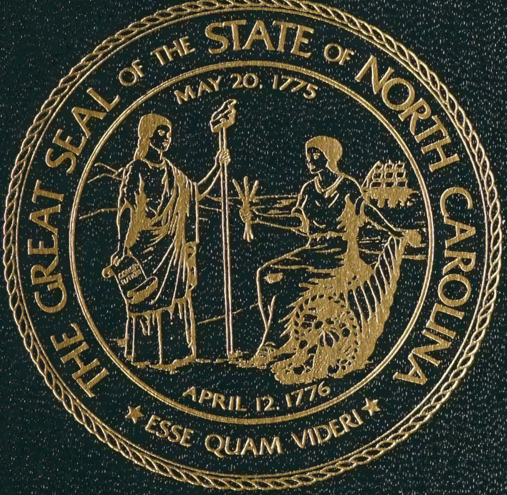
GENERAL STATUTES OF NORTH CAROLINA

ANNOTATED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GENERAL STATUTES OF NORTH CAROLINA

ANNOTATED

Volume 18

Chapters 159A Through 168A

Prepared Under the Supervision of
The Department of Justice
of the State of North Carolina
by
The Editorial Staff of the Publisher

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Preface

This volume contains the general laws of a permanent nature enacted by the General Assembly through the 2009 Regular Session that are within Chapters 159A through 168A, and brings to date the annotations included therein.

A majority of the Session Laws are made effective upon becoming law, but a few provide for stated effective dates. If the Session Law makes no provision for an effective date, the law becomes effective under G.S. 120-20 "from and after 60 days after the adjournment of the session" in which passed.

A ready reference index is included at the back of this volume. This index is intended to give the user a quick reference to larger bodies of statutes within this volume only. For detailed research on any subject, both within this volume and the General Statutes as a whole, see the General Index to the General Statutes.

Beginning with formal opinions issued by the North Carolina Attorney General on July 1, 1969, selected opinions which construe a specific statute are cited in the annotations to that statute. For a copy of an opinion or of its headnotes, write the Attorney General, P.O. Box 629, Raleigh, N.C. 27602.

This recompiled volume has been prepared and published under the supervision of the Department of Justice of the State of North Carolina. The members of the North Carolina Bar are requested to communicate any suggestions they may have for improving the General Statutes to the Department, or to LexisNexis, Charlottesville, Virginia.

Roy Cooper
Attorney General

Scope of Volume

Statutes:

Permanent portions of the General Laws enacted by the General Assembly through the 2009 Regular Session affecting Chapters 159A through 168A of the General Statutes.

Annotations:

This publication contains annotations taken from decisions of the North Carolina Supreme Court, decisions of the North Carolina Court of Appeals, and decisions of the appropriate federal courts posted through September 18, 2009. These cases will be printed in the following reporters:

South Eastern Reporter 2nd Series.
Federal Reporter 3rd Series.
Federal Supplement 2nd Series.
Federal Rules Decisions.
Bankruptcy Reports.
Supreme Court Reporter.

Additionally, annotations have been taken from the following sources:

North Carolina Law Review.
Wake Forest Law Review.
Campbell Law Review.
Duke Law Journal.
North Carolina Central Law Journal.
Opinions of the Attorney General.

User's Guide

In order to assist both the legal profession and the layperson in obtaining the maximum benefit from the North Carolina General Statutes, a User's Guide has been included in Volume 1. This guide contains comments and information on the many features found within the General Statutes intended to increase the usefulness of this set of laws to the user. See Volume 1 for the complete User's Guide.

Abbreviations

(The abbreviations below are those found in the General Statutes that refer to prior codes.)

P.R.	Potter's Revisal (1821, 1827)
R.S.	Revised Statutes (1837)
R.C.	Revised Code (1854)
C.C.P.	Code of Civil Procedure (1868)
Code	Code (1883)
Rev.	Revisal of 1905
C.S.	Consolidated Statutes (1919, 1924)

STATE OF NORTH CAROLINA

Department of Justice

Raleigh, North Carolina

December 2009

I, Roy Cooper, Attorney General of North Carolina, do hereby certify that the foregoing 2009 Replacement Code to the General Statutes of North Carolina was prepared and published by LexisNexis under the supervision of the Department of Justice of the State of North Carolina.

Roy Cooper
Attorney General of North Carolina

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Chapter 159A.

Pollution Abatement and Industrial Facilities Financing Act.

§§ 159A-1 through 159A-25: Unconstitutional.

Editor's Note. — This Chapter, enacted by Session Laws 1971, c. 633, and comprising G.S. 159A-1 through 159A-25, was held unconstitutional in Stanley v. Department of Conservation & Dev., 284 N.C. 15, 199 S.E.2d 641 (1973). A new Chapter 159A, covering the same subject matter, was enacted by Session Laws 1975, c. 800, effective upon ratification of an enabling amendment to the state Constitution, and has been recodified as Chapter 159C.

Chapter 159B.

Joint Municipal Electric Power and Energy Act.

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Short Title, Legislative Findings and Definitions.

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ARTICLE 1.

Short Title, Legislative Findings and Definitions.

§ 159B-1. Short title.

This Chapter may be cited as the "Joint Municipal Electric Power and Energy Act." (1975, c. 186, s. 1.)

§ 159B-2. Legislative findings and purposes.

The General Assembly hereby finds and determines that:

A critical situation exists with respect to the present and future supply of electric power and energy in the State of North Carolina;

The public utilities operating in the State have sustained greatly increased capital and operating costs;

Such public utilities have found it necessary to postpone or curtail construction of planned generation and transmission facilities serving the consumers of electricity in the State, increasing the ultimate cost of such facilities to the public utilities, and that such postponements and curtailments will have an adverse effect on the provision of adequate and reliable electric service in the State;

The above conditions have occurred despite substantial increases in electric rates;

In the absence of further material increases in electric rates, additional postponements and curtailments in the construction of additional generation and transmission facilities may occur, thereby impairing those utilities' ability to continue to provide an adequate and reliable source of electric power and energy in the State;

Seventy-two municipalities in the State have for many years owned and operated systems for the distribution of electric power and energy to customers in their respective service areas and are empowered severally to engage in the generation and transmission of electric power and energy;

Such municipalities owning electric distribution systems have an obligation to provide their inhabitants and customers an adequate, reliable and economical source of electric power and energy in the future;

In order to achieve the economies and efficiencies made possible by the proper planning, financing, sizing and location of facilities for the generation and transmission of electric power and energy which are not practical for any municipality acting alone, and to insure an adequate, reliable and economical supply of electric power and energy to the people of the State, it is desirable for the State of North Carolina to authorize municipal electric systems to jointly plan, finance, develop, own and operate electric generation and transmission facilities appropriate to their needs in order to provide for their present and future power requirements for all uses without supplanting or displacing the service at retail of other electric suppliers operating in the State; and

The joint planning, financing, development, ownership and operation of electric generation and transmission facilities by municipalities which own electric distribution systems and the issuance of revenue bonds for such purposes as provided in this Chapter is for a public use and for public and municipal purposes and is a means of achieving economies, adequacy and reliability in the generation of electric power and energy and in the meeting of future needs of the State and its inhabitants.

In addition to the authority granted municipalities to jointly plan, finance, develop, own and operate electric generation and transmission facilities by Article 2 of this Chapter and the other powers granted in said Article 2, and in addition and supplemental to powers otherwise conferred on municipalities by the laws of this State for interlocal cooperation, it is desirable for the State of North Carolina to authorize municipalities and joint agencies to form joint municipal assistance agencies which shall be empowered to provide aid and assistance to municipalities in the construction, ownership, maintenance, expansion and operation of their electric systems, and to empower joint agencies authorized herein to provide aid and assistance to municipalities or joint municipal assistance agencies in the development and implementation of integrated resource planning, including, but not limited to, the evaluation of resources, generating facilities, alternative energy resources, conservation and load management programs, transmission and distribution facilities, and purchase power options, and in the development, construction and operation of supply-side and demand-side resources, in addition to exercising such other powers as hereinafter provided to joint municipal assistance agencies and joint agencies. In order to provide maximum economies and efficiencies to municipalities and the consuming public in the generation and transmission of electric power and energy contemplated by Article 2 of this Chapter, it is also desirable that the joint municipal assistance agencies authorized herein be empowered to act as provided in Article 3 of this Chapter and that such agency or agencies be empowered to act for and on behalf of any one or more municipalities or joint agencies, as requested, with respect to the construction, ownership, maintenance, expansion and operation of their electric systems; and that the joint agencies authorized herein be empowered to act as provided in Article 2 of this Chapter and that such joint agencies be empowered to act for and on behalf of any one or more municipalities or joint municipal assistance agencies, in each case as requested, with respect to the integrated resource planning and development, construction, and operation of supply-side and demand-side options described above. (1975, c. 186, s. 1; 1983, c. 609, s. 2; 1991 (Reg. Sess., 1992), c. 888, s. 1; 1995, c. 412, s. 1.)

CASE NOTES

Cited in State ex rel. Utils. Comm'n v. Carolina Util. Customers Ass'n, 314 N.C. 171, 333 S.E.2d 259 (1985).

§ 159B-3. Definitions.

The following terms whenever used or referred to in this Chapter shall have the following respective meanings unless a different meaning clearly appears from the context:

(1) "Bonds" shall mean revenue bonds, notes and other evidences of indebtedness of a joint agency or municipality issued under the provisions of this Chapter and shall include refunding bonds.

(2) "Cost" or "cost of a project" shall mean, but shall not be limited to, the cost of acquisition, construction, reconstruction, improvement, enlargement, betterment or extension of any project, including the cost of studies, plans, specifications, surveys, and estimates of costs and revenues relating thereto; the cost of land, land rights, rights-of-way and easements, water rights, fees, permits, approvals, licenses, certificates, franchises, and the preparation of applications for and securing the same; administrative, legal, engineering and inspection expenses; financing fees, expenses and costs; working capital; initial fuel costs; interest on the bonds during the period of construction and for such reasonable period thereafter as may be determined by the issuing municipality or joint agency (provided that a period of three years shall be deemed to be reasonable for bonds issued to finance a generating unit expected to be operated to supply base load); establishment of reserves; and all other expenditures of the issuing municipality or joint agency incidental, necessary or convenient to the acquisition, construction, reconstruction, improvement, enlargement, betterment or extension of any project and the placing of the same in operation. The term shall also mean the capital cost of fuel for any project.

(2a) "Electric system" shall mean any electric power generation, transmission or distribution system.

(3) "Governing board" shall mean the legislative body, council, board of commissioners, board of trustees, or other body charged by law with governing the municipality, joint agency, or joint municipal assistance agency, including any executive committee created pursuant to G.S. 159B-10.

(4) "Joint agency" shall mean a public body and body corporate and politic organized in accordance with the provisions of Article 2 of this Chapter.

(4a) "Joint municipal assistance agency" shall mean a public body and body corporate and politic organized in accordance with the provisions of Article 3 of this Chapter.

(5) "Municipality" shall mean a city, town or other unit of municipal government created under the laws of the State, or any board, agency, or commission thereof, owning a system or facilities for the generation, transmission or distribution of electric power and energy for public and private uses.

(6) "Project" shall mean any system or facilities for the generation, transmission and transformation, or any of them, of electric power and energy by any means whatsoever including, but not limited to, any one or more electric generating units situated at a particular site, or any interest in the foregoing, whether an undivided interest as a tenant in common or otherwise. Project does not mean an administrative office building or office or facilities related to the administrative office building or office.

(7) "State" shall mean the State of North Carolina. (1975, c. 186, s. 1; 1977, c. 708, s. 2; 1983, c. 609, ss. 3-6; 1985, c. 266, s. 1; 1989, c. 329; 1991, c. 513, s. 1; 1995, c. 412, s. 2.)

Article 2.

Joint Agencies; Municipalities.

§ 159B-4. Authority of municipalities to jointly cooperate.

In addition and supplemental to the powers otherwise conferred on municipalities by the laws of the State, and in order to accomplish the purposes of this Chapter and to obtain a supply of electric power and energy for the present and future needs of its inhabitants and customers, a municipality may jointly or severally plan, finance, develop, construct, reconstruct, acquire, improve, enlarge, better, own, operate and maintain a project situated within or without the State with one or more other municipalities or joint agencies created pursuant to this Chapter or, in the case of projects for the generation and transmission of electric power and energy, jointly with any persons, firms, associations or corporations, public or private, engaged in the generation, transmission or distribution of electric power and energy for resale within this State or any state contiguous to the State, and may make such plans and enter into such contracts in connection therewith, not inconsistent with the provisions of this Chapter, as are necessary or appropriate.

Prior to acquiring any generation project the governing board shall determine the needs of the municipality for power and energy based upon engineering studies and reports, and shall not acquire a project in excess of that amount of capacity and the energy associated therewith required to provide for its projected needs for power and energy from and after the date the project is estimated to be placed in normal continuous operation and for such reasonable period of time thereafter as shall be determined by the governing board and approved by the North Carolina Utilities Commission in a proceeding instituted pursuant to G.S. 159B-24. In determining the future power requirements of a municipality, there shall be taken into account the following:

(1) The economies and efficiencies to be achieved in constructing on a large scale facilities for the generation of electric power and energy;
(2) The municipality's needs for reserve and peaking capacity and to meet obligations under pooling and reserve sharing agreements reasonably related to its needs for power and energy to which it is or may become a party;
(3) The estimated useful life of such project;
(4) The estimated time necessary for the planning, development, acquisition or construction of such project and the length of time required in advance to obtain, acquire or construct additional power supply; and
(5) The reliability and availability of existing or alternative power supply sources and the cost of such existing or alternative power supply sources.

A determination by such governing board approved by the North Carolina Utilities Commission based upon appropriate findings of the foregoing matters shall be conclusive as to the quantity of the interest which a municipality may acquire in a generation project unless a party to the proceeding aggrieved by the determination of said Commission shall file notice of appeal pursuant to Article 5 of Chapter 62 of the General Statutes of North Carolina.

Nothing herein contained shall prevent a municipality or municipalities from undertaking studies to determine whether there is a need for a project or whether such project is feasible. (1975, c. 186, s. 1; 1977, c. 385, s. 2; 1983, c. 574, s. 1; 1995, c. 412, s. 3.)

§ 159B-5. Joint ownership of a project; provisions of the contract or agreement with respect thereto.

Each municipality shall own a project in proportion to the amount of the money furnished or the value of property or other consideration supplied by it for the planning, development, acquisition or construction thereof, and shall be entitled to a percentage share of the output and capacity therefrom equal to such ownership proportion in such project.

Each municipality shall be severally liable for its own acts and not jointly or severally liable for the acts, omissions or obligations of others, and no money or property or other consideration supplied by any municipality shall be credited or otherwise applied to the account of any other municipality, nor shall the share of any municipality in a project be charged directly or indirectly with any debt or obligation of any other municipality or be subject to any lien as a result thereof. The acquisition of a project shall include, but shall not be limited to, the purchase or lease of an existing, completed project and the purchase of a project under construction. A municipality participating in the joint or several planning, financing, construction, reconstruction, acquisition, improvement, enlargement, betterment, ownership, operation or maintenance of any project under this Chapter may furnish money derived solely from the proceeds of bonds or from the ownership and operation of its electric system, or both, and provide property, both real and personal, services and other considerations.

Any contracts entered into by municipalities with respect to ownership in a project shall contain such terms, conditions and provisions, not inconsistent with the provisions hereof, as the governing boards of the municipalities shall deem to be in the interests of the municipalities. Any such contracts shall be ratified by resolution of the governing board of each municipality spread upon its minutes. Any such contracts shall include, but shall not be limited to, the following:

(1) The purpose or purposes of the contract;
(2) The duration of the contract;
(3) The manner of appointing or employing the personnel necessary in connection with the project;
(4) The method of financing the project, including the apportionment of costs and revenues;
(5) Provisions specifying the ownership interests of the parties in real property used or useful in connection with the project, and the procedures for the disposition of such property when the contract expires, is terminated or when the project, for any reason, is abandoned, decommissioned or dismantled;
(6) Provisions relating to alienation and prohibiting partition of a municipality's interest in a project, which provisions shall not be subject to any provision of law restricting covenants against alienation or partition;
(7) Provisions for the construction of a project, which may include the determination that one participating municipality or any person, firm or corporation may construct the project as agent for all the parties;
(8) Provisions for the operation and maintenance of a project, which may include the determination that one participating municipality or any person, firm or corporation may operate and maintain the project as agent for all the parties;
(9) Provisions for the creation of a committee of representatives of the participating municipalities with such powers of supervision of the construction and operation of the project as the contract, not inconsistent with the provisions of this Chapter, may provide;
(10) Provisions that if one or more of the municipalities shall default in the performance or discharge of its or their obligations with respect to the project, the other party or parties may assume, pro rata or otherwise, the obligations of such defaulting party or parties and may succeed to such rights and interests of the defaulting party or parties in the project as may be agreed upon in the contract;
(11) Methods for amending the contract;
(12) Methods for terminating the contract; and
(13) Any other necessary or proper matter.

For the purpose of paying its respective share of the cost of a project or projects, a municipality may issue its bonds as provided in this Chapter, and, notwithstanding the provisions of any other law to the contrary, may secure the payment of the principal of, premium, if any, and interest on such bonds by a lien and charge on all, or any portion of, the revenue derived or to be derived from the ownership and operation of its system or facilities for the generation, transmission, or distribution of electric power or energy or its interests in any project or projects, or a combination of such revenues. Provided that all bonds issued under the provisions of this Chapter shall be authorized and issued by the governing board of a city, town, or other unit of municipal government created under the laws of the State.

In connection with any project undertaken pursuant to this Chapter, a municipality shall have all of the rights and powers granted to a joint agency by subdivisions (12) and (13) of G.S. 159B-11.

Notwithstanding the provisions of any other law to the contrary, any contracts with respect to the sale or purchase of capacity, output, power or energy from a project may extend for a period not exceeding 50 years from the date a project is estimated to be placed in normal continuous operation; and the execution and effectiveness thereof shall not be subject to any authorizations or approvals by the State or any agency, commission or instrumentality or political subdivision thereof except as in this Chapter specifically required and provided. (1975, c. 186, s. 1; 1983, c. 574, ss. 2-2.6.)

§ 159B-5.1. Joint ownership with other public or private entities engaged in generation, transmission or distribution of electric power for resale.

Municipalities and joint agencies may jointly or severally own, operate and maintain projects with any person, firm, association or corporation, public or private, engaged in the generation, transmission or distribution of electric power and energy for resale within this State or any state contiguous to this State. Any municipality or joint agency shall have for such purposes all powers conferred upon them by the provisions of this Chapter including the power to issue revenue bonds pursuant to the provisions of this Chapter to finance its share of the cost of any such project. The definitions and all other terms and provisions of this Chapter shall be construed so as to include such undivided ownership interest in order to fully effectuate the power and authority conferred by the foregoing provisions of this section. (1977, c. 708, s. 3.)

CASE NOTES

Cited in State ex rel. Utilities Comm'n v. Eddleman, 320 N.C. 344, 358 S.E.2d 339 (1987).

§ 159B-6. Sale of capacity and output by a municipality.

Capacity or output derived by a municipality from its ownership share of a project not then required by such municipality for its own use and for the use of its consumers may be sold or exchanged by such municipality, for such consideration and for such period and upon such other terms and conditions as may be determined by the parties, to any municipality owning electric distribution facilities in this State, to any electric membership corporation or public utility authorized to do business in this State, or to any state, federal or municipal agency which owns electric generation, transmission or distribution facilities. Provided, however, that the foregoing limitations shall not apply to the temporary sale of excess capacity and energy without the State in cases of emergency or when required to fulfill obligations under any pooling or reserve-sharing agreements reasonably related to its needs for power and energy. Provided further, however, that sales of excess capacity or output of a project to electric membership corporations, public utilities, and other persons the interest on whose securities and other obligations is not exempt from taxation by the federal government shall not be made in such amounts, for such periods of time, and under such terms and conditions as will cause the interest on bonds issued to finance the cost of a project to become taxable by the federal government. (1975, c. 186, s. 1.)

§ 159B-7. Licenses, permits, certificates and approvals.

Municipalities proposing to jointly plan, finance, develop, own and operate a project are hereby authorized, either jointly or separately, to apply to the appropriate agencies of the State, the United States, or any state thereof, and to any other proper agency for such licenses, permits, certificates or approvals as may be necessary, and to construct, maintain and operate projects in accordance with such licenses, permits, certificates or approvals and to obtain, hold and use such licenses, permits, certificates and approvals in the same manner as any other operating unit of any other person. (1975, c. 186, s. 1.)

§ 159B-8: Repealed by Session Laws 1995, c. 412, s. 4.

§ 159B-9. Creation of a joint agency; board of commissioners.

(a) The governing boards of two or more municipalities may by resolution or ordinance determine that it is in the best interests of the municipalities in accomplishing the purposes of this Chapter to create a joint agency as prescribed herein for the purpose of undertaking the planning, financing, development, acquisition, construction, reconstruction, improvement, enlargement, betterment, operation and maintenance of a project or projects as an alternative or supplemental method of obtaining the benefits and assuming the responsibilities of ownership in a project.

In determining whether or not creation of a joint agency for such purpose is in the best interests of the municipalities, the governing boards shall take into consideration, but shall not be limited to, the following:

(1) Whether or not a separate entity may be able to finance the cost of projects in a more efficient and economical manner;
(2) Whether or not better financial market acceptance may result if one entity is responsible for issuing all of the bonds required for a project or projects in a timely and orderly manner and with a uniform credit rating instead of multiple entities issuing separate issues of bonds;
(3) Whether or not savings and other advantages may be obtained by providing a separate entity responsible for the acquisition, construction, ownership and operation of a project or projects; and
(4) Whether or not the existence of such a separate entity will foster the continuation of joint planning and undertaking of projects, and the resulting economies and efficiencies to be derived from such joint planning and undertaking.

If each governing board shall determine that it is in the best interest of the municipality to create a joint agency to provide power and energy to the municipality as provided in this Chapter, each shall adopt a resolution or ordinance so finding (which need not prescribe in detail the basis for the determination), and which shall set forth the names of the municipalities which are proposed to be initial members of the joint agency. The governing board of the municipality shall thereupon by ordinance or resolution appoint one commissioner of the joint agency who may, at the discretion of the governing board, be an officer or employee of the municipality.

Any two or more commissioners so named may file with the Secretary of State an application signed by them setting forth (i) the names of all the proposed member municipalities; (ii) the name and official residence of each of the commissioners so far as known to them; (iii) a certified copy of the appointment evidencing their right to office; (iv) a statement that each governing board of each respective municipality appointing a commissioner has made the aforesaid determination; (v) the desire that a joint agency be organized as a public body and a body corporate and politic under this Chapter; and (vi) the name which is proposed for the joint agency.

The application shall be subscribed and sworn to by such commissioners before an officer or officers authorized by the laws of the State to administer and certify oaths.

The Secretary of State shall examine the application and, if he finds that the name proposed for the joint agency is not identical with that of any other corporation of this State or of any agency or instrumentality thereof, or so nearly similar as to lead to confusion and uncertainty, he shall receive and file it and shall record it in an appropriate book of record in his office.

When the application has been made, filed and recorded as herein provided, the joint agency shall constitute a public body and a body corporate and politic under the name proposed in the application. The Secretary of State shall make and issue to the commissioners executing the application a certificate of incorporation pursuant to this Chapter under the seal of the State, and shall record the same with the application. The certificate shall set forth the names of the member municipalities.

In any suit, action or proceeding involving the validity or enforcement of, or relating to, any contract of the joint agency, the joint agency, in the absence of establishing fraud in the premises, shall be conclusively deemed to have been established in accordance with the provisions of this Chapter upon proof of the issuance of the aforesaid certificate by the Secretary of State. A copy of such certificate, duly certified by the Secretary of State, shall be admissible in evidence in any such suit, action or proceeding, and shall be conclusive proof of the filing and contents thereof.

Notice of the issuance of such certificate shall be given to all of the proposed member municipalities by the Secretary of State. If a commissioner of any such municipality has not signed the application to the Secretary of State and such municipality does not notify the Secretary of State of the appointment of a commissioner within 40 days after receipt of such notice, such municipality shall be deemed to have elected not to be a member of the joint agency. As soon as practicable after the expiration of such 40-day period, the Secretary of State shall issue a new certificate of incorporation, if necessary, setting forth the names of those municipalities which have elected to become members of the joint agency. The failure of any proposed member to become a member shall not affect the validity of the corporate existence of the joint agency.

(b) After the creation of a joint agency, any other municipality may become a member thereof upon application to such joint agency after the adoption of a resolution or ordinance by the governing board of the municipality setting forth the determination and finding prescribed in paragraph (a) of this G.S. 159B-9, and authorizing said municipality to participate, and with the unanimous consent of the members of the joint agency evidenced by the resolutions of their respective governing bodies. Any municipality may withdraw from a joint agency, provided, however, that all contractual rights acquired and obligations incurred while a municipality was a member shall remain in full force and effect.

(c) The powers of a joint agency shall be exercised by or under the authority of, and the business and affairs of a joint agency shall be managed under the direction of, its board of commissioners. However, all or a portion of those powers and the management of all or any part of the business and affairs of a joint agency may be exercised by an executive committee created pursuant to G.S. 159B-10. The board of commissioners shall consist of commissioners appointed by the respective governing boards of the municipalities which are members of the joint agency. Each commissioner shall have not less than one vote and may have in addition thereto such additional votes as the governing boards of a majority of the municipalities which are members of the agency shall determine. Each commissioner shall serve at the pleasure of the governing board by which the commissioner was appointed. Each appointed commissioner before entering upon his duties shall take and subscribe to an oath before some person authorized by law to administer oaths to execute the duties of his office faithfully and impartially, and a record of each such oath shall be filed with the governing board of the appointing municipality and spread upon its minutes. The governing board of each of the municipalities may appoint up to two alternate commissioners to act in lieu of its appointed commissioner when the appointed commissioner is unable for any reason to attend meetings of the board of commissioners or any committee thereof, and the governing board shall designate them as first or second alternate commissioner. Each alternate commissioner shall serve at the pleasure of the governing body by which that commissioner was appointed and shall take, subscribe to and file an oath in the same manner as prescribed for regularly appointed commissioners. Such alternate commissioner when acting in lieu of the regularly appointed commissioner shall be deemed to be the commissioner of such municipality, and shall have the rights, powers and authority of the regularly appointed commissioner, including any committee function of said commissioner, other than such commissioner's position as an officer pursuant to paragraph (d) of this G.S. 159B-9. A certificate entered into the minutes of the board of commissioners of a joint agency by the clerk or other custodian of the minutes and records of the governing body of a municipality, appointing commissioners and alternate commissioners and reciting their appointments, shall constitute conclusive evidence of their appointment. The offices of commissioner, alternate commissioner, or officer of a joint agency are hereby declared to be offices which may be held by the holders of any office, place of trust or profit in addition to and concurrently with those offices permitted by G.S. 128-1.1 and other offices permitted by other General Statute.

(d) The board of commissioners of the joint agency shall annually elect one of the commissioners as chairman, another as vice-chairman, and another person or persons, who may but need not be commissioners, as treasurer, secretary, and, if desired, assistant secretary and assistant treasurer. The office of treasurer or assistant treasurer may be held by the secretary or assistant secretary. The board of commissioners may also appoint such additional officers as it deems necessary. The secretary or any assistant secretary of the joint agency shall keep a record of the proceedings of the joint agency, and the secretary shall be the custodian of all records, books, documents and papers filed with the joint agency, the minute book or journal of the joint agency and its official seal. Either the secretary or the assistant secretary of the joint agency may cause copies to be made of all minutes and other records and documents of the joint agency and may give certificates under the official seal of the joint agency to the effect that such copies are true copies, and all persons dealing with the joint agency may rely upon such certificates.

(e) A majority of the commissioners of a joint agency then in office shall constitute a quorum. A vacancy in the board of commissioners of the joint agency shall not impair the right of a quorum to exercise all the rights and perform all the duties of the joint agency. Any action taken by the joint agency under the provisions of this Chapter may be authorized by resolution at any regular or special meeting, and each such resolution may take effect immediately and need not be published or posted. A majority of the votes which the commissioners present are entitled to cast shall be necessary and sufficient to take any action or to pass any resolution, provided that such commissioners present are entitled to cast a majority of the votes of all commissioners of the board.

(f) No commissioner of a joint agency shall receive any compensation for the performance of his duties hereunder, provided, however, that each commissioner may be paid his necessary expenses incurred while engaged in the performance of such duties. (1975, c. 186, s. 1; 1977, c. 385, ss. 3, 4; 1979, c. 102; 1983, c. 574, s. 3; 1985, c. 243, s. 1; 1995, c. 412, s. 5.)

§ 159B-10. Executive committee, composition; powers and duties; terms.

(a) The board of commissioners of a joint agency may create an executive committee by resolution. The board may provide for the composition and terms of office of, and the method of filling vacancies on, the executive committee. The executive committee may include representatives of the joint agency, representatives of any other joint agency, and any other persons. The executive committee of a joint agency may simultaneously act as the executive committee of any other joint agency or agencies, or joint municipal assistance agency or agencies, if so provided by all such entities, and also may simultaneously act as the sole governing board of any joint municipal assistance agency created by two or more joint agencies pursuant to G.S. 159B-45 if so provided by all such joint agencies. An executive committee acting as the sole governing board of a joint municipal assistance agency shall not be subject to the limitations on the powers and authority of executive committees set forth in subsection (b) of this section.

(b) Except as limited by resolution of the board of commissioners creating an executive committee and except as otherwise provided in this subsection, an executive committee shall have and shall exercise all of the powers and authority of the board of commissioners creating the executive committee. However, the executive committee shall not have the power or authority to (i) amend any resolution of the board of commissioners of the joint agency relating to the creation of the executive committee or providing for its powers or authority; or (ii) adopt or amend a budget. Any rate for a joint agency adopted by an executive committee may be rejected, within 30 days following the adoption of the rate, by a vote of two-thirds in number of the commissioners representing the joint agency members affected by the rate. In the event that any rate is rejected in this manner, the executive committee shall, within 10 days following the action on the part of the commissioners, adopt a second rate for that joint agency, which may be the same rate as previously adopted. This second rate may be rejected, within 10 days following the adoption of the rate, by a vote of two-thirds in number of the commissioners representing the joint agency members affected by the rate. If a second rate adopted by the executive committee is rejected in this manner, the board of commissioners of the affected joint agency shall, acting by weighted vote, adopt a rate for the joint agency which is sufficient at least to comply with the requirements of G.S. 159B-17(b). No such rate adopted by the executive committee shall become effective so long as it is subject to rejection by commissioners of a joint agency as provided for in this subsection. However, if the executive committee determines that the establishment of a rate is required within 50 days to enable a joint agency to satisfy the requirements of G.S. 159B-17(b), the rate adopted by the executive committee shall be effective until changed by the executive committee or board of commissioners in accordance with this subsection.

(c) Each member of the executive committee shall have one vote and shall serve at the pleasure of the governing board by which the member was appointed. Before performing duties as a member, each member shall take and subscribe to an oath before some person authorized by law to administer oaths to execute the duties of the office faithfully and impartially, and a record of each oath shall be filed with the governing board appointing the member and spread upon its minutes. The office of a member of an executive committee may be held by the holders of any office, place of trust or profit in addition to and concurrently with those offices permitted by G.S. 128-1.1 and other offices permitted by law.

(d) The executive committee shall annually elect from its membership a chair and vice-chair, and shall elect another person or persons, who need not be members, to serve as secretary and, if desired, assistant secretary. The secretary or any assistant secretary of the executive committee shall keep a record of the proceedings of the executive committee, and the secretary shall be the custodian of all records, books, documents, and papers filed with the executive committee, as well as the minute book or journal of the executive committee. Either the secretary or the assistant secretary of the executive committee may cause copies to be made of all minutes and other records and documents of the executive committee and may give certificates of the executive committee to the effect that the copies are true copies, and all persons dealing with the executive committee may rely upon those certificates.

(e) A majority of the members of an executive committee then serving shall constitute a quorum. A vacancy on the executive committee shall not impair the right of a quorum to exercise all the rights and perform all the duties of the executive committee. Any action taken by the executive committee under the provisions of this Chapter may be authorized by resolution at any regular or special meeting, and each such resolution may take effect immediately and need not be published or posted. A vote of the majority of the members present shall be necessary and sufficient to take any action or to pass any resolution, provided that those members present are entitled to cast a majority of the votes of all members of the executive committee.

(f) Members of the executive committee, and of any subcommittee created by the executive committee, may receive compensation and be paid expenses for the performance of their duties as determined by the board or boards of commissioners creating that executive committee. However, for any member of an executive committee who is an employee of a municipality, a payment in lieu of any compensation shall be made to the municipality for distribution to the executive committee member in the manner and amount, if any, it deems appropriate. An executive committee for more than one entity may be referred to as a board of directors of any or each of those entities. (1975, c. 186, s. 1; 1977, c. 385, s. 5; 1995, c. 412, s. 6.)

§ 159B-11. General powers of joint agencies; prerequisites to undertaking projects.

Each joint agency shall have all of the rights and powers necessary or convenient to carry out and effectuate the purposes and provisions of this Chapter, including, but without limiting the generality of the foregoing, the rights and powers:

(1) To adopt bylaws for the regulation of the affairs and the conduct of its business, and to prescribe rules, regulations and policies in connection with the performance of its functions and duties;

(2) To adopt an official seal and alter the same at pleasure;

(3) To acquire and maintain an administrative office building or office at such place or places as it may determine, which building or office may be used or owned alone or together with any other joint agency or agencies, joint municipal assistance agency, municipalities, corporations, associations or persons under such terms and provisions for sharing costs and otherwise as may be determined;

(4) To sue and be sued in its own name, and to plead and be impleaded;

(5) To receive, administer and comply with the conditions and requirements respecting any gift, grant or donation of any property or money;

(6) To acquire by purchase, lease, gift, or otherwise, or to obtain options for the acquisition of, any property, real or personal, improved or unimproved, including an interest in land less than the fee thereof;

(7) To sell, lease, exchange, transfer or otherwise dispose of, or to grant options for any such purposes with respect to, any real or personal property or interest therein;

(8) To pledge, assign, mortgage or otherwise grant a security interest in any real or personal property or interest therein, including the right and power to pledge, assign or otherwise grant a security interest in any money, rents, charges or other revenues and any proceeds derived by the joint agency from the sales of property, insurance or condemnation awards;

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(9) To issue bonds of the joint agency for the purpose of providing funds for any of its corporate purposes;

(10) To study, plan, finance, construct, reconstruct, acquire, improve, enlarge, extend, better, own, operate and maintain one or more projects, either individually or jointly with one or more municipalities in this State or any state contiguous to this State owning electric distribution facilities or with any political subdivisions, agencies or instrumentalities of any state contiguous to this State or with other joint agencies created pursuant to this Chapter, and to pay all or any part of the costs thereof from the proceeds of bonds of the joint agency or from any other available funds of the joint agency; no provisions of law with respect to the acquisition, construction, or operation of property by other public bodies shall be applicable to any project as defined in this Chapter and as authorized by this subdivision unless the General Assembly shall specifically so state;

(11) To authorize the construction, operation or maintenance of any project or projects by any person, firm, association, or corporation, public or private;

(12) To acquire by private negotiated purchase or lease or otherwise an existing project, a project under construction, or other property, either individually or jointly, with one or more municipalities or joint agencies in this State or any state contiguous to this State owning electric distribution facilities or with any political subdivisions, agencies or instrumentalities of any state contiguous to this State or with other joint agencies created pursuant to this Chapter; to acquire by private negotiated purchase or lease or otherwise any facilities for the development, production, manufacture, procurement, handling, storage, fabrication, enrichment, processing or reprocessing of fuel of any kind or any facility or rights with respect to the supply of water, and to enter into agreements by private negotiation or otherwise, for a period not exceeding fifty (50) years, for the development, production, manufacture, procurement, handling, storage, fabrication, enrichment, processing or reprocessing of fuel of any kind or any facility or rights with respect to the supply of water; no provisions of law with respect to the acquisition, construction or operation of property by other public bodies shall be applicable to any agency created pursuant to this Chapter unless the legislature shall specifically so state;

(13) To dispose of by private negotiated sale or lease, or otherwise, an existing project or a project under construction, or to dispose of by private negotiated sale or lease, or otherwise any facilities for the development, production, manufacture, procurement, handling, storage, fabrication, enrichment, processing or reprocessing of fuel of any kind or any facility or rights with respect to the supply of water; no provisions of law with respect to the disposition of property by other public bodies shall be applicable to an agency created pursuant to this Chapter unless the legislature shall specifically so state;

(14) To fix, charge and collect rents, rates, fees and charges for electric power or energy and other services, facilities and commodities sold, furnished or supplied through any project or activity permitted in this Chapter;

(15) To generate, produce, transmit, deliver, exchange, purchase, sell for resale only, electric power or energy, and to enter into contracts for any or all such purposes;

(16) To negotiate and enter into contracts for the purchase, sale for resale only, exchange, interchange, wheeling, pooling, transmission or use of electric power and energy with any person, firm, association, or corporation, public or private;

(17) To make and execute contracts and other instruments necessary or convenient in the exercise of the powers and functions of the joint agency under this Chapter, including contracts with persons, firms, associations, or corporations, public or private;

(18) To apply to the appropriate agencies of the State, the United States or any state thereof, and to any other proper agency, for such permits, licenses, certificates or approvals as may be necessary, and to construct, maintain and operate projects and undertake other activities permitted in this Chapter in accordance with such licenses, permits, certificates or approvals, and to obtain, hold and use such licenses, permits, certificates and approvals in the same manner as any other person or operating unit of any other person;

(19) To employ engineers, architects, attorneys, real estate counselors, appraisers, financial advisors and such other consultants and employees as may be required in the judgment of the joint agency and to fix and pay their compensation from funds available to the joint agency therefor and to select and retain subject to approval of the Local Government Commission the financial consultants, underwriters and bond attorneys to be associated with the issuance of any bonds and to pay for services rendered by underwriters, financial consultants or bond attorneys out of the proceeds of any such issue with regard to which the services were performed;

(19a) To purchase power and energy, and services and facilities relating to the utilization of power and energy, from any source on behalf of its members and other customers and to furnish, sell, lease, exchange, transfer, or otherwise dispose of, or to grant options for any such purposes with respect to the same, to its members and other customers in such amounts, with such characteristics, for such periods of time and under such terms and conditions as the governing board of the joint agency shall determine;

(19b) To provide aid and assistance to municipalities, and to act for or on behalf of any municipality, in any activity related to the development and implementation of integrated resource planning, including, but not limited to, the evaluation of resources, generating facilities, alternative energy resources, conservation and load management programs, transmission and distribution facilities, and purchased power options, and related to the development, construction and operation of supply-side and demand-side resources, and to do such other acts and things as provided in Article 3 of this Chapter as if the joint agency were a joint municipal assistance agency, and to carry out the powers granted in this Chapter in relation thereto; to provide aid and assistance to any joint municipal assistance agency in the exercise of its respective powers and functions; and

(20) To do all acts and things necessary, convenient or desirable to carry out the purposes, and to exercise the powers granted to the joint agency in this Chapter.

No joint agency shall undertake any project required to be financed, in whole or in part, with the proceeds of bonds without the approval of a majority of its members. Before undertaking any project, a joint agency shall, based upon engineering studies and reports, determine that such project is required to provide for the projected needs for power and energy of its members from and after the date the project is estimated to be placed in normal and continuous operation and for a reasonable period of time thereafter. Prior to or simultaneously with granting a certificate of public convenience and necessity for any such generation project the North Carolina Utilities Commission, in a proceeding instituted pursuant to G.S. 159B-24 of this Chapter, shall approve such

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determination. In determining the future power requirements of the members of a joint agency, there shall be taken into account the following:

(1) The economies and efficiencies to be achieved in constructing on a large scale facilities for the generation of electric power and energy;

(2) Needs of the joint agency for reserve and peaking capacity and to meet obligations under pooling and reserve-sharing agreements reasonably related to its needs for power and energy to which the joint agency is or may become a party;

(3) The estimated useful life of such project;

(4) The estimated time necessary for the planning, development, acquisition, or construction of such project and the length of time required in advance to obtain, acquire or construct additional power supply for the members of the joint agency;

(5) The reliability and availability of existing alternative power supply sources and the cost of such existing alternative power supply sources.

A determination by the joint agency approved by the North Carolina Utilities Commission based upon appropriate findings of the foregoing matters shall be conclusive as to the appropriateness of a project to provide the needs of the members of a joint agency for power and energy unless a party to the proceeding aggrieved by the determination of said Commission shall file notice of appeal pursuant to Article 5 of Chapter 62 of the General Statutes of North Carolina.

Nothing herein contained shall prevent a joint agency from undertaking studies to determine whether there is a need for a project or whether such project is feasible. (1975, c. 186, s. 1; 1977, c. 385, ss. 6-10; 1983, c. 574, ss. 4, 4.1; 1985, c. 212, s. 1; c. 723, s. 3; 1991 (Reg. Sess., 1992), c. 888, s. 2; 1993, c. 182, s. 1; 1995, c. 412, s. 7.)

CASE NOTES

Cited in State ex rel. Utilities Comm'n v. Eddleman, 320 N.C. 344, 358 S.E.2d 339 (1987).

§ 159B-12. Sale of capacity and output by a joint agency; other contracts with a joint agency.

Any municipality which is a member of the joint agency may contract to buy from the joint agency power and energy for its present or future requirements, including the capacity and output of one or more specified projects. As the creation of a joint agency is an alternative method whereby a municipality may obtain the benefits and assume the responsibilities of ownership in a project, any such contract may provide that the municipality so contracting shall be obligated to make the payments required by the contract whether or not a project is completed, operable or operating and notwithstanding the suspension, interruption, interference, reduction or curtailment of the output of a project or the power and energy contracted for, and that such payments under the contract shall not be subject to any reduction, whether by offset or otherwise, and shall not be conditioned upon the performance or nonperformance of the joint agency or any other member of the joint agency under the contract or any other instrument. Any contract with respect to the sale or purchase of capacity or output of a project entered into between a joint agency and its member municipalities may also provide that if one or more of such municipalities shall default in the payment of its or their obligations with respect to the purchase of said capacity or output, then in that event the remaining member municipalities which are purchasing capacity and output under the contract shall be required to accept and pay for and shall be entitled proportionately to and may use or otherwise dispose of the capacity or output which was to be purchased by the defaulting municipality. Notwithstanding the provisions of any other law to the contrary, any such contract with respect to the sale or purchase of capacity, output, power, or energy from a project may extend for a period not exceeding 50 years from the date a project is estimated to be placed in normal continuous operation.

Any municipality may contract with a joint agency, or may contract indirectly with a joint agency through a joint municipal assistance agency, to implement the provisions of G.S. 159B-11(19a) and (19b). Notwithstanding the provisions of any law to the contrary, including, but not limited to, the provisions of G.S. 159B-44(13), any contract between a joint agency and a municipality or a joint municipal assistance agency (or between a municipality and a joint municipal assistance agency) to implement the provisions of G.S. 159B-11(19b) may extend for a period not exceeding 30 years; provided, that any such contract in respect of a capital project to be used by or for the benefit of a municipality shall be subject to the prior approval of the Local Government Commission of North Carolina. In reviewing any such contract for approval, said Local Government Commission shall consider the municipality's debt management procedures and policies, whether the municipality is in default with respect to its debt service obligations and such other matters as said Local Government Commission may believe to have a bearing on whether the contract should be approved.

Notwithstanding the provisions of any law to the contrary, the execution and effectiveness of any contracts authorized by this section shall not be subject to any authorizations or approvals by the State or any agency, commission or instrumentality or political subdivision thereof except as in this Chapter specifically required and provided.

Payments by a municipality under any contract authorized by this section shall be made solely from the revenues derived from the ownership and operation of the electric system of said municipality and any obligation under such contract shall not constitute a legal or equitable pledge, charge, lien, or encumbrance upon any property of the municipality or upon any of its income, receipts, or revenues, except the revenues of its electric system, and neither the faith and credit nor the taxing power of the municipality are, or may be, pledged for the payment of any obligation under any such contract. A municipality or joint agency, pursuant to an agreement with a municipality, shall be obligated to fix, charge and collect rents, rates, fees and charges for electric power and energy and other services, activities permitted in this Chapter, facilities and commodities sold, furnished or supplied through the electric system of the municipality sufficient to provide revenues adequate to meet its obligations under any such contract and to pay any and all other amounts payable from or constituting a charge and lien upon such revenues, including amounts sufficient to pay the principal of and interest on general obligation bonds heretofore or hereafter issued by the municipality for purposes related to its electric system.

Payments by any joint municipal assistance agency to any joint agency under any contract or contracts authorized by this section, shall be made solely from the sources specified in such contract or contracts and no other, and any obligation under such contract shall not constitute a legal or equitable pledge, charge, lien, or encumbrance upon any property of the joint municipal assistance agency or upon any of its income, receipts, or revenues, or upon any property of any municipality with which the joint agency or joint municipal assistance agency contracts or upon any of such municipality's income, receipts, or revenues in each case except such sources so specified. A joint municipal assistance agency shall be obligated to fix, charge and collect rents, rates, fees, and charges for providing aid and assistance sufficient to provide revenues adequate to meet its obligations under such contract.

Any municipality which is a member of a joint agency may furnish the joint agency with money derived solely from the ownership and operation of its electric system or facilities and provide the joint agency with personnel, equipment and property, both real and personal. Any municipality may also provide any services to a joint agency.

Any member of a joint agency may contract for, advance or contribute funds derived solely from the ownership and operation of its electric system or facilities to a joint agency as may be agreed upon by the joint agency and the member, and the joint agency shall repay such advances or contributions from proceeds of bonds, from operating revenues or from any other funds of the joint agency, together with interest thereon as may be agreed upon by the member and the joint agency. (1975, c. 186, s. 1; 1983, c. 574, s. 5; 1991 (Reg. Sess., 1992), c. 888, s. 3; 1995, c. 412, s. 8.)

§ 159B-13. Sale of excess capacity and output by a joint agency.

A joint agency may sell or exchange the excess capacity or output of a project not then required by any of its members, for such consideration and for such period and upon such other terms and conditions as may be determined by the parties, to any person, firm, association, or corporation, public or private. (1975, c. 186, s. 1; 1977, c. 385, s. 11; 1995, c. 412, s. 9.)

§ 159B-14. Bonds of a joint agency.

A joint agency may issue bonds for the purpose of paying the cost of a project and secure both the principal of and interest on the bonds by a pledge of part or all of the revenues derived or to be derived from all or any of its projects, and any additions and betterments thereto or extensions thereof, or from the sale of power and energy and services and facilities related to the utilization of power and energy, or from other activities or facilities permitted in this Chapter, or from contributions or advances from its members. A joint agency may issue bonds that are not for the purpose of paying the cost of a project and secure the bonds solely by a pledge of revenues, solely by a security interest in real or personal property, or by both a pledge of revenues and a security interest in real or personal property. Bonds of a joint agency shall be authorized by a resolution adopted by its governing board and spread upon its minutes. (1975, c. 186, s. 1; 1983, c. 574, s. 6; 1991, c. 513, s. 2; 1995, c. 412, s. 10.)

§ 159B-15. Issuance of bonds.

(a) Each municipality and joint agency is hereby authorized to issue at one time or from time to time its bonds for the purpose of paying all or any part of the cost of any of the purposes herein authorized. The principal of, premium, if any, and the interest on bonds issued to pay the cost of a project shall be payable solely from revenues. Bonds that are not issued to pay the cost of a project shall be payable from revenues, from property pledged as security for the bonds, or from both.

The bonds of each issue shall bear interest at such rate or rates as may be determined or provided for by the Local Government Commission of North Carolina with the approval of the issuer. The bonds of each issue shall be dated and shall mature in such amounts and at such time or times, not exceeding 50 years from their respective date or dates, as may be determined by the governing board of the issuer, and may be made redeemable before maturity at such price or prices and under such terms and conditions as may be fixed by the governing board of the issuer prior to the issuance of the bonds. The governing board of the issuer shall determine the form and the manner of execution of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the State. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bond, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. The governing board of the issuer may also provide for the authentication of the bonds by a trustee or fiscal agent appointed by the issuer, or by an authenticating agent of any such trustee or fiscal agent. The bonds may be issued in coupon or in fully registered form, or both, as the governing board of the issuer may determine, and provisions may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest, and for the interchange of registered and coupon bonds. At the election of a joint agency, any bonds issued and sold in accordance with the provisions of this Chapter may be purchased or otherwise acquired by the joint agency and held by it in lieu of cancellation, and subsequently resold.

(a1) Notwithstanding anything in this Chapter to the contrary, the Local Government Commission of North Carolina and the issuer (i) may authorize officers or employees of either or both thereof to fix principal amounts, maturity dates, interest rates or methods of fixing interest rates, interest payment dates, denominations, redemption rights of the issuer or holder, places of payment of principal and interest, and purchase prices of any bonds, to sell and deliver any bonds in whole or in part at one time or from time to time, and to fix other matters and procedures necessary to complete the transactions authorized, all subject to such limitations as may be prescribed by the Local Government Commission with the approval of the issuer, (ii) may approve insurance contracts, agreements for lines of credit, letters of credit, commitments to purchase bonds and any other transactions to provide security to assure, timely payment of bonds, (iii) may employ one or more persons or firms to assist in the sale of the bonds and appoint one or more banks, trust companies or any dealer in bonds, within or without the State, as depository for safekeeping and as agent for the delivery and payment of the bonds, and (iv) may provide for the payment of fees and expenses in connection with the foregoing either from the proceeds of the bonds or from other available funds.

(b) The proceeds of the bonds of each issue shall be used solely for the purposes for which such bonds have been issued, and shall be disbursed in such manner and under such restrictions, if any, as the governing board of the issuer may provide in the resolution authorizing the issuance of such bonds or in any trust agreement securing the same. The municipality or joint agency may issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The municipality or joint agency may also provide for the replacement of any bonds which shall have become mutilated or shall have been destroyed or lost.

(c) Bonds may be issued under the provisions of this Chapter without obtaining, except as otherwise expressly provided in G.S. 159B-24 of this Chapter, the consent of the State or of any political subdivision, or of any agency, commission or instrumentality of either thereof, and without any other approvals, proceedings or the happening of any conditions or things other than those approvals, proceedings, conditions or things which are specifically required by this Chapter and the provisions of the resolution authorizing the issuance of such bonds or the trust agreement securing the same. (1975, c. 186, s. 1; 1983, c. 574, ss. 7, 7.1; 1985, c. 266, ss. 2, 3; 1991, c. 513, s. 3; 1995, c. 412, s. 11.)

§ 159B-16. Resolution or trust agreement.

In the discretion of the governing board of the issuer, any bonds issued under the provisions of this Chapter may be secured by a trust agreement by and between the issuer and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the State. Such trust agreement or the resolution providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the bondholders and of the trustee as may be reasonable and proper and not in violation of law, and may restrict the individual right of action by bondholders. The trust agreement or the resolution providing for the issuance of such bonds may contain covenants including, but not limited to, the following:

(1) The pledge of all or any part of the revenues derived or to be derived from the project or projects to be financed by the bonds, or from the sale or other disposition of power and energy and services and facilities related to the utilization of power and energy, or from other services or activities permitted in this Chapter, or from contributions and advances from members of a joint agency, or from the electric system or other facilities of a municipality or a joint agency.

(2) The rents, rates, fees and charges to be established, maintained, and collected, and the use and disposal of revenues, gifts, grants and funds received or to be received by the municipality or joint agency.

(3) The setting aside of reserves and the investment, regulation and disposition thereof.

(4) The custody, collection, securing, investment, and payment of any moneys held for the payment of bonds.

(5) Limitations or restrictions on the purposes to which the proceeds of sale of bonds then or thereafter to be issued may be applied.

(6) Limitations or restrictions on the issuance of additional bonds; the terms upon which additional bonds may be issued and secured; or the refunding of outstanding or other bonds.

(7) The procedure, if any, by which the terms of any contract with bondholders may be amended, the percentage of bonds the bondholders of which must consent thereto, and the manner in which such consent may be given.

(8) Events of default and the rights and liabilities arising thereupon, the terms and conditions upon which bonds issued under this Chapter shall become or may be declared due before maturity, and the terms and conditions upon which such declaration and its consequences may be waived.

(9) The preparation and maintenance of a budget.

(10) The retention or employment of consulting engineers, independent auditors, and other technical consultants.

(11) Limitations on or the prohibition of free service to any person, firm or corporation, public or private.

(12) The acquisition and disposal of property, provided that no project or part thereof shall be mortgaged by such trust agreement or resolution.

(13) Provisions for insurance and for accounting reports and the inspection and audit thereof.

(14) The continuing operation and maintenance of the project or other facilities.

(15) For bonds that are not issued to pay the cost of a project, the pledge, assignment, mortgage, or grant of a security interest in any real or personal property or interest in real or personal property, including the pledge, assignment, or grant of a security interest in money, rents, charges, or other revenues or proceeds derived by the joint agency from the sale of property, from insurance, or from a condemnation award. In the event of default on a bond secured by a pledge, assignment, mortgage, or grant of a security interest, the rights of the bond holders and the liabilities arising from the default shall be limited, except to the extent provided in a pledge of revenues, to the specific property or interest in property pledged, assigned, or mortgaged or in which a security interest was granted to secure the bonds, and no claim for any deficiency shall be made nor any deficiency judgment entered as a result of the pledge, assignment, mortgage, or grant of a security interest in the property or the interest in property. (1975, c. 186, s. 1; 1983, c. 574, s. 8; 1991, c. 513, ss. 4, 5; 1995, c. 412, s. 12.)

§ 159B-17. Revenues.

(a) A municipality is hereby authorized to fix, charge and collect rents, rates, fees and charges for electric power and energy and other services, facilities and commodities sold, furnished or supplied through the facilities of its electric system or its interest in any joint project. For so long as any bonds of a municipality are outstanding and unpaid, the rents, rates, fees and charges shall be so fixed as to provide revenues sufficient to pay all costs of and charges and expenses in connection with the proper operation and maintenance of its electric system, and its interest in any joint project, and all necessary repairs, replacements or renewals thereof, to pay when due the principal of, premium, if any, and interest on all bonds and other evidences of indebtedness payable from said revenues, to create and maintain reserves as may be required by any resolution or trust agreement authorizing and securing bonds, to pay when due the principal of, premium, if any, and interest on all general obligation bonds heretofore or hereafter issued to finance additions, improvements and betterments to its electric system, and to pay any and all amounts which the municipality may be obligated to pay from said revenues by law or contract.

(b) A joint agency is hereby authorized to fix, charge, and collect rents, rates, fees and charges for electric power and energy and other services, facilities and commodities sold, furnished or supplied through the facilities of its projects or otherwise as authorized by this Chapter. For so long as any bonds of a joint agency are outstanding and unpaid, the rents, rates, fees and charges shall be so fixed as to provide revenues sufficient to pay all costs of and charges and expenses in connection with the proper operation and maintenance of its projects, and all necessary repairs, replacements or renewals thereof, to pay when due the principal of, premium, if any, and interest on all bonds and other evidences of indebtedness payable from said revenues, to create and maintain reserves as may be required by any resolution or trust agreement authorizing and securing bonds, and to pay any and all amounts which the joint agency may be obligated to pay from said revenues by law or contract.

(c) Any pledge of revenues, securities or other moneys made by a municipality, joint agency or joint municipal assistance agency pursuant to this Chapter shall be valid and binding from the date the pledge is made. The revenues, securities, and other moneys so pledged and then held or thereafter received by the municipality, joint agency or joint municipal assistance agency or any fiduciary shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act, and the lien of the pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the municipality, joint agency or joint municipal assistance agency without regard to whether such parties have notice thereof. The resolution or trust agreement or any financing statement, continuation statement or other instrument by which a pledge of revenues, securities or other moneys is created need not be filed or recorded in any manner. (1975, c. 186, s. 1; 1983, c. 574, s. 9; 1985, c. 212, s. 2; 1991 (Reg. Sess., 1992), c. 888, s. 4; 1995, c. 412, s. 13.)

§ 159B-18. Trust funds; investment authority.

(a) Notwithstanding any other provisions of law to the contrary, all moneys received pursuant to the authority of this Chapter, whether as proceeds from the sale of bonds or as revenues, shall be deemed to be trust funds to be held and applied solely as provided in this Chapter. The resolution authorizing the bonds of any issue or the trust agreement securing such bonds may provide that any of such moneys may be temporarily invested and reinvested pending the disbursements thereof in such securities and other investments as shall be provided in such resolution or trust agreement, and shall provide that any officer with whom, or any bank or trust company with which, such moneys shall be deposited shall hold and apply the same for the purposes hereof, subject to such regulation as this Chapter and such resolution or trust agreement may provide.

(b) Any moneys received pursuant to the authority of this Chapter and any other moneys available to a joint agency for investment may be invested:

(1) As provided in subsection (a) of this section;

(2) As provided in G.S. 159-30, except that:

  a. A joint agency may also invest, in addition to the obligations enumerated in G.S. 159-30(c)(2), in bonds, debentures, notes, participation certificates, or other evidences of indebtedness issued, or the principal of and the interest on which are unconditionally guaranteed, whether directly or indirectly, by any agency or instrumentality of, or corporation wholly owned by, the United States of America.

  b. For purposes of G.S. 159-30(c)(12), a joint agency may also enter into repurchase agreements with respect to, in addition to the obligations enumerated in G.S. 159-30(c)(12):

    1. Obligations of the Federal Financing Bank, the Federal Farm Credit Bank, the Bank for Cooperatives, the Federal Intermediate Credit Bank, the Federal Land Banks, the Federal Home Loan Banks, the Federal Home Loan Mortgage Corporation, Fannie Mae, the Government National Mortgage Association, the Federal Housing Administration, the Farmers Home Administration, and the United States Postal Service;

    2. Bonds, debentures, notes, participation certificates, or other evidences of indebtedness issued, or the principal of and the interest on which are unconditionally guaranteed, whether directly or indirectly, by any agency or instrumentality of, or corporation wholly owned by, the United States of America;

    3. Mortgage-backed pass-through securities guaranteed by the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, or Fannie Mae;

4. Direct or indirect obligations which are collateralized by or represent beneficial ownership interests in mortgage-backed pass-through securities guaranteed by the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, Fannie Mae; and
5. Direct or indirect obligations, trust certificates, or other similar instruments which are both: (i) guaranteed by the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, or Fannie Mae; (ii) collateralized by or represent beneficial ownership interests in mortgage-backed pass-through securities which are guaranteed by the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, or Fannie Mae; including, but not limited to, Real Estate Mortgage Investment Conduit Certificates; and (iii) for purposes of the second proviso of G.S. 159-30(c)(12)a., the financial institution serving either as trustee or as fiscal agent for a joint agency holding the obligations subject to the repurchase agreement may also be the provider of the repurchase agreement if the obligations that are subject to the repurchase agreement are held in trust by the trustee or fiscal agent for the benefit of the joint agency;

(3) In mortgage-backed pass-through securities guaranteed by the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, or Fannie Mae;

(4) In direct or indirect obligations which are collateralized by or represent beneficial ownership interests in mortgage-backed pass-through securities guaranteed by the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, or Fannie Mae; and

(5) In direct or indirect obligations, trust certificates, or other similar instruments which are (i) guaranteed by the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, or Fannie Mae, and (ii) collateralized by or represent beneficial ownership interests in mortgage-backed pass-through securities which are guaranteed by the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, or Fannie Mae, including, but not limited to, Real Estate Mortgage Investment Conduit Certificates. (1975, c. 186, s. 1; 1991 (Reg. Sess., 1992), c. 888, s. 5; 1993, c. 445, s. 1; 1995, c. 412, s. 14; 2001-487, s. 14(n).)

Editor's Note. — Session Laws 1991 (Reg. Sess., 1992), c. 888, s. 6 provides: "Section 5 of this act [which added "investment authority" in the catchline, added the subsection (a) designation and added subsection (b)] is intended to provide additional and alternative methods for investment and shall be regarded as supplemental and additional to powers conferred by any other laws, and shall not be regarded as being in derogation of any powers now existing."

§ 159B-19. Remedies.

Any holder of bonds issued under the provisions of this Chapter or any of the coupons appertaining thereto, and the trustee under any trust agreements, except to the extent the rights herein given may be restricted by such trust agreement or the resolution authorizing the issuance of such bonds, may, either at law or in equity, by suit, action, mandamus or other proceeding, protect and enforce any and all rights under the laws of the State or granted hereunder, or, to the extent permitted by law, under such trust agreement or resolution authorizing the issuance of such bonds or under any agreement or other contract executed by the municipality or joint agency pursuant to this Chapter, and may enforce and compel the performance of all duties required by this Chapter or by such trust agreement or resolution to be performed by any joint agency or municipality or by any officer thereof, including the fixing, charging and collecting of rents, rates, fees and charges. (1975, c. 186, s. 1.)

§ 159B-20. Status of bonds under Uniform Commercial Code.

Whether or not the bonds and interest coupons appertaining thereto are of such form and character as to be investment securities under Article 8 of the Uniform Commercial Code as enacted in this State, all bonds and interest coupons appertaining thereto issued under this Chapter are hereby made investment securities within the meaning of and for all the purposes of Article 8 of the Uniform Commercial Code as enacted in this State, subject only to the provisions of the bonds pertaining to registration. (1975, c. 186, s. 1.)

Editor's Note. — The Uniform Commercial Code, referred to in this section, is found in Chapter 25 of the General Statutes.

§ 159B-21. Bonds eligible for investment.

Bonds issued by a municipality or joint agency under the provisions of this Chapter are hereby made securities in which all public officers and agencies of the State and all political subdivisions, all insurance companies, banking associations, investment companies, executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such bonds are hereby made securities which may properly and legally be deposited with and received by any officer or agency of the State or any political subdivision for any purpose for which the deposit of bonds or obligations of the State or any political subdivision is now or may hereafter be authorized by law. (1975, c. 186, s. 1.)

§ 159B-22. Agreement of the State.

The State does hereby covenant and agree with the holders of any bonds that so long as any bonds of a municipality or joint agency are outstanding and unpaid the State will not limit or alter the rights vested in such municipality or joint agency to acquire, construct, reconstruct, improve, enlarge, better, extend, own, operate and maintain its electric system or any project or interest therein, as the case may be, or to establish, maintain, revise, charge, and collect the rents, rates, fees and charges referred to in this Chapter and to fulfill the terms of any agreements made with the holders of the bonds or in any way impair the rights and remedies of the bondholders, until the bonds, together with interest thereon, interest on any unpaid installment of interest, and all costs and expenses in connection with any action or proceedings by or on behalf of the bondholders, are fully paid, met and discharged. (1975, c. 186, s. 1.)

§ 159B-23. Limited liability.

(a) Bonds shall be special obligations of the municipality or joint agency issuing them. The principal of, premium, if any, and interest on the bonds shall not be payable from the general funds of the municipality or joint agency.

Bonds issued to pay the cost of a project and, except as provided in this subsection, bonds that are not issued to pay the cost of a project shall not constitute a legal or equitable pledge, charge, lien, or encumbrance upon any of the municipality's or joint agency's property or upon any of its income, receipts, or revenues, except the funds pledged under the resolution authorizing the bonds or the trust agreement securing the bonds. Bonds that are not issued to pay the cost of a project and that are secured by a pledge, assignment, mortgage, or grant of a security interest in property shall constitute an encumbrance on the municipality's or joint agency's property as provided in the resolution authorizing the bonds or the trust agreement securing the bonds.

(b) Neither the faith and credit nor the taxing power of a municipality or of the State are, or may be, pledged for the payment of the principal of or interest on bonds, and no holder of bonds shall have the right to compel the exercise of the taxing power by the State or a municipality. No holder of bonds issued to pay the cost of a project shall have the right to compel the forfeiture of any of the municipality's or joint agency's property in connection with any default on the bonds. A holder of bonds that are not issued to pay the cost of a project and that are secured by a pledge, assignment, mortgage, or grant of a security interest in property may compel the forfeiture of the property to the extent allowed in the resolution authorizing the bonds or the trust agreement securing the bonds.

(c) Every bond issued to pay the cost of a project shall recite in substance that the principal of and interest on the bond is payable solely from the revenues pledged to its payment and that the municipality or joint agency is not obligated to pay the principal or interest except from these revenues. A bond that is not issued to pay the cost of a project shall recite in substance that the principal of and interest on the bond is payable and secured as provided in the resolution authorizing the bond or the trust agreement securing the bond. (1975, c. 186, s. 1; 1991, c. 513, s. 6.)

§ 159B-24. Approval and sale of bonds.

Prior to the acquisition or the commencement of construction of any project consisting of a system or facilities for the generation of power and energy which is to be financed by the issuance of bonds under the provisions of this Chapter, the participating municipalities or joint agency, as the case may be, shall first obtain a certificate of public convenience and necessity and, in the same proceeding, the approval required by G.S. 159B-4 hereof, in the case of the participating municipalities, or the approval required by G.S. 159B-11 hereof, in the case of a joint agency, from the North Carolina Utilities Commission under such rules, regulations and procedures as the Commission may prescribe.

No municipality or joint agency shall issue any bonds pursuant to this Chapter unless and until, and only to the extent that, the issuance of such bonds is approved by the Local Government Commission. A participating municipality or joint agency shall file with the secretary of the Local Government Commission an application for Commission approval of the issuance of the bonds upon such form as the said Commission may prescribe, which form shall provide for the submission of such information as the secretary may require concerning the proposed bond issue, the details thereof and the security therefor. Before he accepts the application, the secretary may require the governing board or its representatives to attend a preliminary conference at which time the secretary and his deputies may informally discuss the details of the proposed issue and the security therefor.

After an application in proper form has been filed, and after a preliminary conference if one is required, the secretary shall notify the municipality or joint agency in writing that the application has been filed and accepted for submission to the Commission. The secretary's statement shall be conclusive evidence that the municipality or joint agency, as the case may be, has complied with the requirements of this section with respect to the filing of an application for approval by the said Local Government Commission.

In determining whether a proposed bond issue shall be approved, the Commission may consider:

(1) The municipality's or joint agency's debt management procedures and policies.
(2) Whether the municipality or joint agency is in default with respect to any of its debt service obligations.
(3) Whether, based upon feasibility reports submitted to it, the probable revenues of the project to be financed or the revenues of the municipality's electric system, as the case may be, will be sufficient to service the proposed bonds.

The Commission may inquire into and give consideration to any other matters that it may believe to have a bearing on whether the issue should be approved except matters which are expressly required by the provisions of this Chapter to be determined by the North Carolina Utilities Commission.

The Commission shall approve the application if, upon the information and evidence it receives, it finds and determines:

(1) That, based upon engineering studies and feasibility reports submitted to it, the principal amount of the proposed bonds will be adequate and not excessive for the proposed purpose of the issue.
(2) That the municipality's or joint agency's debt management procedures and policies are good, or that reasonable assurances have been given that its debt will henceforth be managed in strict compliance with law.
(3) That the requirements of this Chapter with respect to the issuance of the bonds and the details thereof and security therefor have been, or will be, satisfied.
(4) That the issuance of the proposed bonds will effectuate the purposes and policies of this Chapter.

After considering an application, the Local Government Commission shall enter its order either approving or denying the application. An order approving an issue shall not be regarded as an approval of the legality of the bonds in any respect.

If the Commission enters an order denying the application, the proceedings under this section shall be at an end.

At any time after the Commission approves an application for the issuance of bonds, the governing board of the issuer may adopt a bond resolution or enter into a trust agreement in accordance with the provisions of this Chapter, and may thereafter at one time, or from time to time, issue the bonds as provided herein.

Upon the filing with the Local Government Commission of a resolution of the issuer requesting that its bonds be sold, such bonds may be sold in such manner, either at public or private sale, and for such price as the Local Government Commission shall determine to be for the best interest of the issuer and effectuate best the purposes of this Chapter, provided that such sale shall be approved by the issuer.

Except as herein expressly provided, bonds may be issued and sold under the provisions of this Chapter without obtaining the approval or consent of any other department, division, commission, board, bureau or agency of the State, and without any other proceeding or the happening of any other condition or thing than those proceedings, conditions or things which are specifically required by this Chapter. (1975, c. 186, s. 1; 1995, c. 412, s. 15.)

Legal Periodicals. — For note, "Tax Increment Financing in North Carolina: The Myth of the Countermajoritarian Difficulty," see 83 N.C. L. Rev. 1526 (2005).

§ 159B-25. Refunding bonds.

(a) A municipality or joint agency is hereby authorized to provide by resolution for the issuance of refunding bonds of the municipality or joint agency for the purpose of refunding any bonds then outstanding which shall have been issued under the provisions of this Chapter, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds.

(b) In addition to any refunding bonds that may be issued pursuant to subsection (a), a municipality or joint agency is hereby authorized to provide by resolution for the issuance of refunding bonds for the purpose of providing for the payment of any interest accrued or to accrue on any bonds which shall have been issued by the joint agency under the provisions of this Chapter; provided, however, that the refunding bonds are issued on or prior to June 30, 1992, and the latest maturity of the refunding bonds issued for a project is no later than the latest maturity of any other bonds issued by the municipality or joint agency, as the case may be, then outstanding for the same project; and provided further that the Local Government Commission shall conduct an evidentiary hearing and upon the evidence presented find and determine that:

(1) The municipality's or the joint agency's debt will be managed in strict compliance with law;
(2) The requirements of this Chapter with respect to the issuance of its bonds and the details thereof and security therefor have been and will be satisfied;
(3) The estimated revenues of the project or the revenues of the municipality's electric system, as the case may be, will be sufficient to service all bonds to be outstanding after the issuance of the refunding bonds;
(4) The application of the proceeds of the refunding bonds will result in the deferral of recovery in rates of a portion of the capital costs of the project for a reasonable period of time;
(5) All capital costs of the project will be recovered over a period ending, and all bonds issued for the project will mature, no later than the end of the then estimated useful economic life of the project;
(6) The issuance of the bonds is in the best interest of the municipality's or joint agency's electricity customers; and
(7) The bond rating of the State and its several political subdivisions and agencies allowed to issue bonds should not be adversely affected.

(c) The issuance of such bonds, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties and obligations of the municipality or joint agency in respect to the same shall be governed by the provisions of this Chapter which relate to the issuance of bonds, insofar as such provisions may be appropriate thereto. (1975, c. 186, s. 1; 1989, c. 735, s. 2; 1995, c. 412, s. 16.)

§ 159B-26. Tax exemption.

Bonds shall at all times be free from taxation by the State or any political subdivision or any of their agencies, excepting inheritance or gift taxes, income taxes on the gain from the transfer of the bonds, and franchise taxes. The interest on the bonds is not subject to taxation as income. (1975, c. 186, s. 1; 1995, c. 46, s. 18.)

§ 159B-27. Taxes; payments in lieu of taxes.

(a) A project jointly owned by municipalities or owned by a joint agency shall be exempt from property taxes; provided, however, that each municipality possessing an ownership share of a project, and a joint agency owning a project, shall, in lieu of property taxes, pay to any governmental body authorized to levy property taxes the amount which would be assessed as taxes on real and personal property of a project if such project were otherwise subject to valuation and assessment by the Department of Revenue. Such payments in lieu of taxes shall be due and shall bear interest if unpaid, as in the cases of taxes on other property. Payments in lieu of taxes made hereunder shall be treated in the same manner as taxes for purposes of all procedural and substantive provisions of law. Any administrative building and associated land shall be deemed a project for purposes of this paragraph.

(b) Each municipality having an ownership share in a project shall pay to the State in lieu of an annual franchise or privilege tax an amount equal to three and twenty-two hundredths percent (3.22%) of that percentage of all moneys expended by said municipality on account of its ownership share, including payment of principal and interest on bonds issued to finance such ownership share, which is equal to the percentage of such city or town's total entitlement that is used or sold by it to any person, firm or corporation exempted by law from the payment of the tax on gross receipts pursuant to G.S. 105-116.

(c) In lieu of an annual franchise or privilege tax, each joint agency shall pay to the State an amount equal to three and twenty-two hundredths percent (3.22%) of the gross receipts from sales of electric power or energy, less receipts from sales of electric power or energy to a vendee subject to tax under G.S. 105-116.

(d) The State shall distribute to cities and towns which receive electric power and energy from their ownership share of a project or to which electric power and energy is sold by a joint agency an amount equal to a tax of three and nine hundredths percent (3.09%) of all moneys expended by a municipality on account of its ownership share of a project, including payment of principal and interest on bonds issued to finance such ownership share, or an amount equal to a tax of three and nine hundredths percent (3.09%) of the gross receipts from all sales of electric power and energy to such city or town by a joint agency, as the case may be. The General Assembly finds that the revenue distributed under this section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of the North Carolina Constitution. Therefore, the Governor may not reduce or withhold the distribution.

(e) The reporting, payment and collection procedures contained in G.S. 105-116 shall apply to the levy herein made.

(f) Except as herein expressly provided with respect to jointly owned projects or projects owned by a joint agency, no other property of a municipality used or useful in the generation, transmission and distribution of electric power and energy shall be subject to payments in lieu of taxes. (1973, c. 476, s. 193; 1975, c. 186, s. 1; 1977, c. 385, s. 12; 1981, c. 487; 1983, c. 574, s. 10; 1983 (Reg. Sess., 1984), c. 1097, s. 11; 1995, c. 412, s. 17; 2002-120, s. 6.)

CASE NOTES

Payments Made in Lieu of "Property Taxes". — Under subsection (a) of this section, municipally owned public utilities make payments for system property to counties and cities "in lieu of property taxes". Under the statute, these payments are treated as property taxes. North Carolina E. Mun. Power v. Wake County, 100 N.C. App. 693, 398 S.E.2d 486 (1990), cert. denied, 329 N.C. 270, 407 S.E.2d 838 (1991).

§ 159B-28. Personnel.

Personnel employed or appointed by a municipality to work on a joint project or for a joint agency shall have the same authority, rights, privileges and immunities (including coverage under the workers' compensation laws) which the officers, agents and employees of the appointing municipality enjoy within the territory of that municipality, whether within or without the territory of the appointing municipality, when they are acting within the scope of their authority or in the course of their employment.

Personnel employed or appointed directly by a joint agency or by a nonprofit operating agency of the participating municipalities or of the joint agency, shall be qualified for participation in the North Carolina Local Government Employees Retirement System with the same rights, privileges, obligations and responsibilities as they would have if they were employees of a municipality. (1975, c. 186, s. 1; 1991, c. 636, s. 3.)

§ 159B-29. Dissolution of joint agencies.

Whenever the governing board of a joint agency and the governing boards of its member municipalities shall by resolution or ordinance determine that the purposes for which the joint agency was formed have been substantially fulfilled and that all bonds theretofore issued and all other obligations theretofore incurred by the joint agency have been fully paid or satisfied, the governing board of the joint agency may by resolution declare the joint agency to be dissolved. On the effective date of such resolution declaring the joint agency to be dissolved, the title to all funds and other property owned by the joint agency at the time of such dissolution shall vest in the member municipalities of the joint agency as provided in this Chapter and the bylaws of the joint agency. Notice of such dissolution shall be filed with the Secretary of State. (1975, c. 186, s. 1; 1995, c. 412, s. 18.)

§ 159B-30. Annual reports.

Each joint agency shall, following the closing of each fiscal year, submit an annual report of its activities for the preceding year to the governing boards of its member municipalities and to the North Carolina Utilities Commission. Each such report shall set forth in a form prescribed by the North Carolina Utilities Commission a complete operating and financial statement covering the operations of the joint agency during such year. The joint agency shall cause an audit of its books of record and accounts to be made at least once in each year by certified public accountant(s) and the cost thereof may be treated as a part of the cost of construction of a project or projects, or otherwise as part of the expense of administration of a project covered by such audit.

The municipalities possessing ownership interests in a project shall, following the closing of each fiscal year, submit a consolidated or combined annual report of their activities with respect to such project for the preceding year to the respective governing board of such municipalities and to the North Carolina Utilities Commission. Each such report shall set forth in a form prescribed by the North Carolina Utilities Commission a complete operating and financial statement covering the operations of the jointly owned project during such year. The municipalities possessing ownership interests in a project shall cause an audit of the books of record and accounts relating to such project to be made at least once in each year by certified public accountant(s) and the cost thereof may be treated as a cost of construction of the project, or otherwise as part of the expenses of the administration of the project covered by such audit. (1975, c. 186, s. 1.)

§ 159B-30.1. Additional reports.

Beginning March 1, 1996, and annually thereafter, each joint agency operating under the authority of Chapter 159B of the General Statutes shall file a report with the Joint Legislative Utility Review Committee describing the activities of the joint agency carried out pursuant to the authority granted by G.S. 159B-2, 159B-11(19b), 159B-12 and 159B-17(c). The report shall cover the preceding calendar year. Each joint agency shall file such additional reports as the Joint Legislative Utility Review Committee shall request. (1991 (Reg. Sess., 1992), c. 888, s. 7; 1995, c. 412, s. 19.)

Cross References. — For provisions pertaining to the Joint Legislative Utility Review Committee, see Article 12A of Chapter 120, G.S. 120-70.1 et seq.

Editor's Note. — Session Laws 1991 (Reg. Sess., 1992), c. 888, s. 7, has been codified as this section at the direction of the Revisor of Statutes.

§ 159B-31. Legislative consent to the application of laws of other states.

Legislative consent is hereby given

(1) To the application of the laws of other states with respect to taxation, payments in lieu of taxes, and the assessment thereof, to any municipality or joint agency created pursuant to this Chapter, which has acquired or has an interest in a project, real or personal, situated without the State, or which owns or operates a project without the State pursuant to this Chapter, and

(2) To the application of regulatory and other laws of other states and of the United States to any municipality or joint agency which owns or operates a project without the State. (1975, c. 186, s. 1.)

§ 159B-32. Government grants and loans.

The governing board of any municipality or joint agency is hereby authorized to make application and to enter into contracts for and to accept grants-in-aid and loans from the federal and State governments and their agencies for planning, acquiring, constructing, expanding, maintaining and operating any project or facility, or participating in any research or development program, or performing any function which such municipality or joint agency may be authorized by general or local law to provide or perform.

In order to exercise the authority granted by this section, the governing board of any municipality or joint agency may:

(1) Enter into and carry out contracts with the State or federal government or any agency or institution thereof under which such government, agency or institution grants financial or other assistance to the municipality or joint agency;

(2) Accept such assistance or funds as may be granted or loaned by the State or federal government with or without such a contract;

(3) Agree to and comply with any reasonable conditions which are imposed upon such grants or loans;

(4) Make expenditures from any funds so granted. (1975, c. 186, s. 1.)

§ 159B-33. Eminent domain.

Municipalities participating in a joint project and joint agencies shall possess the power of eminent domain to the extent and in the same manner and under the same laws as municipalities pursuant to Chapter 40A of the

General Statutes of North Carolina; provided, however, that a municipality or joint agency exercising the power of eminent domain for a purpose authorized by this Chapter shall have no power to condemn an existing facility used for the generation, transmission or distribution of electric power and energy; provided, further, that the North Carolina Utilities Commission shall have the power and authority to order that the lines and rights-of-way of any public utility or electric membership corporation, municipalities participating in a joint project or any joint agency may be crossed by any municipalities participating in a joint project or any joint agency or that the lines of any municipalities participating in a joint project or any joint agency may be crossed by any public utility or electric membership corporation pursuant to the provisions of G.S. 62-39; provided, further, when any municipalities participating in a joint project, or any joint agency, proposes to condemn the lands or rights-of-way of any public utility, electric membership corporation, municipalities participating in a joint project or any joint agency, or any public utility or electric membership corporation proposes to condemn the lands or rights-of-way of any municipalities participating in a joint project or any joint agency, not then used for the generation, transmission or distribution of electric power and energy but held for future use or development, the party desiring to condemn shall file a petition with the North Carolina Utilities Commission requesting authority to condemn such lands or rights-of-way. Upon such petition, the North Carolina Utilities Commission shall have the power and authority, after notice and hearing, to order that such lands or rights-of-way, or parts thereof, may be condemned, and its order shall be final, subject to appeal as provided in this section. In all such cases in which the Commission permits condemnation and when the parties affected cannot agree upon the damages to be paid for the lands or rights-of-way to be condemned, it shall be the duty of the Commission to fix the damages, if any, to be paid in such amounts as may be just and equitable. Any party shall have the right of appeal from any final order or decision or determination of the North Carolina Utilities Commission as to matters of crossings and condemnation of property held for future use or development pursuant to the provisions of Article 5 of Chapter 62 of the General Statutes of North Carolina. (1975, c. 186, s. 1; 1981, c. 919, s. 27.)

§ 159B-34. Liability and defense.

(a) No commissioner or officer of any joint agency or municipality, or member of an executive committee created pursuant to G.S. 159B-10, or person or persons acting in their behalf, while acting within the scope of their authority, shall be subject to any personal liability or accountability by reason of his carrying out any of the powers expressly or impliedly given in this Chapter.

(b) The governing board of a joint agency may provide for the defense of a criminal or civil proceeding brought against any current or former commissioner, member of an executive committee, officer, agent or employee either in his official or individual capacity, or both, on account of any act done or omission made in the scope and course of his employment or duty as a commissioner, member of an executive committee, officer, agent, or employee of the joint agency. The defense may be provided by the agency by its own counsel, by employing other counsel or by purchasing insurance which requires that the insurer provide the defense.

(c) The governing board may appropriate funds for the purpose of paying all or part of a claim made or any civil judgment entered against any of its current or former commissioners, members of executive committees, officers, agents or employees, when such claim is made or such judgment is rendered as damages on account of any act done or omission made in the scope and course of his current or former employment or duty as a commissioner, member of an executive committee, officer, agent or employee; provided, however, that nothing in this section shall authorize any joint agency to appropriate funds for the purpose of paying any claim made or civil judgment entered against any current or former commissioners, members of executive committees, officers, agents or employees if the board of commissioners finds that commissioner, member of an executive committee, officer, agent or employee acted or failed to act because of actual fraud, corruption or actual malice on his part. Any joint agency may purchase insurance coverage for payment of claims or judgments pursuant to this section. (1975, c. 186, s. 1; 1985, c. 225, s. 1; 1995, c. 412, s. 20.)

§ 159B-35. Additional method.

The foregoing sections of this Chapter shall be deemed to provide an additional, alternative and complete method for the doing of the things authorized thereby and shall be deemed and construed to be supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing; provided, however, that insofar as the provisions of this Chapter are inconsistent with the provisions of any other general, special or local law, the provisions of this Chapter shall be controlling. Nothing in this Chapter shall be construed to authorize the issuance of bonds for the purpose of financing facilities to be owned exclusively by any private corporation. (1975, c. 186, s. 1; 1977, c. 385, s. 13.)

§ 159B-36: Recodified as G.S. 159B-52 by Session Laws 1983, c. 609, s. 8.

§ 159B-37. Actions relating to bonds or to security for bonds.

Notwithstanding the general provisions concerning venue contained in Chapter 1, Subchapter IV, Article 7, or elsewhere in the General Statutes, any action or proceeding by or against a municipality or a joint agency that concerns or relates to (a) any bonds issued pursuant to this Chapter, (b) any contract or document the revenues from which secure in whole or in part the payment of said bonds or (c) any other security or source for payment of said bonds must be tried in the Superior Court of Wake County. (1985, c. 414, s. 1.)

§ 159B-38. Confidentiality of contract discussions.

Discussions of a proposed or existing contract to which a joint agency may be or is a party for the construction, ownership, or operation of works, plants, and facilities for or incident to the generation, transmission, or use of electric power and energy or the purchase, sale, exchange, interchange, wheeling, pooling, transmission, or use of electric power and energy shall be confidential and information relating to such discussions shall not be a public record under Chapter 132 of the General Statutes; provided that any contract entered into by or on behalf of a joint agency as defined by G.S. 159B-3 shall be a public record unless otherwise exempted by law. (1993 (Reg. Sess., 1994), c. 570, s. 11.)

§§ 159B-39 through 159B-41: Reserved for future codification purposes.

ARTICLE 3.

Joint Municipal Assistance Agencies.

§ 159B-42. Joint municipal assistance agencies.

The purpose of this Article is to authorize joint agencies or municipalities to form one or more joint municipal assistance agencies which shall be empowered to provide aid and assistance to municipalities in the construction, ownership, maintenance, expansion and operation of their electric systems, to do such other acts and things as hereinafter provided and to carry out the powers and responsibilities hereinafter granted in this Chapter. It shall also be the purpose of a joint municipal assistance agency to provide aid and assistance to any joint agency in the exercise of its respective powers and functions. The term "provide aid and assistance" shall be liberally construed. (1983, c. 609, s. 7; 1995, c. 412, s. 21.)

§ 159B-43. Joint municipal assistance agencies authorized.

(a) Any two or more joint agencies, or any two or more municipalities, may organize a joint municipal assistance agency, which shall be a public body and body corporate and politic. Any joint agency or municipality is hereby authorized to become a member of any such joint municipal assistance agency upon a determination, by resolution or ordinance of its governing board, that economies, efficiencies and other benefits might be achieved from participation in such an agency.

The resolution or ordinance determining it desirable for a joint agency or municipality to become a member of a joint municipal assistance agency (which need not prescribe in detail the basis for the determination) shall set forth the names of the joint agencies or municipalities which are proposed to be initial members of the joint municipal assistance agency. The governing board of the joint agency or municipality shall thereupon by ordinance or resolution appoint one commissioner and up to two alternate commissioners of the joint municipal assistance agency who may, at the discretion of the governing board, be an officer or employee of the joint agency or municipality. If two alternate commissioners are appointed, the governing board shall designate them as first or second alternate commissioner.

Any two or more commissioners so named may file with the Secretary of State an application signed by them setting forth (i) the names of all the proposed member joint agencies or municipalities; (ii) the name and official residence of each of the commissioners so far as known to them; (iii) a certified copy of the appointment evidencing their right to office; (iv) a statement that each governing board of each respective joint agency or municipality appointing a commissioner has made the aforesaid determination; (v) the desire that a joint municipal assistance agency be organized as a public body and a body corporate and politic under this Chapter; and (vi) the name which is proposed for the joint municipal assistance agency.

The application shall be subscribed and sworn to by such commissioners before an officer or officers authorized by the laws of the State to administer and certify oaths.

The Secretary of State shall examine the application and, if he finds that the name proposed for the joint municipal assistance agency is not identical with that of any other corporation of this State or of any agency or instrumentality thereof, or so nearly similar as to lead to confusion and uncertainty, he shall receive and file it and shall record it in an appropriate book of record in his office.

When the application has been made, filed and recorded as herein provided, the joint municipal assistance agency shall constitute a public body and a body corporate and politic under the name proposed in the application. The Secretary of State shall make and issue to the commissioners executing the application a certificate of incorporation pursuant to this Chapter under the seal of the State, and shall record the same with the application. The certificate shall set forth the names of the member municipalities.

In any suit, action or proceeding involving the validity or enforcement of, or relating to, any contract of the joint municipal assistance agency, the joint municipal assistance agency, in the absence of establishing fraud in the premises, shall be conclusively deemed to have been established in accordance with the provisions of this Chapter upon proof of the issuance of the aforesaid certificate by the Secretary of State. A copy of such certificate or of any new or supplemental certificate hereinafter provided for, duly certified by the Secretary of State, shall be admissible in evidence in any suit, action or proceeding, and shall be conclusive proof of the filing and contents thereof.

Notice of the issuance of such certificate shall be given to all of the proposed member joint agencies or municipalities by the Secretary of State. If a commissioner of any such joint agency or municipality has not signed the application to the Secretary of State and such joint agency or municipality does not notify the Secretary of State of the appointment of a commissioner within 60 days after receipt of such notice, such joint agency or municipality shall be deemed to have elected not to be a member of the joint municipal assistance agency. As soon as practicable after the expiration of such 60-day period, the Secretary of State shall issue a new certificate of incorporation, if necessary, setting forth the names of those joint agencies or municipalities which have elected to become members of the joint municipal assistance agency. The failure of any proposed member to become a member shall not affect the validity of the corporate existence of the joint municipal assistance agency.

(b) After the creation of a joint municipal assistance agency, any other joint agency (if organized by joint agencies) or municipality (if organized by municipalities) may become a member thereof upon application to such joint municipal assistance agency after the adoption of a resolution or ordinance by the governing board of the joint agency or municipality setting forth the determination and finding prescribed above for the original members and authorizing said municipality to become a member and appointing one commissioner, and with the consent of a majority of the board of commissioners of the joint municipal assistance agency. Any joint agency or municipality may withdraw from a joint municipal assistance agency, provided, however, that all obligations incurred by a joint agency or municipality while it was a member shall remain in full force and effect. Notice that a joint agency or municipality has been added to or withdrawn from membership in the joint municipal assistance agency shall be filed with the Secretary of State, and the Secretary of State shall thereupon issue a new or supplemental certificate of incorporation setting forth the names of all members of the joint municipal assistance agency. Additions of new members or withdrawal of members shall not affect the validity of the corporate existence of the joint municipal assistance agency.

(c) The joint municipal assistance agency may be governed by a board of commissioners appointed as provided in subsections (a) and (b) of this section. It shall not be necessary to notify the Secretary of State of the appointment of any commissioners following the notifications referred to in subsections (a) and (b) of this section. Each commissioner shall have one vote and shall serve at the pleasure of the governing board by which he was appointed. Each appointed commissioner before entering upon his duties shall take and subscribe to an oath before some person authorized by law to administer oaths to execute the duties of his office faithfully and impartially, and a record of each such oath shall be filed with the governing board of the appointing joint agency or municipality and spread upon its minutes. The governing board of each of the joint agencies or municipalities may appoint up to two alternate commissioners to act in lieu of its appointed commissioner when the appointed commissioner is unable for any reason to attend meetings of the board of commissioners or any committee thereof, and the governing board shall designate them as first or second alternate commissioner. Each alternate commissioner shall serve at the pleasure of the governing board by which he is appointed and shall take, subscribe to and file an oath in the same manner as prescribed for regularly appointed commissioners. Such alternate commissioner when acting in lieu of the regularly appointed commissioner shall be deemed to be the commissioner representing such joint agency or municipality, and shall have the rights, powers and authority of the regularly appointed commissioner, other than such commissioner's position as an officer, director or member of the executive committee. A certificate entered into the minutes of the board of commissioners of a joint agency by the clerk or other custodian of the minutes and records of the governing body of a municipality, appointing commissioners and alternate commissioners and reciting their appointments, shall constitute conclusive evidence of their appointment. All powers, functions, rights and privileges of the joint municipal assistance agency shall be exercised or delegated by the board of commissioners.

(d) The board of commissioners of the joint municipal assistance agency shall annually elect one of the commissioners as president, another as vice president, and another person or persons, who may but need not be commissioners, as treasurer, secretary, and, if desired, assistant secretary or secretaries and assistant treasurer. The office of treasurer or assistant treasurer may be held by the secretary or any assistant secretary. The board of commissioners may also appoint and prescribe the duties of such additional officers as it deems necessary. The secretary or any assistant secretary of the joint municipal assistance agency shall keep a record of the proceedings of the joint municipal assistance agency, and the secretary shall be the custodian of all records, books, documents and papers filed with the joint municipal assistance agency, the minute book or journal of the joint municipal assistance agency and its official seal. Either the secretary or any assistant secretary of the joint municipal assistance agency may cause copies to be made of all minutes and other records and documents of the joint municipal assistance agency and may give certificates under the official seal of the joint municipal assistance agency to the effect that such copies are true copies, and all persons dealing with the joint municipal assistance agency may rely upon such certificates.

(e) Fifty-one percent (51%) of the commissioners of a joint municipal assistance agency then in office shall constitute a quorum, and the commissioners may by written consent executed before or after any meeting waive notice and all other formalities incident to the calling or conduct of the same. Meetings of the commissioners may be held at any place within the State or any state contiguous to the State. A vacancy in the board of commissioners of the joint municipal assistance agency shall not impair the right of a quorum to exercise all the rights and perform all the duties of the joint municipal assistance agency. Any action taken by the joint municipal assistance agency under the provisions of this Chapter may be authorized by resolution at any regular or special meeting, and each such resolution may take effect immediately and need not be published or posted. Except as specifically provided by the bylaws, a majority of the votes of the commissioners present shall be necessary and sufficient to take any action or to pass any resolution.

(f) The board of commissioners of the joint municipal assistance agency may, in its bylaws, provide for a board of directors of the joint municipal assistance agency to be selected from the commissioners and alternate commissioners. The board of directors shall have and exercise such of the powers and authority of the board of commissioners during the intervals between the board of commissioners' meetings as shall be prescribed in the bylaws, rules, motions and resolutions of the board of commissioners. The terms of office of the members of the board of directors and the method of filling vacancies therein shall be fixed by the bylaws of the board of commissioners of the joint municipal assistance agency. The bylaws of the joint municipal assistance agency shall provide that the officers of the board of commissioners elected pursuant to subsection (d) of this section must also serve on the board of directors and hold the same offices thereon.

(g) The board of commissioners may also provide, in its bylaws or otherwise, that the board of directors shall create an executive committee of the board of directors composed of the officers of the board of directors, together with such other members of the board of directors as may be prescribed and that such executive committee shall have and shall exercise such of the powers and authority of the board of directors during the intervals between that board's meetings as shall be prescribed in the bylaws of the joint municipal assistance agency or in the rules or resolutions of the board of directors.

(h) The board of commissioners, board of directors and executive committee may provide or adopt methods and procedures consistent with other applicable laws for the calling or conducting of meetings or the taking of any action.

(i) No commissioner or director of a joint municipal assistance agency shall receive any compensation for the performance of his or her duties hereunder, provided, however, that each commissioner and director may be paid his or her necessary expenses incurred while engaged in the performance of such duties. (1983, c. 609, s. 7; 1985, c. 243, ss. 2, 3; 1995, c. 412, s. 22.)

§ 159B-43.1. Alternative to board of commissioners.

(a) In lieu of the provisions of G.S. 159B-43(c) through (i), a joint municipal assistance agency organized by two or more joint agencies, by resolutions adopted by each of those joint agencies, may be governed by an executive committee created pursuant to the provisions of G.S. 159B-10. In that case, the commissioners of the joint municipal assistance agency appointed pursuant to the provisions of G.S. 159B-43(a) and (b) shall adopt a resolution substantially identical to the resolutions adopted by the joint agencies creating the executive committee. The terms of office, methods of filling vacancies, and such other matters involving the executive committee shall be as set forth in those resolutions.

(b) In connection with a joint municipal assistance agency governed pursuant to the provisions of subsection (a) of this section, member municipalities of that joint municipal assistance agency which are not members of the joint agencies organizing that joint municipal assistance agency and nonmunicipal members, as defined in G.S. 159B-50, may elect members to the executive committee pursuant to those procedures as they agree upon among themselves, but subject to the following: if the number of the member municipalities and nonmunicipal members is seven or less, those municipalities and nonmunicipal members, acting jointly, may appoint one member to the executive committee, and if the number of the member municipalities and nonmunicipal members is more than seven, those member municipalities and nonmunicipal members, acting jointly, may appoint two members to the executive committee.

(c) Members of the executive committee appointed by the member municipalities and nonmunicipal members, and members of any subcommittee created by those member municipalities and nonmunicipal members, may receive compensation, and be paid expenses, for the performance of their duties as determined by the member municipalities and nonmunicipal members appointing those members. However, for any member of an executive committee who is an employee of a member municipality or nonmunicipal member, a payment in lieu of any compensation shall be made to the member municipality or nonmunicipal member for distribution to the executive committee member in the manner and amount, if any, it deems appropriate. (1995, c. 412, s. 23.)

§ 159B-44. General powers of joint municipal assistance agencies and municipalities.

Each joint municipal assistance agency shall have all of the rights and powers necessary or convenient to carry out and effectuate the purposes and provisions of this Article, including, but without limiting the generality of the foregoing, the rights and powers:

(1) To establish and from time to time modify a schedule of dues and assessments and to provide that the payment thereof when due shall be prerequisite to voting at any meeting and participation in and enjoyment of rights or benefits of the joint municipal assistance agency;

(2) To appropriate for the purposes of the joint municipal assistance agency the funds derived from dues and assessments, and from any other source;

(3) To provide aid and assistance to any one or more municipalities, and to act for or on behalf of any one or more municipalities, in any activity related to the construction, ownership, maintenance, expansion or operation of an electric system, upon such terms, conditions and considerations as may be agreed to between the municipalities and the joint municipal assistance agency;

(4) To provide aid and assistance to any one or more joint agencies, and to act for or on behalf of any one or more joint agencies in the exercise of any power, function, right, privilege or immunity granted by Article 2 of this Chapter, upon such terms, conditions and considerations as may be agreed to between the joint agency and the joint municipal assistance agency;

(5) To provide property and services to any one or more municipalities or joint agencies upon such terms, conditions and considerations as may be agreed to between the municipalities or joint agency and the joint municipal assistance agency;

(6) To adopt bylaws for the regulation of the affairs and the conduct of its business, and to prescribe rules, regulations and policies in connection with the performance of its functions and duties;

(7) To adopt an official seal and alter the same at pleasure;

(8) To acquire and maintain an administrative office building or office at such place or places as it may determine, which building or office may be used or owned together with any joint agency or agencies, municipalities, corporations, associations or persons under such terms and provisions for sharing costs and otherwise as may be determined;

(9) To sue and be sued in its own name, and to plead and be impleaded;

(10) To receive, administer and comply with the conditions and requirements respecting any gift, grant or donation of any property or money;

(11) To acquire by purchase, lease, gift, or otherwise, or to obtain options for the acquisition of, any property, real or personal, improved or unimproved, including an interest in land less than the fee thereof;

(12) To sell, lease, exchange, transfer or otherwise dispose of, or to grant options for any such purposes with respect to, any real or personal property or interest therein; provided, however, that property acquired by a joint municipal assistance agency from a municipality without consideration or for a consideration other than the fair market value thereof as determined by the governing board of the municipality may only be disposed of in accordance with the procedures set forth in Article 12 of Chapter 160A of the General Statutes;

(13) To make and execute contracts and other instruments necessary or convenient in the exercise of the powers and functions of the joint municipal assistance agency, including contracts with municipalities, joint agencies, persons, firms, corporations and others, provided, however, that such contracts shall not unreasonably preclude the municipality or joint agency from contracting with other parties in order to achieve economy, adequacy and reliability in the operation of their electric systems;

(14) To employ engineers, architects, attorneys, real estate counselors, appraisers, financial advisors and such other consultants and employees as may be required in the judgment of the joint municipal assistance agency and to fix and pay their compensation from funds available to the joint municipal assistance agency therefor; and

(15) To do all acts and things necessary, convenient or desirable to carry out the purposes, and to exercise the powers granted to the joint municipal assistance agency herein.

Any municipality or joint agency is authorized to appropriate and pay funds to a joint municipal assistance agency and to enter into contracts or arrangements with a joint municipal assistance agency for the purposes and in the execution of the functions and powers of the municipality or joint agency.

Joint municipal assistance agencies shall comply with Article 8 of Chapter 143 of the General Statutes respecting acquisition or construction of property to the same extent required of municipalities; provided, however, that Article 8 of Chapter 143 of the General Statutes shall not apply to a municipality, joint municipal assistance agency or joint agency in transactions between a joint municipal assistance agency and a municipality or joint agency involving the transfer or construction of property.

Property owned by a joint municipal assistance agency or jointly owned by municipalities or joint agencies and joint municipal assistance agencies shall be exempt from property taxes; provided, however, that each joint municipal assistance agency shall, in lieu of property taxes, pay to any governmental agency authorized to levy property taxes the amount which would be assessed as taxes on real and personal property of such agency if such property were otherwise subject to valuation and assessment by the Department of Revenue. Such payments in lieu of taxes shall be due and shall bear interest if unpaid, as in the cases of taxes on other property. Payments in lieu of taxes made hereunder shall be treated in the same manner as taxes for purposes of all procedural and substantive provisions of law. (1983, c. 609, s. 7; 1995, c. 412, s. 24; 2008-38, s. 1.)

Effect of Amendments. — Session Laws 2008-38, s. 1, effective July 1, 2008, deleted "for a period not exceeding three years" following "execute contracts" in subdivision (13).

Legal Periodicals. — For note, "Tax Increment Financing in North Carolina: The Myth of the Countermajoritarian Difficulty," see 83 N.C. L. Rev. 1526 (2005).

§ 159B-45. Dissolution.

Whenever the governing board of a joint municipal assistance agency and the governing boards of its member joint agencies or municipalities shall by resolution or ordinance determine that the purposes for which the joint municipal assistance agency was formed have been substantially fulfilled and that all obligations incurred by the joint municipal assistance agency have been fully paid or satisfied, the governing board of the joint municipal assistance agency may by resolution declare the joint municipal assistance agency to be dissolved. On the effective date of such resolution declaring the joint agency to be dissolved, the title to all funds and other property owned by the joint municipal assistance agency at the time of such dissolution shall vest in the members of the joint municipal assistance agency as provided in this Chapter and the bylaws of the joint municipal assistance agency. Notice of such dissolution shall be filed with the Secretary of State. (1983, c. 609, s. 7; 1995, c. 412, s. 25.)

§ 159B-46. Reports, liability, and personnel.

(a) Each joint municipal assistance agency shall, following the closing of each fiscal year, submit an annual report of its activities for the preceding year to the governing boards of its members. Each such report shall set forth an operating and financial statement covering the operations of the joint municipal assistance agency during such year. The joint municipal assistance agency shall cause an audit of its books of record and accounts to be made at least once in each year by independent certified public accountants.

(b) No commissioner, alternate commissioner or director or officer of any joint municipal assistance agency, member of an executive committee created pursuant to G.S. 159B-10, officer of any joint agency or municipality, or person or persons acting in their behalf, while acting within the scope of his authority, shall be subject to any personal liability or accountability by reason of his carrying out any of the powers expressly or impliedly given in this Article.

(c) Each municipality, joint agency and joint municipal assistance agency shall be severally liable for its own acts or omissions and not jointly or severally liable for the acts, omissions, or obligations of others, including other municipalities.

(d) In no event shall any municipality or joint agency be liable or responsible for any acts, omissions or obligations of any joint municipal assistance agency or any of its officers, members of an executive committee, employees or agents; provided, however, that contracts between the joint municipal assistance agency and one or more municipalities or one or more joint agencies may expressly provide for the imputation of or indemnification for any liability of one party thereto by the other, or for the assumption of any obligation of one party thereto by the other.

(e) Personnel employed or appointed by a municipality and performing services for or on behalf of a joint municipal assistance agency shall have the same authority, rights, privileges and immunities (including coverage under the workers' compensation laws) which the officers, agents and employees of the appointing municipality enjoy within the territory of that municipality, whether within or without the territory of the appointing municipality, when they are acting within the scope of their authority or in the course of their employment.

(f) Personnel employed or appointed by a joint municipal assistance agency shall be qualified for participation in the North Carolina Local Government Employees' Retirement System with the same rights, privileges, obligations and responsibilities as they would have if they were employees of a municipality.

(g) The offices of commissioner, alternate commissioner, officer, director and member of the executive committee of a joint municipal assistance agency are hereby declared to be offices which may be held by the holder of any office, place of trust or profit in addition to and concurrently with those offices permitted by G.S. 128-1.1 and other offices permitted by other General Statute. (1983, c. 609, s. 7; 1991, c. 636, s. 3; 1995, c. 412, s. 26.)

§ 159B-47. Defense.

(a) The board of commissioners of a joint municipal assistance agency may provide for the defense of a criminal or civil proceeding brought against any current or former commissioner, member of an executive committee, director, officer, agent or employee either in his official or individual capacity, or both, on account of any act done or omission made in the scope and course of his employment or duty as a commissioner, member of an executive committee, director, officer, agent or employee of the joint municipal assistance agency. The defense may be provided by the agency by its own counsel, by employing other counsel or by purchasing insurance which requires that the insurer provide the defense.

(b) The board of commissioners may appropriate funds for the purpose of paying all or part of a claim made or any civil judgment entered against any of its current or former commissioners, members of executive committees, directors, officers, agents or employees, when such claim is made or such judgment is rendered as damages on account of any act done or omission made or any act allegedly done or omission allegedly made in the scope and course of his current or former employment or duty as a commissioner, member of an executive committee, director, officer, agent or employee; provided, however, that nothing in this section shall authorize any joint municipal assistance agency to appropriate funds for the purpose of paying any claim made or civil judgment entered against any current or former commissioners, members of executive committees, directors, officers, agents or employees if the board of commissioners finds that commissioner, member of an executive committee, director, officer, agent or employee acted or failed to act because of actual fraud, corruption or actual malice on his part. Any joint municipal assistance agency may purchase insurance coverage for payment of claims or judgments pursuant to this section. (1985, c. 225, s. 2; 1995, c. 412, s. 27.)

§ 159B-48. Nonmunicipal members; constituent institutions of The University of North Carolina.

Notwithstanding the provisions of Article 1 of Chapter 159B of the General Statutes or any other provision of law, any constituent institution of The University of North Carolina, as defined in Article 1 of Chapter 116 of the General Statutes, that owns a system or facility for the generation, transmission, or distribution of electric power and energy for public and private use, may become a member of a joint municipal assistance agency. The commissioner and one or more alternate commissioners designated by any such members shall be appointed by its local governing board. As a member, the constituent institution has all the rights, privileges, immunities, powers, authority, and responsibilities of a municipal member of a joint municipal assistance agency under Article 3 of this Chapter, including, the protection and immunities granted under Article 3 to those employed, appointed or otherwise acting on behalf of the constituent institutions, and the power and authority to enter into contracts and arrangements with a joint municipal assistance agency. (1991, c. 291, s. 1; 1995, c. 412, s. 28.)

§ 159B-49. Associate members.

Notwithstanding the provisions of Article 1 of Chapter 159B of the General Statutes or any other provision of law, a joint municipal assistance agency may, in its bylaws, create associate memberships. An associate member of a joint municipal assistance agency shall have only those rights, privileges, immunities, powers, authority, and responsibilities as set forth in the bylaws of the joint municipal assistance agency; provided, that:

(1) An associate member shall not have the right to appoint a commissioner or alternate commissioner, have the right to vote or otherwise participate in decisions of the joint municipal assistance agency;

(2) An associate member shall not have the right to a distribution of assets upon dissolution of the joint municipal assistance agency; and

(3) Income from the joint municipal assistance agency shall not accrue to, or otherwise inure to the benefit of, an associate member. (1991, c. 291, s. 2.)

§§ 159B-50, 159B-51: Reserved for future codification purposes.

ARTICLE 4.

Construction.

§ 159B-52. Chapter liberally construed.

In order to effectuate the purposes and policies prescribed in this Chapter the provisions hereof shall be liberally construed. (1975, c. 186, s. 3; 1983, c. 609, s. 8.)

Chapter 159C.

Industrial and Pollution Control Facilities Financing Act.

Sec.

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§ 159C-1. Short title.

This Chapter may be referred to as the "Industrial and Pollution Control Facilities Financing Act." (1975, c. 800, s. 1.)

Cross References. — For the North Carolina Industrial and Pollution Control Facilities Financing Authority Act, see G.S. 159D-1 et seq.

Editor's Note. — This Chapter is Chapter 159A, as enacted by Session Laws 1975, c. 800, effective upon ratification of an enabling amendment to the state Constitution, and recodified. It replaces the original Chapter 159A, which was held unconstitutional in Stanley v. Department of Conservation & Dev., 284 N.C. 15, 199 S.E.2d 641 (1973).

Session Laws 1977, c. 198, s. 24, provided: "All existing rules and regulations of the North Carolina Department of Natural and Economic Resources applicable to General Statutes Chapter 159C shall continue in full force and effect as rules and regulations of the North Carolina Department of Commerce as successor of the Department of Natural and Economic Resources until repealed, modified or amended by the Department of Commerce."

Session Laws 1979, c. 109, s. 2, provided: "The creation, formation and organization of all authorities heretofore purported to have been created, formed and organized under the provisions of this Chapter are hereby ratified, confirmed and validated."

Legal Periodicals. — For article discussing the North Carolina Industrial and Pollution Control Facilities Financing Act, see 61 N.C.L. Rev. 419 (1983).

§ 159C-2. Legislative findings and purposes.

(a) The General Assembly finds and determines that there exists in the State a critical condition of unemployment and a scarcity of employment opportunities; that the economic insecurity which results from such unemployment and scarcity of employment opportunities constitutes a serious menace to the safety, morals and general welfare of the entire State; that such unemployment and scarcity of employment opportunities have caused many workers and their families, including young adults upon whom future economic prosperity is dependent, to migrate elsewhere to find employment and establish homes; that such emigration has resulted in a reduced rate of growth in the tax base of the counties and other local governmental units of the State which impairs the financial ability of such counties and other local governmental units to support education and other local governmental services; that such unemployment results in obligations to grant public assistance and to pay unemployment compensation; that the aforesaid conditions can best be remedied by the attraction, stimulation, expansion and rehabilitation and revitalization of industrial and manufacturing facilities for industry in the State; and that there is a need to stimulate a larger flow of private investment funds into industrial building programs into the State.

(b) The General Assembly further finds and determines that the development and expansion of industry within the State, and the generation of electric power and the supply of other services by public utilities, which are essential to the economic growth of the State and to the full employment and prosperity of its people, are accompanied by the increased production and discharge of gaseous, liquid, and solid pollution and wastes which threaten and endanger the health, welfare and safety of the inhabitants of the State by polluting the air, land and waters of the State; that in order to reduce, control, and prevent such environmental pollution, it is imperative that action be taken at various levels of government to require the provision of devices, equipment and facilities for the collection, reduction, treatment, and disposal of such pollution and wastes; that the assistance provided in this Chapter, especially with respect to financing, is therefore in the public interest and serves a public purpose of the State in promoting the health, welfare and safety of the inhabitants of the State not only physically by collecting, reducing, treating and preventing environmental pollution but also economically by securing and retaining private industry thereby maintaining a higher level of employment and economic activity and stability.

(c) It is therefore declared to be the policy of the State to promote the right to gainful employment opportunity, private industry, the prevention and control of the pollution of the air, land and waters of the State, and the safety, morals and health of the people of the State, and thereby promote general welfare of the people of the State, by authorizing counties to create county authorities which shall be political subdivisions and bodies corporate and politic of the State. These bodies are to be formed (i) to aid in the financing of industrial and manufacturing facilities for the purpose of alleviating unemployment or raising below average manufacturing wages by financing industrial and manufacturing facilities which provide job opportunities or pay better wages than those prevalent in the area and (ii) to aid in financing pollution control facilities for industry in connection with manufacturing and industrial facilities and for public utilities; provided, however, that it is the policy of the State to finance only those facilities where there is a direct or indirect favorable impact on employment or an improvement in the degree of prevention or control of pollution commensurate with the size and cost of the facilities. (1975, c. 800, s. 1.)

§ 159C-3. Definitions.

The following definitions apply in this Chapter:

(1) Agency. — Any agency, bureau, commission, department, or instrumentality.

(2) Air pollution control facility. — Any structure, equipment, or other facility for, including any increment in the cost of any structure, equipment, or facility attributable to, the purpose of treating, neutralizing, or reducing gaseous industrial waste and other air pollutants, including recovery, treatment, neutralizing, or stabilizing plants and equipment and their appurtenances, which have been certified by the government entity having jurisdiction to be in furtherance of the purpose of abating or controlling atmospheric pollutants or contaminants.

(3) Bonds. — Revenue bonds of an authority issued under the provisions of this Chapter.

(3a) Code. — The Internal Revenue Code of 1986, as amended.

(4) Cost. — This term as applied to any project embraces all capital costs of the project, including all of the following:
  a. The cost of construction.
  b. The cost of acquisition of all property, including rights in land and other property, real and personal and improved and unimproved.
  c. The cost of demolishing, removing or relocating any buildings or structures on lands so acquired, including the cost of acquiring any lands to which those buildings or structures may be moved or relocated.
  d. The cost of all machinery and equipment, installation, start-up expenses, financing charges, and interest prior to, during and for a period not exceeding one year after completion of construction.
  e. The cost of engineering and architectural surveys, plans and specifications.
  f. The cost of consultants' and legal services, other expenses necessary or incident to determining the feasibility or practicability of the project, administrative and other expenses necessary or incident to the acquisition or construction of the project and the financing of the acquisition and construction of the project.

(5) Repealed by Session Laws 2000, c. 179, s. 3, effective August 1, 2000.

(6) Financing agreement. — A written instrument establishing the rights and responsibilities of the authority, operator, and obligor with respect to a project financed by the issuance of bonds. A financing agreement may be in the nature of a lease, a lease and leaseback, a sale and leaseback, a lease purchase, an installment sale and purchase agreement, a conditional sales agreement, a secured or unsecured loan agreement or other similar contract and may involve property in addition to the property financed with the bonds.

(6a) Governing body. — The board, commission, council, or other body in which the general legislative powers of any county or other political subdivision are vested.

(6b) Industrial project. — Any industrial or manufacturing factory, mill, assembly plant, or fabricating plant; freight terminal; industrial research, development, or laboratory facility; industrial processing facility; facility used in the manufacturing or production of tangible personal property; facility used in the creation or production of intangible property as described in section 197(d)(1)(C)(iii) of the Code; or distribution facility for industrial or manufactured products.

(7) Obligor. — Any person, which may include the operator, who is obligated under a financing agreement or guaranty agreement or other contract or agreement to make payments to, or for the benefit of, the holders of bonds of the authority. Any requirement of an obligor may be satisfied by any one or more persons who are defined collectively by this Chapter as the obligor.

(8) Operator. — The person entitled to the use or occupancy of a project.

(9) Political subdivision. — Any county, city, town, other unit of local government or any other governmental corporation, authority, or instrumentality of the State now or hereafter existing.

(10) Pollution or pollutants. — Any noxious or deleterious substances in any air or waters of or adjacent to the State of North Carolina or affecting the physical, chemical or biological properties of any air or waters of or adjacent to the State of North Carolina in a manner and to an extent which renders or is likely to render the air or waters

harmful or inimical to the public health, safety or welfare, or to animal, bird or aquatic life, or to the use of such air or waters for domestic, industrial or agricultural purposes or recreation.

(10a) Pollution control project. — Any air pollution control facility, water pollution control facility, or solid waste disposal facility if the facility is in connection with either an industrial project or a public utility plant.

(11) Project. — Any land or equipment or one or more buildings or other structures, whether or not on the same site or sites, and any rehabilitation, improvement, renovation or enlargement of, or any addition to, any building or structure for use as or in connection with (i) any industrial project, (ii) any pollution control project for industry or for public utilities, (iii) any special purpose project, or (iv) any combination of projects mentioned in clauses (i) through (iii) of this subdivision. Any project may include all appurtenances and incidental facilities such as land, headquarters or office facilities, warehouses, distribution centers, access roads, sidewalks, utilities, railway sidings, trucking and similar facilities, parking facilities, landing strips and other facilities for aircraft, waterways, docks, wharves and other improvements necessary or convenient for the construction, maintenance and operation of any building or structure, or addition to it.

(12) Revenues. — With respect to any project, the rents, fees, charges, payments, proceeds and other income or profit derived from the project or from the financing agreement or security document in connection with the project.

(13) Security document. — A written instrument establishing the rights and responsibilities of the authority and the holders of bonds issued to finance a project, which may provide for, or be in the form of an agreement with, a trustee for the benefit of the bondholders. A security document may contain an assignment, pledge, mortgage or other encumbrance of all or part of the authority's interest in, or right to receive revenues with respect to, a project and any other property provided by the operator or other obligor under a financing agreement and may bear any appropriate title. A financing agreement and a security document may be combined as one instrument.

(14) Solid waste. — Solid waste materials resulting from any industrial or manufacturing activities or from any pollution control facility.

(15) Solid waste disposal facility. — A facility for the purpose of treating, burning, compacting, composting, storing or disposing of solid waste.

(15a) Special purpose project. — Any structure, equipment, or other facility for any one or more of the following purposes:

a. Water systems or facilities, including all plants, works, instrumentalities, and properties used or useful in obtaining, conserving, treating, and distributing water for domestic or industrial use, irrigation, sanitation, fire protection, or any other public or private use.

b. Sewage disposal systems or facilities, including all plants, works, instrumentalities, and properties used or useful in the collection, treatment, purification, or disposal of sewage, other than facilities constituting a water pollution control facility.

c. Public transportation systems, facilities, or equipment, including bus, truck, ferry, and railroad terminals, depots, trackages, vehicles, and ferries, and mass transit systems.

d. Public parking lots, areas, garages, and other public vehicular parking structures and facilities.

e. Public auditoriums, gymnasiums, stadiums, and convention centers.

f. Recreational facilities, including museums.

g. Land, equipment, and facilities for the disposal, treatment, or recycling of solid or other waste that are described in G.S. 159I-8.

h. Facilities for the provision of rehabilitation services, education, training, and employment opportunities for persons with disabilities and the disadvantaged. The term does not include a retail facility, however, unless the proposed operator of the facility certifies that at least seventy-five percent (75%) of its employees will be disadvantaged or disabled persons and at least seventy-five percent (75%) of its inventory will be composed of used, donated items and items manufactured by disadvantaged or disabled persons.

i. Orphanages and similar housing facilities for children or disadvantaged or disabled persons.

j. Facilities for the provision of material salvage and recycling services, the proceeds of which are used to provide for low, moderate, or affordable housing.

k. Research facilities owned or operated by a nonprofit corporation incorporated by two or more accredited universities whose main campuses are located in North Carolina or by the Chancellor, President, or similar official of such universities.

l. Facilities for housing the international headquarters of a nonprofit scholarly society that is a member of the Scholarly Societies Project.

m. Facilities that qualify as recovery zone property in connection with the issuance of recovery zone facility bonds pursuant to the American Recovery and Reinvestment Tax Act of 2009.

(16) Water pollution control facility. — Any structure, equipment or other facility for, including any increment in the cost of any structure, equipment or facility attributable to, the purpose of treating, neutralizing or reducing liquid industrial waste and other water pollution, including collecting, treating, neutralizing, stabilizing, cooling, segregating, holding, recycling, or disposing of liquid industrial waste and other water pollution, including necessary collector, interceptor, and outfall lines and pumping stations, which have been certified by the agency exercising jurisdiction to be in furtherance of the purpose of abating or controlling water pollution. (1975, c. 800, s. 1; 1977, 2nd Sess., c. 1197; 1979, c. 109, s. 1; 1995 (Reg. Sess., 1996), c. 575, ss. 4, 5; 2000-179, s. 3; 2005-238, s. 10; 2007-128, s. 1; 2009-140, s. 6.)

Editor's Note. — Session Laws 2005-238, s. 10, which added "including museums" to subdivision (15a)f.; and added subdivision (15a)i., was effective August 1, 2005.

Session Laws 2005-238, s. 15, provides: "The General Assembly finds that the provisions of this act are necessary for the health and welfare of the State and as such finds that the act shall be construed liberally to effect its purposes."

Session Laws 2005-238, s. 16 is a severability clause.

Effect of Amendments. — Session Laws 2009-140, s. 6, effective June 19, 2009, added subdivision (3a); in subdivision (6b), inserted "facility used in the manufacturing or production of tangible personal property; facility used in the creation or production of intangible property as described in section 197(d)(1)(C)(iii) of the Code"; and added subdivision (15a)m.

§ 159C-4. Creation of authorities.

(a) The governing body of any county is hereby authorized to create by resolution a political subdivision and body corporate and politic of the State known as "The ____________ (the blank space to be filled in with the name of the county) County Industrial Facilities and Pollution Control Financing

Authority," which shall consist of a board of seven commissioners, to be appointed by the governing body of such county in the resolution creating such authority, or by subsequent resolution. At least 30 days prior to the adoption of such resolution, the governing body of such county shall file with the Department of Commerce and the Local Government Commission of the State notice of its intention to adopt a resolution creating an authority. At the time of the appointment of the first board of commissioners the governing body of the county shall appoint two commissioners for initial terms of two years each, two commissioners for initial terms of four years each and three commissioners for initial terms of six years each and thereafter the terms of all commissioners shall be six years, except appointments to fill vacancies which shall be for the unexpired terms. Each appointed commissioner before entering upon his duties shall take and subscribe to an oath before some person authorized by law to administer oaths to execute the duties of his office faithfully and impartially, and a record of each such oath shall be filed with the governing body of the county and entered in its minutes. All authority commissioners will serve at the pleasure of the governing body of the county. If at the end of any term of office of any commissioner a successor thereto shall not have been appointed, then the commissioner whose term of office shall have expired shall continue to hold office until his successor shall be so appointed and qualified.

(b) Each commissioner of an authority shall be a qualified elector and resident of the county for which the authority is created, and no commissioner shall be an elected official of the county for which the authority is created. Any commissioner of an authority may be removed, with or without cause, by the governing body of the county.

(c) The board of commissioners of the authority shall annually elect from its membership a chairman and a vice-chairman and another person or persons, who may but need not be commissioners, as treasurer, secretary and, if desired, assistant secretary. The position of secretary and treasurer or assistant secretary and treasurer may be held by the same person. The secretary of the authority shall keep a record of the proceedings of the authority and shall be the custodian of all books, documents and papers filed with the authority, the minute book or journal of the authority and its official seal. Either the secretary or the assistant secretary of the authority may cause copies to be made of all minutes and other records and documents of the authority and may give certificates under the official seal of the authority to the effect that such copies are true copies, and all persons dealing with the authority may rely upon such certificates.

(d) A majority of the commissioners of an authority then in office shall constitute a quorum. The affirmative vote of a majority of the commissioners of an authority then in office shall be necessary for any action taken by the authority. A vacancy in the board of commissioners of the authority shall not impair the right of a quorum to exercise all the rights and perform all the duties of the authority. Any action taken by the authority under the provisions of this Chapter may be authorized by resolution at any regular or special meeting, and each resolution shall take effect immediately and need not be published or posted. No bonds shall be issued under the provisions of this Chapter unless the issuance thereof shall have been approved by the governing body of the county.

(e) No commissioner of an authority shall receive any compensation for the performance of his duties under this Chapter; provided, however, that each commissioner shall be reimbursed for his necessary expenses incurred while engaged in the performance of duties but only from moneys provided by obligors.

(f) Within 30 days of the date of creation of the authority, the authority shall advise the Department of Commerce and the Local Government Commission that an authority has been formed. The authority shall also furnish such Department and such Commission with (i) a list of its commissioners and its officers and (ii) a description of any projects that are under consideration by the authority. The authority shall, from time to time, notify the Department of Commerce and the Local Government Commission of changes in commissioners and officers and of new projects under consideration by the authority. (1975, c. 800, s. 1; 1977, c. 198, s. 23; c. 719, s. 1; 1989, c. 751, s. 7(47); 1991 (Reg. Sess., 1992), c. 959, s. 78.)

§ 159C-5. General powers.

Each authority shall have all of the powers necessary or convenient to carry out and effectuate the purposes and provisions of this Chapter, including, but without limiting the generality of the foregoing, the powers:

(1) To adopt bylaws for the regulation of its affairs and the conduct of its business and to prescribe rules, regulations and policies in connection with the performance of its functions and duties;

(2) To adopt an official seal and alter the same at pleasure;

(3) To maintain an office at such place or places within the boundaries of the county for which it was created as it may determine;

(4) To sue and be sued in its own name, plead and be impleaded;

(5) To receive, administer and comply with the conditions and requirements respecting any gift, grant or donation of any property or money;

(6) To make and execute financing agreements, security documents and other contracts and instruments necessary or convenient in the exercise of the powers and functions of the authority under this Chapter;

(7) To acquire by purchase, lease, gift or otherwise, but not by eminent domain, or to obtain options for the acquisition of, any property, real or personal, improved or unimproved, and interests in land less than the fee interest, for the construction, operation or maintenance of any project;

(7a) Repealed by Session Laws 2001-487, s. 94, effective December 16, 2001.

(8) To sell, lease, exchange, transfer or otherwise dispose of, or to grant options for any such purposes with respect to, any real or personal property or interest therein;

(9) To pledge or assign revenues of the authority;

(10) To construct, acquire, own, repair, maintain, extend, improve, rehabilitate, renovate, furnish and equip one or more projects and to pay all or any part of the costs thereof from the proceeds of bonds of the authority or from any contribution, gift or donation or other funds made available to the authority for such purpose;

(11) To fix, charge and collect revenues with respect to any project;

(12) To employ consulting engineers, architects, attorneys, real estate counselors, appraisers and such other consultants and employees as may be required in the judgment of the authority and to fix and pay their compensation from funds available to the authority therefor and to select and retain subject to approval of the Local Government Commission the financial consultants, underwriters and bond attorneys to be associated with the issuance of any bonds and to pay for services rendered by underwriters, financial consultants or bond attorneys out of the proceeds of any such issue with regard to which the services were performed; and

(13) To do all acts and things necessary, convenient or desirable to carry out the purposes, and to exercise the powers herein granted. (1975, c.

800, s. 1; 1979, c. 109, s. 1; 1985, c. 723, s. 3; 2000-179, s. 4; 2001-487, s. 94.)

§ 159C-6. Bonds.

(a) Each authority is authorized to provide for the issuance, at one time or from time to time, of bonds of the authority for the purpose of paying all or any part of the cost of any project. The principal of, the interest on and any premium payable upon the redemption of the bonds shall be payable solely from the funds authorized in this Article for their payment. The bonds of each issue shall bear interest as may be determined by the Local Government Commission with the approval of the authority and the obligor irrespective of the limitations of G.S. 24-1.1, as amended, and successor provisions. The bonds of each issue shall be dated, shall mature at any time or times not exceeding 35 years after the date of their issuance, and may be made redeemable before maturity at any price or prices and under any terms and conditions, as may be fixed by the authority before the issuance of the bonds. The authority shall determine the form and the manner of execution of the bonds, including any interest coupons to be attached to them, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest. In case any officer whose signature or a facsimile of whose signature appears on any bonds or coupons ceases to be that officer before the delivery of the bonds, the signature or the facsimile shall nevertheless be valid and sufficient for all purposes the same as if the officer had remained in office until the delivery. The authority may also provide for the authentication of the bonds by a trustee or fiscal agent. The bonds may be issued in coupon or in fully registered form, or both, as the authority may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest, and for the interchange of registered and coupon bonds.

(a1) A county or city that receives an allocation to issue recovery zone facility bonds within the meaning of the American Recovery and Reinvestment Tax Act of 2009 to finance recovery zone property may designate any authority as the governmental entity authorized to issue recovery zone facility bonds.

(b) The proceeds of the bonds of each issue shall be used solely for the payment of the cost of all or part of the project for which the bonds were issued, and shall be disbursed in any manner and under any restrictions, as the authority may provide in the financing agreement and the security document. If the proceeds of the bonds of any issue, by reason of increased construction costs or error in estimates or otherwise, are less than this cost, additional bonds may in like manner be issued to provide the amount of the deficiency.

(c) The proceeds of bonds shall not be used to refinance the cost of an industrial project or a pollution control project. For the purposes of this section, a cost of an industrial project or a pollution control project is considered refinanced if both of the following conditions are met:

(1) The cost is initially paid from sources other than bond proceeds, and the original expenditure is to be reimbursed from bond proceeds.

(2) The original expenditure was paid more than 60 days before the authority took some action indicating its intent that the expenditure would be financed or reimbursed from bond proceeds.

(d) Notwithstanding subsection (c) of this section, preliminary expenditures that are incurred prior to the commencement of the acquisition, construction, or rehabilitation of an industrial project or a pollution control project, such as architectural costs, engineering costs, surveying costs, soil testing costs, bond issuance costs, and other similar costs, may be reimbursed from bond proceeds even if these costs are incurred or paid more than 60 days prior to the authority's action. This exception that allows preliminary expenditures to be reimbursed from bond proceeds, regardless of whether or not they are incurred or paid within 60 days of the authority's action, does not include costs that are incurred incident to the commencement of the construction of an industrial project or a pollution control project, such as expenditures for land acquisition and site preparation. In any event, an expenditure in connection with an industrial project or a pollution control project originally paid before the authority took some action indicating its intent that the expenditures would be financed or reimbursed from bond proceeds may be reimbursed from bond proceeds only if the authority finds that reimbursing those costs from bond proceeds will promote the purposes of this Chapter.

(e) An authority may make loans to an obligor to refund outstanding loans, obligations, deeds of trust, or advances issued, made, or given by the obligor for the cost of a special purpose project.

(f) The authority may issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when the bonds have been executed and are available for delivery. The authority may also provide for the replacement of any bonds that become mutilated or are destroyed or lost.

(g) Bonds may be issued under the provisions of this Chapter without obtaining, except as otherwise expressly provided in this Chapter, the consent of the State or of any political subdivision or of any agency of either, and without any other proceedings or the happening of any conditions or things other than those proceedings, conditions, or things that are specifically required by this Chapter and the provisions of the financing agreement and security document authorizing the issuance of the bonds and securing the bonds. (1975, c. 800, s. 1; 1979, c. 109, s. 1; 1997-111, s. 1; 1997-463, s. 1; 2000-179, s. 5; 2009-140, s. 7.)

Effect of Amendments. — Session Laws 2009-140, s. 7, effective June 19, 2009, added subsection (a1).

§ 159C-7. Approval of industrial projects and pollution control projects by Secretary of Commerce.

(a) Approval Required. — No bonds may be issued by an authority to finance an industrial project or a pollution control project unless the project for which their issuance is proposed is first approved by the Secretary of Commerce. The authority shall file an application for approval of its proposed industrial project or pollution control project with the Secretary of Commerce, and shall notify the Local Government Commission of the filing.

(b) Findings. — The Secretary shall not approve any proposed industrial project or pollution control project unless the Secretary makes all of the following, applicable findings:

(1) In the case of a proposed industrial project, that the proposed project will not have a materially adverse effect on the environment.

(2) In the case of a proposed pollution control project, that the project will have a materially favorable impact on the environment or will prevent or diminish materially the impact of pollution which would otherwise occur.

(2a) In the case of a hazardous waste facility or low-level radioactive waste facility that is used as a reduction, recovery or recycling facility, that such project will further the waste management goals of North Carolina and will not have an adverse effect upon public health or a significant adverse effect on the environment.

(3) In the case of an industrial project or a pollution control project, except a pollution control project for a public utility,

a. That the jobs to be generated or saved, directly or indirectly, by the proposed project will be large enough in number to have a measurable impact on the area immediately surrounding the proposed project and will be commensurate with the size and cost of the proposed project,

b. That the proposed operator of the proposed project has demonstrated or can demonstrate the capability to operate the project, and

c. That the financing of the project by the authority will not cause or result in the abandonment of an existing industrial or manufacturing facility of the proposed operator or an affiliate elsewhere within the State unless the facility is to be abandoned because of obsolescence, lack of available labor in the area, or site limitations.

(b1) Initial Operator. — If the initial proposed operator of an industrial project or a pollution control project is not expected to be the operator for the term of the bonds proposed to be issued, the Secretary may make the findings required pursuant to subdivisions (b)(1)a. and (3)b. of this section only with respect to the initial operator. The initial operator shall be identified in the application for approval of the proposed project.

(c) Public Hearing. — The Secretary of Commerce shall not approve any proposed industrial project or pollution control project pursuant to this section unless the governing body of the county in which the project is located has first conducted a public hearing and, at or after the public hearing, approved in principle the issuance of bonds under this Chapter for the purpose of paying all or part of the cost of the proposed project. Notice of the public hearing shall be published at least once in at least one newspaper of general circulation in the county not less than 14 days before the public hearing. The notice shall describe generally the bonds proposed to be issued and the proposed project, including its general location, and any other information the governing body considers appropriate or the Secretary of Commerce prescribes for the purpose of providing the Secretary with the views of the community. The notice shall also state that following the public hearing the authority intends to file an application for approval of the proposed project with the Secretary of Commerce.

(d) Certificate of Department of Environment and Natural Resources. — The Secretary of Commerce shall not make the findings required by subdivisions (b)(1)b and (2) of this section unless the Secretary has first received a certification from the Department of Environment and Natural Resources that, in the case of a proposed industrial project, the proposed project will not have a materially adverse effect on the environment and that, in the case of a proposed pollution control project, the proposed project will have a materially favorable impact on the environment or will prevent or diminish materially the impact of pollution which would otherwise occur. The Secretary of Commerce shall not make the findings required by subdivision (2a) unless the Secretary has first received a certification from the Department of Environment and Natural Resources that the proposed project is environmentally sound, will not have an adverse effect on public health and will further the waste management goals of North Carolina. The Secretary of Commerce shall deliver a copy of the application to the Department of Environment and Natural Resources. The Department of Environment and Natural Resources shall provide each certification to the Secretary of Commerce within seven days after the applicant satisfactorily demonstrates to it that all permits, including environmental permits, necessary for the construction of the proposed project have been obtained, unless the authority consents to a longer period of time.

(e) Waiver of Wage Requirement. — If the Secretary of Commerce has made all of the required findings respecting a proposed industrial project except that prescribed in subdivision (b)(1)a of this section, the Secretary may, in the Secretary's discretion, approve the proposed industrial project if the Secretary has received (i) a resolution of the governing body of the county requesting that the proposed industrial project be approved notwithstanding that the operator will not pay an average weekly manufacturing wage above the average weekly manufacturing wage in the county and (ii) a letter from an appropriate State official, selected by the Secretary, to the effect that unemployment in the county is especially severe.

(f) Rules. — To facilitate review of each proposed industrial project or pollution control project, the Secretary may require the authority to obtain and submit any data and information about the project the Secretary may prescribe. The Secretary may also prescribe forms and rules the Secretary considers reasonably necessary to implement the provisions of this section.

(g) Certificate of Approval. — If the Secretary approves the proposed industrial project or pollution control project, the Secretary shall prepare a certificate of approval evidencing the approval and setting forth the findings and shall cause the certificate of approval to be published in a newspaper of general circulation within the county. This approval shall be reviewable as provided in Article 4 of Chapter 150B of the General Statutes only by an action filed, within 30 days after notice of the findings and approval have been so published, in the Superior Court of Wake County. The superior court is vested with jurisdiction to hear the action, but if no action is filed within the 30 days prescribed, the validity of the approval is conclusively presumed, and no court has authority to inquire into the approval. Copies of the certificate of approval of the proposed industrial project or pollution control project will be given to the authority, the board of county commissioners, and the Secretary of the Local Government Commission.

The certificate of approval becomes effective immediately following the expiration of the 30-day period or the expiration of any appeal period after a final determination by any court of any action timely filed pursuant to this section. The certificate expires one year after its date unless extended by the Secretary who shall not extend the certificate unless the Secretary again approves the proposed industrial project or pollution control project as provided in this section. If bonds are issued within that year pursuant to the authorization of this Chapter to pay all or part of the costs of the industrial project or pollution control project, however, the certificate expires three years after the date of the first issuance of the bonds. (1975, c. 800, s. 1; 1977, c. 198, s. 23; c. 719, ss. 2, 3; c. 771, s. 4; 1979, c. 109, s. 1; 1981, c. 704, s. 22; 1987, c. 827, s. 1; 1989, c. 727, ss. 218(161), 219(38); c. 751, s. 8(29); 1991 (Reg. Sess., 1992), c. 959, s. 79; 1995 (Reg. Sess., 1996), c. 575, s. 6; 1997-443, s. 11A.123; 1997-463, s. 2; 2000-179, s. 6; 2004-132, s. 1.)

Editor's Note. — Session Laws 2004-132, s. 3, provides: "The Department of Commerce shall encourage projects applying for industrial revenue bonds under Chapter 159C or Chapter 159D of the General Statutes to locate the projects in development zones."

§ 159C-8. Approval of bonds.

(a) No bonds may be issued by an authority unless the issuance of the bonds is first approved by the Local Government Commission.

The authority shall file an application for approval of its proposed bond issue with the Secretary of the Local Government Commission, and shall notify the Secretary of Commerce of the filing if the project is an industrial project or pollution control project.

(b) In determining whether a proposed bond issue should be approved, the Local Government Commission may consider any of the following:

(1) Whether the proposed operator and obligor have demonstrated or can demonstrate the financial responsibility and capability to fulfill their obligations with respect to the financing agreement. In making such determination, the Commission may consider the operator's experience and the obligor's ratio of current assets to current liabilities, net worth, earnings trends and coverage of fixed charges, the nature of the industry or business involved and its stability and any additional security such as credit enhancement, insurance, guaranties or property to be pledged to secure such bonds.

(2) Whether the political subdivisions in or near which the proposed project is to be located have the ability to cope satisfactorily with the impact of the project and to provide, or cause to be provided, the public facilities and services, including utilities, that will be necessary for the project and on account of any increase in population which are expected to result from the project.

(3) Whether the proposed date and manner of sale will have an adverse effect upon any scheduled or anticipated sale of obligations by the State or any political subdivision or any agency of either of them.

(4) Any other factors the Commission considers relevant.

(c) The Local Government Commission shall not approve the issuance of bonds for a special purpose project unless the governing body of the county in which the special purpose project is located has conducted a public hearing and, at or after the public hearing, approved in principle the issuance of bonds under this Chapter for the purposes of paying all or a part of the proposed special purpose project. Notice of the public hearing must be published at least once in at least one newspaper of general circulation in the county not less than 14 days before the public hearing. The notice must describe generally the bonds proposed to be issued and the proposed special purpose project, including its general location, and any other information the governing body considers appropriate.

(d) If the initial proposed operator of the project is not expected to be the operator for the term of the bonds proposed to be issued, the Local Government Commission may consider the matters required under subdivision (b)(1) of this section only with respect to the initial operator. The obligor shall be obligated to perform all of the duties of the obligor required hereunder during the term the bonds are outstanding. The Local Government Commission shall evaluate the obligor's ability to perform these duties without regard to whether the initial proposed operator of the project is expected to be the operator for the term of the bonds proposed to be issued. To facilitate the review of the proposed bond issue by the Commission, the Secretary may require the authority to obtain and submit any financial data and information about the proposed bond issue and the security for it, including the proposed prospectus or offering circular, the proposed financing agreement and security document and annual and other financial reports and statements of the obligor, as the Secretary may prescribe. The Secretary may also prescribe any forms and rules the Secretary considers reasonably necessary to implement the provisions of this section. (1975, c. 800, s. 1; 1977, c. 198, s. 23; 1979, c. 109, s. 1; 1989, c. 751, s. 7(49); 1991 (Reg. Sess., 1992), c. 959, s. 80; 1995 (Reg. Sess., 1996), c. 575, s. 7; 2000-179, s. 7.)

§ 159C-9. Sale of bonds.

Bonds may be sold in such manner, either at public or private sale, and for such price as the Local Government Commission shall determine to be for the best interests of the authority and effectuate best the purposes of this Chapter irrespective of the interest limitations set forth in G.S. 24-1.1, as amended, and successor provisions, provided that such sale shall be approved by the authority and the obligor. (1975, c. 800, s. 1.)

§ 159C-10. Location of projects.

Except as provided in this section, any project or projects of an authority shall be located within the boundaries of the county for which the authority was created. A portion or portions of any project including, but not limited to, any real or personal property or improvements necessary or convenient for the construction, maintenance, and operation of the project, may be located in a county or counties other than the county in which the principal part of the project is located so long as the additional portion or portions constitute functionally appurtenant or incidental facilities and the governing body of each other county in which the additional portion or portions of the project is or are located approves the project. In addition, if a project or a group of related projects is located in two or more adjacent counties, the authority created for any one of the counties may issue bonds as provided in G.S. 159C-6 for the purpose of paying all or any part of the cost of the project or group of related projects if the following conditions are met:

(1) The board of commissioners of each county in which the project or group of related projects is located has consented.

(2) The governing body of the authority created for each county in which the project or group of related projects is located has consented.

(3) The bonds are issued in compliance with all other provisions of this Chapter. (1975, c. 800, s. 1; 1993, c. 130, s. 1; 1997-463, s. 3.)

§ 159C-11. Financing agreements.

(a) Every financing agreement shall provide that:

(1) The amounts payable under the financing agreement shall be sufficient to pay all of the principal of and redemption premium, if any, and interest on the bonds issued by the authority to pay the cost of the project as they respectively become due.

(2) The obligor shall pay all costs incurred by the authority in connection with the financing and administration of the project, except as may be paid out of the proceeds of bonds or otherwise, including insurance costs, the cost of administering the financing agreement and the security document and the fees and expenses of the fiscal agent or trustee, paying agents, attorneys, consultants and others.

(3) The obligor shall pay all the costs and expenses of operation, maintenance and upkeep of the project.

(4) The obligor's obligation to provide for the payment of the bonds in full is not subject to cancellation, termination or abatement until payment of the bonds or provision for their payment has been made.

(5) If the proposed initial operator of the project is not expected to be the operator for the term of the bonds proposed to be issued, the financing agreement shall require that the obligor attempt to arrange for a new operator when the current operator discontinues serving as operator. The new operator is subject to the approval of the Secretary under subdivisions (b)(1)a. and (3)b. of G.S. 159C-7 if the project is an industrial project or a pollution control project, and is subject in any event to the approval of the Local Government Commission under G.S. 159C-8.

(b) The financing agreement, if in the nature of a lease agreement, shall either provide that the obligor has an option to purchase, or require that the obligor purchase, the project upon the expiration or termination of the financing agreement subject to the condition that payment in full of the principal of, and the interest and any redemption premium on, the bonds, or provision for payment, has been made.

The financing agreement may provide the authority with rights and remedies in the event of a default by the obligor under the agreement, including any one or more of the following:

(1) Acceleration of all amounts payable under the financing agreement;
(2) Reentry and repossession of the project;
(3) Termination of the financing agreement;
(4) Leasing or sale or foreclosure of the project to others; and
(5) Taking whatever actions at law or in equity may appear necessary or desirable to collect the amounts payable under, and to enforce covenants made in, the financing agreement.

(c) The authority's interest in a project under a financing agreement may be that of owner, lessor, lessee, conditional or installment vendor, mortgagor, mortgagee, secured party or otherwise, but the authority need not have any ownership or possessory interest in the project.

The authority may assign all or any of its rights and remedies under the financing agreement to the trustee or the bondholders under a security document.

The financing agreement may contain any additional provisions the authority considers necessary or convenient to effectuate the purposes of this Chapter. (1975, c. 800, s. 1; 1979, c. 109, s. 1; 1995 (Reg. Sess., 1996), c. 575, s. 8; 2000-179, s. 8.)

§ 159C-12. Security documents.

Bonds issued under the provisions of this Chapter may be secured by a security document which may be a trust instrument between the authority and a bank or trust company or individual within the State, or a bank or a trust company without the State, as trustee. Such security document may pledge and assign the revenues provided for the security of the bonds, including proceeds from the sale of any project, or part thereof, insurance proceeds and condemnation awards, and may convey or mortgage the project and other property to secure a bond issue.

The revenues and other funds derived from the project, except such part thereof as may be necessary to provide reserves therefor, if any, shall be set aside at such regular intervals as may be provided in such security document in a sinking fund which may be thereby pledged to, and charged with, the payment of the principal of and the interest on such bonds as the same shall become due and the redemption price or the purchase price of bonds retired by call or purchase as therein provided. Such pledge shall be valid and binding from the time when the pledge is made. The revenues so pledged and thereafter received by the authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the authority, irrespective of whether such parties have notice thereof. The use and disposition of money to the credit of such sinking fund shall be subject to the provisions of the security document. Such security document may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including, without limitation, any one or more of the following:

(1) Acceleration of all amounts payable under the security document;

(2) Appointment of a receiver to manage the project and any other property mortgaged or assigned as security for the bonds;

(3) Foreclosure and sale of the project and any other property mortgaged or assigned as security for the bonds; and

(4) Rights to bring and maintain such other actions at law or in equity as may appear necessary or desirable to collect the amounts payable under, or to enforce the covenants made in, the security document.

It shall be lawful for any bank or trust company incorporated under the laws of this State which may act as depositary of the proceeds of bonds, revenues or other funds provided under this Chapter to furnish such indemnifying bonds or to pledge such securities as may be required by the authority. All expenses incurred in carrying out the provisions of such security document may be treated as a part of the cost of the project in connection with which bonds are issued or as an expense of administration of such project.

The authority may subordinate the bonds or its rights under the financing agreement or otherwise to any prior, contemporaneous or future securities or obligations or lien, mortgage or other security interest. (1975, c. 800, s. 1; 1977, c. 719, s. 4; 1979, c. 109, s. 1.)

§ 159C-13. Trust funds.

Notwithstanding any other provisions of law to the contrary, all money received pursuant to the authority of this Chapter, whether as proceeds from the sale of bonds or as revenues, shall be deemed to be trust funds to be held and applied solely as provided in this Chapter. The security document may provide that any of such moneys may be temporarily invested and reinvested pending the disbursement thereof in such securities and other investments as shall be provided in such security document, and shall provide that any officer with whom, or any bank or trust company with which, such moneys shall be deposited shall act as trustee of such moneys and shall hold and apply the same for the purpose hereof, subject to such regulations as this Chapter and such security document may provide. (1975, c. 800, s. 1.)

§ 159C-14. Tax exemption.

The authority shall not be required to pay any taxes on any project or on any other property owned by the authority under the provisions of this Chapter or upon the income therefrom.

The interest on bonds issued by the authority shall be exempt from all income taxes within the State.

All projects and all transactions therefor shall be subject to taxation to the extent such projects and transactions would be subject to taxation if no public body were involved therewith. (1975, c. 800, s. 1; 1977, c. 719, s. 5.)

§ 159C-15. Construction contracts.

The authority may agree with the prospective operator that all contracts relating to the acquisition, construction, installation and equipping of a project shall be solicited, negotiated, awarded and executed by the prospective operator and its agents subject only to such approvals by the authority as the authority may require in such agreement. Such agreement may provide that the authority may, out of the proceeds of bonds, make advances to or reimburse the operator for all or a portion of its costs incurred in connection with such contracts. (1975, c. 800, s. 1; 1977, c. 719, s. 6.)

§ 159C-16. Conflict of interest.

If any officer, commissioner or employee of the authority, or any member of the governing body of the county for which the authority is created, shall be interested either directly or indirectly in any contract with the authority, such interest shall be disclosed to the authority and the county board of commissioners and shall be set forth in the minutes of the authority and the county board of commissioners, and the officer, commissioner, employee or member having such interest therein shall not participate on behalf of the authority in the authorization of any such contract or on behalf of the governing body of the county in the approval of the bonds to be issued by the authority to finance the project, respectively; provided, however, that this section shall not apply to the ownership of less than one per centum (1%) of the stock of any operator or obligor. Failure to take any or all actions necessary to carry out the purposes of this section shall not affect the validity of bonds issued pursuant to the provisions of this Chapter. (1975, c. 800, s. 1; 1977, c. 719, s. 7.)

§ 159C-17. Credit of State not pledged.

Bonds issued under the provisions of this Chapter shall not be deemed to constitute a debt of the State or any political subdivision or any agency thereof or a pledge of the faith and credit of the State or any political subdivision or any such agency, but shall be payable solely from the revenues and other funds provided therefor. Each bond issued under this Chapter shall contain on the face thereof a statement to the effect that the authority shall not be obligated to pay the same or the interest thereon except from the revenues and other funds pledged therefor and that neither the faith and credit nor the taxing power of the State or any political subdivision or any agency thereof is pledged to the payment of the principal of or the interest on such bonds. (1975, c. 800, s. 1.)

§ 159C-18. Bonds eligible for investment.

Bonds issued by an authority under the provisions of this Chapter are hereby made securities in which all public officers and agencies of the State and all political subdivisions, all insurance companies, trust companies, banking associations, investment companies, executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. (1975, c. 800, s. 1.)

§ 159C-19. Revenue refunding bonds.

(a) Each authority is authorized to provide by resolution for the issuance of refunding bonds of the authority for the purpose of refunding any bonds then outstanding that have been issued under the provisions of this Chapter, including the payment of any redemption premium on them and any interest accrued or to accrue to the date of redemption of the bonds, and, if deemed advisable by the authority, for either or both of the following additional purposes:

(1) Constructing improvements, additions, extensions or enlargements of the project or projects in connection with which the bonds to be refunded have been issued, and

(2) Paying all or any part of the cost of any additional project or projects.

(a1) The issuance of these bonds, their maturities and other details, the rights of their holders, and the rights, duties, and obligations of the authority in respect to them shall be governed by the provisions of this Chapter that relate to the issuance of bonds, to the extent appropriate, including that the bonds may have a single maturity within the limit prescribed by G.S. 159C-6. The approvals required by G.S. 159C-7 and 159C-8 shall be obtained prior to the issuance of any refunding bonds, except that if the refunding bonds of all or a portion of an issue are to be issued solely for the purpose of refunding outstanding bonds issued under this Chapter, the approval required by G.S. 159C-7 is not required as to the project financed with the bonds to be refunded.

(b) Refunding bonds issued under this section may be sold or exchanged for outstanding bonds issued under this Chapter and, if sold, their proceeds may be applied, in addition to any other authorized purposes, to the purchase, redemption, or payment of the outstanding bonds. Refunding bonds may be issued, in the determination of the authority, at any time before the date of maturity or maturities or the date selected for the redemption of the bonds being refunded by them. Pending the application of the proceeds of the refunding bonds, with any other available funds, to the payment of the principal of and accrued interest and any redemption premium on the bonds being refunded, and, if so provided or permitted in the security document securing them, to the payment of any interest on the refunding bonds and any expenses in connection with the refunding, the proceeds may be invested in direct obligations of, or obligations the principal of and the interest on which are unconditionally guaranteed by, the United States of America that mature or are subject to redemption by the holder, at the option of such holder, not later than the respective dates when the proceeds, together with the interest accruing on them, will be required for the purposes intended. (1975, c. 800, s. 1; 1997-463, s. 4; 2000-179, s. 9.)

§ 159C-20. No power of eminent domain.

No authority shall have any right or power to acquire any property through the exercise of eminent domain or any proceedings in the nature of eminent domain. (1975, c. 800, s. 1.)

§ 159C-21. Dissolution of authorities.

Whenever the board of commissioners of an authority and the governing body of the county for which such authority was created shall by joint resolution determine that the purposes for which the authority was formed have been substantially fulfilled and that all bonds theretofore issued and all other obligations theretofore incurred by the authority have been fully paid or satisfied, such board of commissioners and governing body may declare the authority to be dissolved. On the effective date of such joint resolution, the title to all funds and other property owned by the authority at the time of such dissolution shall vest in the county or in such other political subdivisions as the county shall direct, and possession of such funds and other property shall forthwith be delivered to the county or to such other political subdivisions in accordance with the direction of the county. (1975, c. 800, s. 1.)

§ 159C-22. Annual reports; application of Article 3, Subchapter III of Chapter 159.

Each authority shall, promptly following the close of each calendar year, submit an annual report of its activities for the preceding year to the governing body of the county for which the authority was created. Each such report shall set forth a complete operating and financial statement covering the operations of the authority during such year.

The provisions of Article 3, Subchapter III of Chapter 159 of the General Statutes of North Carolina entitled: “The Local Government Budget and Fiscal Control Act” shall have no application to authorities created pursuant to this Chapter. (1975, c. 800, s. 1; 1977, c. 719, s. 8.)

§ 159C-23. Officers not liable.

No commissioner of any authority shall be subject to any personal liability or accountability by reason of his execution of any bonds or the issuance thereof. (1975, c. 800, s. 1.)

§ 159C-24. Additional method.

The foregoing sections of this Chapter shall be deemed to provide an additional and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing; provided, however, that the issuance of bonds or refunding bonds under the provisions of this Chapter need not comply with the requirements of any other law applicable to the issuance of bonds. (1975, c. 800, s. 1.)

§ 159C-25. Liberal construction.

This Chapter, being necessary for the prosperity and welfare of the State and its inhabitants, shall be liberally construed to effect the purposes hereof. (1975, c. 800, s. 2.)

§ 159C-26. Inconsistent laws inapplicable.

Insofar as the provisions of this Chapter are inconsistent with the provisions of any general, special or local laws, or parts thereof, the provisions of this Chapter shall be controlling. (1975, c. 800, s. 3.)

§ 159C-27. Creation, etc., of prior authorities ratified.

The creation, formation and organization of all authorities heretofore [prior to June 24, 1977] purported to have been created, formed and organized are hereby ratified, confirmed and validated. (1977, c. 719, s. 9.)

§ 159C-28: Repealed by Session Laws 2001-218, s. 5, effective July 1, 2001.

Chapter 159D.
The North Carolina Capital Facilities Financing Act.

Article 1.

Industrial and Pollution Control Facilities Financing.

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Article 2.

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ARTICLE 1.

Industrial and Pollution Control Facilities Financing.

§ 159D-1. Short title.

This Article may be referred to as "The North Carolina Industrial and Pollution Control Facilities Financing Act." (1977, 2nd Sess., c. 1198, s. 1; 1987, c. 517, s. 1; 2000-179, s. 2.)

§ 159D-2. Legislative findings and purposes.

(a) The General Assembly finds and determines that there exists in the State a critical condition of unemployment and a scarcity of employment opportunities; that the economic insecurity which results from such unemployment and scarcity of employment opportunities constitutes a serious menace to the safety, morals and general welfare of the entire State; that such unemployment and scarcity of employment opportunities have caused many workers and their families, including young adults upon whom future economic prosperity is dependent, to migrate elsewhere to find employment and establish homes; that such emigration has resulted in a reduced rate of growth in the tax base of the counties and other local governmental units of the State which impairs the financial ability of such counties and other local governmental units to support education and other local governmental services; that such unemployment results in obligations to grant public assistance and to pay unemployment compensation; that the aforesaid conditions can best be remedied by the attraction, stimulation, expansion and rehabilitation and revitalization of industrial and manufacturing facilities for industry in the State; and that there is a need to stimulate a larger flow of private investment funds into industrial building programs in the State.

(b) The General Assembly further finds and determines that the development and expansion of industry within the State, which are essential to the economic growth of the State, and to the full employment and prosperity of its people, are accompanied by the increased production and discharge of gaseous, liquid, and solid pollution and wastes which threaten and endanger the health, welfare and safety of the inhabitants of the State by polluting the air, land and waters of the State; that in order to reduce, control, and prevent such environmental pollution, it is imperative that action be taken at various levels of government to require the provision of devices, equipment and facilities for the collection, reduction, treatment, and disposal of such pollution and wastes; that the assistance provided in this Article, especially with respect to financing, is therefore in the public interest and serves a public purpose of the State in promoting the health, welfare and safety of the inhabitants of the State not only physically by collecting, reducing, treating and preventing environmental pollution but also economically by securing and retaining private industry thereby maintaining a higher level of employment and economic activity and stability.

(c), (c1), (d) Repealed by Session Laws 2000, c. 179, s. 2, effective July 1, 2000.

(1977, 2nd Sess., c. 1198, s. 1; 1987, c. 517, ss. 2, 3; 2000-179, s. 2.)

§ 159D-3. Definitions.

The following terms, whenever used or referred to in this Article, shall have the following respective meanings, unless a different meaning clearly appears from the context:

(1) "Agency" means the North Carolina Capital Facilities Finance Agency, an agency of the State created pursuant to G.S. 159D-38 of the North Carolina Capital Facilities Finance Act, codified as Article 2 of this Chapter.

(2) "Air pollution control facility" shall mean any structure, equipment or other facility for, including any increment in the cost of any structure, equipment or facility attributable to, the purpose of treating, neutralizing or reducing gaseous industrial waste and other air pollutants, including recovery, treatment, neutralizing or stabilizing plants and equipment and their appurtenances, which shall have been certified by the agency having jurisdiction to be in furtherance of the purpose of abating or controlling atmospheric pollutants or contaminants.

(3) "Authority" shall mean The North Carolina Industrial and Pollution Control Facilities Financing Authority, a political subdivision and body politic of the State, created pursuant to the provisions of this Article.

(4) "Bonds" shall mean revenue bonds issued under the provisions of this Article.

(4a) "Code" means the Internal Revenue Code of 1986, as amended.

(5) "Cost" as applied to any project shall embrace all capital costs thereof, including the cost of construction, the cost of acquisition of all property, including rights in land and other property, both real and personal and improved and unimproved, the cost of demolishing, removing or relocating any buildings or structures on lands so acquired, including the cost of acquiring any lands to which such buildings or structures may be moved or relocated, the cost of all machinery and equipment, installation, start-up expenses, financing charges, interest prior to, during and for a period not exceeding one year after completion of construction, the cost of engineering and architectural surveys, plans and specifications, the cost of consultants and legal services, other expenses necessary or incident to determining the feasibility or practicability of such project, administrative and other expenses necessary or incident to the acquisition or construction of such project and the financing of the acquisition and construction thereof, including a reserve for debt services.

(6) Repealed by Session Laws 2000, c. 179, s. 2, effective July 1, 2000.

(7) "Financing agreement" shall mean a written instrument establishing the rights and responsibilities of the agency and the operator with respect to a project financed by the issue of bonds.

(8) "Governing body" shall mean the board, commission, council or other body in which the general legislative powers of any county or other political subdivision are vested.

(9) "Obligor" shall mean collectively the operator and any others (including, but not by way of limitation, any other person, collateral device or fund that shall be obligated to pay) who or which shall be obligated under a financing agreement or guaranty agreement or other contract or agreement to make payments to, or for the benefit of, the holders of bonds of the agency. Any requirement of an obligor may be satisfied by any one or more persons who are defined collectively by this Article as the obligor.

(10) "Operator" shall mean the person entitled to the use or occupancy of a project.

(11) "Political subdivision" shall mean any county, city, town, other unit of local government or any other governmental corporation, entity, authority or instrumentality of the State now or hereafter existing.

(12) "Pollution and pollutants" shall mean any noxious or deleterious substances in any air or waters of or adjacent to the State of North Carolina or affecting the physical, chemical or biological properties of any air or waters of or adjacent to the State of North Carolina in a manner and to an extent which renders or is likely to render such air or waters harmful or inimical to the public health, safety or welfare, or to animal, bird or aquatic life, or to the use of such air or waters for domestic, industrial or agricultural purposes or recreation.

(13) "Project" means any land, equipment or any one or more buildings or other structures, whether or not on the same site or sites, and any rehabilitation, improvement, renovation or enlargement of, or any addition to, any building or structure for use as or in connection with (i) any industrial project, which may be an industrial or manufacturing factory, mill, assembly plant, fabricating plant, freight terminal, industrial research, development or laboratory facility, industrial processing facility for industrial or manufactured products, a facility used in the manufacturing or production of tangible personal property, a facility used in the creation or production of intangible property as described in section 197(d)(1)(C)(iii) of the Code, or a distribution facility for industrial or manufactured products, or (ii) any pollution

control project for industry which project may be any air pollution control facility, water pollution control facility, or solid waste disposal facility in connection with any factory, mill, plant, terminal or facility described in clause (i) of this subdivision, or (iii) any combination of projects mentioned in clauses (i) and (ii) of this subdivision. Any project may include all appurtenances and incidental facilities such as land, headquarters or office facilities, warehouses, distribution centers, access roads, sidewalks, utilities, railway sidings, trucking and similar facilities, parking facilities, landing strips and other facilities for aircraft, waterways, docks, wharves and other improvements necessary or convenient for the construction, maintenance and operation of any building or structure, or addition thereto.

(14) "Revenues" shall mean, with respect to any project, the rents, fees, charges, payments, proceeds and other income or profit derived therefrom or from the financing agreement or security document in connection therewith.

(15) "Security document" shall mean a written instrument or instruments establishing the rights and responsibilities of the agency and the holders of bonds issued to finance a project, and may provide for, or be in the form of an agreement with, a trustee for the benefit of such bondholders. A security document may contain an assignment, pledge, mortgage or other encumbrance of all or part of the agency's interest in, or right to receive revenues with respect to, a project and any other property provided by the operator or other obligor under a financing agreement and may bear any appropriate title. A financing agreement and a security document may be combined as one instrument.

(16) "Solid waste" shall mean solid waste materials resulting from any industrial or manufacturing activities or from any pollution control facility.

(17) "Solid waste disposal facility" shall mean a facility for the purpose of treating, burning, compacting, composting, storing or disposing of solid waste.

(18) "Water pollution control facility" shall mean any structure, equipment or other facility for, including any increment in the cost of any structure, equipment or facility attributable to, the purpose of treating, neutralizing or reducing liquid industrial waste and other water pollution, including collecting, treating, neutralizing, stabilizing, cooling, segregating, holding, recycling, or disposing of liquid industrial waste and other water pollution, including necessary collector, interceptor, and outfall lines and pumping stations, which has been certified by the entity exercising jurisdiction to be in furtherance of the purpose of abating or controlling water pollution. (1977, 2nd Sess., c. 1198, s. 1; 1987, c. 517, ss. 4, 4.1; 2000-179, s. 2; 2009-140, s. 8.)

Editor's Note. — Subdivision (4a) was originally enacted as subdivision (3a) by Session Laws 2009-140, s. 8. It has been renumbered as subdivision (4a) to preserve alphabetical order at the direction of the Revisor of Statutes.

Effect of Amendments. — Session Laws 2009-140, s. 8, effective June 19, 2009, added subdivision (3a); and in subdivision (13), in the first sentence, substituted "means" for "shall mean" near the beginning, "project, which may be an" for "project for industry which project may be any" near the middle, inserted "a facility used in the manufacturing or production of tangible personal property, a facility used in the creation or production of intangible property as described in section 197(d)(1)(C)(iii) of the Code, or a distribution facility for industrial or manufactured products," and made related minor grammatical and punctuation changes.

§ **159D-4:** Repealed by Session Laws 2000-179, s. 2, effective July 1, 2000.

§ 159D-4.1. Jurisdiction of the agency.

All actions taken by counties, local officials, the Secretary of State, the State Treasurer, and other interested parties to create and organize The North Carolina Industrial Facilities and Pollution Control Financing Authority are ratified and confirmed. All duties, powers, jurisdiction, and responsibilities vested by statute or by contract in the authority are transferred to and vested in the North Carolina Capital Facilities Finance Agency, subject to the provisions of this Article. Upon this transfer, the agency is responsible for all duties and obligations of the authority entered into or incurred, by contract or otherwise, before the transfer. Particularly, the agency is responsible for all matters relating to any outstanding bonds of the authority to the same extent that the authority was responsible for them before the date of transfer. The agency for all purposes assumes the role and is the legal successor of the authority. Upon this transfer, the authority is dissolved. (2000-179, s. 2.)

§ 159D-5. General powers.

The agency shall have all of the powers necessary or convenient to carry out and effectuate the purposes and provisions of this Article, including all of the following:

(1) To adopt bylaws for the regulation of its affairs and the conduct of its business and to prescribe rules, regulations and policies in connection with the performance of its functions and duties;
(2) To adopt an official seal and alter the same at pleasure;
(3) To maintain an office at such place or places as it may determine;
(4) To sue and be sued in its own name, plead and be impleaded;
(5) To receive, administer and comply with the conditions and requirements respecting any gift, grant or donation of any property or money;
(6) To make and execute financing agreements, security documents and other contracts and instruments necessary or convenient in the exercise of the powers and functions of the agency under this Article;
(7) To acquire by purchase, lease, gift or otherwise, but not by eminent domain, or to obtain options for the acquisition of any property, real or personal, improved or unimproved, and interests in land less than the fee thereof, for the construction, operation or maintenance of any project;
(8) To sell, lease, exchange, transfer or otherwise dispose of, or to grant options for any such purposes with respect to, any real or personal property or interest therein;
(9) To pledge or assign revenues of the agency;
(10) To construct, acquire, own, repair, maintain, extend, improve, rehabilitate, renovate, furnish and equip one or more projects and to pay all or any part of the costs thereof from the proceeds of bonds of the agency or from any contribution, gift or donation or other funds made available to the agency for such purpose;
(11) To fix, charge and collect revenues with respect to any project;
(12) To employ consulting engineers, architects, attorneys, real estate counselors, appraisers and such other consultants and employees as may be required in the judgment of the agency and to fix and pay their compensation from funds available to the agency therefor and to select and retain subject to approval of the Local Government Commission the financial consultants, underwriters and bond attorneys to be associated with the issuance of any bonds and to pay for services rendered by underwriters, financial consultants or bond attorneys out of the proceeds of any such issue with regard to which the services were performed; and

(13) To do all acts and things necessary, convenient or desirable to carry out the purposes, and to exercise the powers granted in this Article. (1977, 2nd Sess., c. 1198, s. 1; 1985, c. 723, s. 3; 2000-179, s. 2.)

§ 159D-6. Bonds.

(a) The agency is authorized to provide for the issuance, at one time or from time to time, of bonds of the agency for the purpose of paying all or any part of the cost of any project. The principal of, the interest on and any premium payable under the redemption of such bonds shall be payable solely from the funds herein authorized for such payment. The bonds of each issue shall bear interest as may be determined by the Local Government Commission of North Carolina with the approval of the agency and the obligor irrespective of the limitations of G.S. 24-1.1, as amended, and successor provisions. The bonds of each issue shall be dated, shall mature at such time or times not exceeding 30 years from the date of their issuance, and may be made redeemable before maturity at such price or prices and under such terms and conditions, as may be fixed by the agency prior to the issuance of the bonds. The agency shall determine the form and the manner of execution of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest. In case any officer whose signature or a facsimile of whose signature appears on any bonds or coupons ceases to be that officer before the delivery of the bonds, the signature or the facsimile shall nevertheless be valid and sufficient for all purposes the same as if the officer had remained in office until such delivery. The agency may also provide for the authentication of the bonds by a trustee or fiscal agent.

(b) The proceeds of the bonds of each issue shall be used solely for the payment of the cost of the project or projects, or a portion thereof, for which the bonds were issued, and shall be disbursed in such manner and under such restrictions, if any, as the agency may provide in the financing agreement and the security document. If the proceeds of the bonds of any issue, by reason of increased construction costs or error in estimates or otherwise, are less than such cost, additional bonds may in like manner be issued to provide the amount of such deficiency.

(c) The proceeds of bonds issued pursuant to this Article shall not be used to refinance the cost of a project. For the purposes of this section, a cost of a project is considered refinanced if both of the following conditions are met:

(1) The cost is initially paid from sources other than bond proceeds, and the original expenditure is to be reimbursed from bond proceeds.

(2) The original expenditure was paid more than 60 days before the agency took some action indicating its intent that the expenditure would be financed or reimbursed from bond proceeds.

(d) Notwithstanding subsection (c) of this section, preliminary expenditures that are incurred prior to the commencement of the acquisition, construction, or rehabilitation of a project, such as architectural costs, engineering costs, surveying costs, soil testing costs, bond issuance costs, and other similar costs, may be reimbursed from bond proceeds even if these costs are incurred or paid more than 60 days prior to the agency's action. This exception that allows preliminary expenditures to be reimbursed from bond proceeds, whether or not they are incurred or paid within 60 days of the agency's action, does not include costs that are incurred incident to the commencement of the construction of a project, such as expenditures for land acquisition and site preparation. In any event, an expenditure originally paid before the agency took some action indicating its intent that the expenditures would be financed or reimbursed from bond proceeds may be reimbursed from bond proceeds only if the agency finds that reimbursing those costs from bond proceeds will promote the purposes of this Article.

(e) Bonds may be issued under the provisions of this Article without obtaining, except as otherwise expressly provided in this Article, the consent of the State or of any political subdivision and without any other proceedings or the happening of any conditions or things other than those proceedings, conditions or things specifically required by this Article and the provisions of the financing agreement and security document authorizing the issuance of such bonds and securing the same. (1977, 2nd Sess., c. 1198, s. 1; 2000-179, s. 2.)

§ 159D-7. Approval of project by Secretary of Commerce.

(a) Approval Required. — No bonds may be issued by the agency pursuant to this Article unless the project for which their issuance is proposed is first approved by the Secretary of Commerce. The agency shall file an application for approval of its proposed project with the Secretary of Commerce, and shall notify the Local Government Commission of such filing.

(b) Findings. — The Secretary shall not approve any proposed project unless the Secretary makes all of the following, applicable findings:

(1) In the case of a proposed industrial project, that the proposed project will not have a materially adverse effect on the environment.

(2) In the case of a proposed pollution control project, that such project will have a materially favorable impact on the environment or will prevent or diminish materially the impact of pollution which would otherwise occur.

(2a) In the case of a hazardous waste facility or low-level radioactive waste facility that is used as a reduction, recovery or recycling facility, that such project will further the waste management goals of North Carolina and will not have an adverse effect upon public health or a significant adverse effect on the environment.

(3) In any case (whether the proposed project is an industrial or a pollution control project),

a. That the jobs to be generated or saved, directly or indirectly, by the proposed project will be large enough in number to have a measurable impact on the area immediately surrounding the proposed project and will be commensurate with the size and cost of the proposed project,

b. That the proposed operator of the proposed project has demonstrated or can demonstrate the capability to operate such project, and

c. That the financing of such project by the agency will not cause or result in the abandonment of an existing industrial or manufacturing facility of the proposed operator or an affiliate elsewhere within the State unless the facility is to be abandoned because of obsolescence, lack of available labor in the area, or site limitations.

(c) Initial Operator. — If the initial proposed operator of a project is not expected to be the operator for the term of the bonds proposed to be issued, the Secretary may make the findings required pursuant to subdivisions (b)(1)a. and (3)b. of this section only with respect to the initial operator. The initial operator shall be identified in the application for approval of the proposed project.

(d) Public Hearing, Generally. — The Secretary of Commerce shall not approve any proposed project pursuant to this section unless the governing body of the county in which the project is located has first conducted a public hearing and, at or after the public hearing, approved in principle the issuance of bonds under this Article for the purpose of paying all or part of the cost of the proposed project. Notice of the public hearing shall be published at least once in at least one newspaper of general circulation in the county not less than 14 days before the public hearing. The notice shall describe generally the bonds proposed to be issued and the proposed project, including its general location, and any other information the governing body considers appropriate or the Secretary of Commerce prescribes for the purpose of providing the Secretary with the views of the community. The notice shall also state that following the public hearing the agency intends to file an application for approval of the proposed project with the Secretary of Commerce.

(d1) Public Hearing, Multiple Projects. — Notwithstanding subsection (d) of this section, in the event the bonds proposed to be issued are to finance more than one project, the public hearing shall be conducted by the agency or by a hearing officer designated by the agency to conduct public hearings. The public hearing may be held at any location designated by the agency. Notice of the public hearing shall be published at least once in at least one newspaper of general circulation in each county in which a proposed project is to be located not less than 14 days before the public hearing. The notice shall describe generally the bonds proposed to be issued and any proposed project in that county, including its general location, and any other information the agency considers appropriate or the Secretary of Commerce prescribes for the purpose of providing the Secretary with the views of the community. A copy of the notice of public hearing must be mailed to the board of county commissioners of any county in which a proposed project is to be located and to the governing body of any municipality in which a proposed project is to be located.

(e) Certificate of Department of Environment and Natural Resources. — The Secretary of Commerce shall not make the findings required by subdivisions (b)(1)b and (2) of this section unless the Secretary has first received a certification from the Department of Environment and Natural Resources that, in the case of a proposed industrial project, the proposed project will not have a materially adverse effect on the environment and that, in the case of a proposed pollution control project, the proposed project will have a materially favorable impact on the environment or will prevent or diminish materially the impact of pollution which would otherwise occur. The Secretary shall not make the findings required by subdivision (b)(2a) of this section unless the Secretary has first received a certification from the Department of Environment and Natural Resources that the proposed project is environmentally sound, will not have an adverse effect on public health and will further the waste management goals of North Carolina. The Secretary of Commerce shall deliver a copy of the application to the Department of Environment and Natural Resources. The Department of Environment and Natural Resources shall provide each certification to the Secretary of Commerce within seven days after the applicant satisfactorily demonstrates to it that all permits, including environmental permits, necessary for the construction of the proposed project have been obtained, unless the agency consents to a longer period of time.

(f) Waiver of Wage Requirement. — If the Secretary of Commerce has made all of the required findings respecting a proposed industrial project, except that prescribed in subdivision (b)(1)a of this section, the Secretary may, in the Secretary's discretion, approve the proposed project if the Secretary has received (i) a resolution of the governing body of the county in which the proposed project is to be located requesting that the proposed project be approved notwithstanding that the operator will not pay an average weekly manufacturing wage above the average weekly manufacturing wage in the county and (ii) a letter from an appropriate State official, selected by the Secretary, to the effect that unemployment in the county is especially severe.

(g) Rules. — To facilitate the Secretary's review of each proposed project, the Secretary may require the agency to obtain and submit such data and information about such project as the Secretary may prescribe. The Secretary may also prescribe such forms and such rules as the Secretary considers reasonably necessary to implement the provisions of this section.

(h) Certificate of Approval. — If the Secretary approves the proposed project, the Secretary shall prepare a certificate of approval evidencing such approval and setting forth the findings and shall cause the certificate of approval to be published in a newspaper of general circulation within the county in which the proposed project is to be located. Any such approval shall be reviewable as provided in Article 4 of Chapter 150B of the General Statutes only by an action filed, within 30 days after notice of such findings and approval shall have been so published, in the Superior Court of Wake County. The superior court is hereby vested with jurisdiction to hear such action, but if no such action is filed within the 30 days herein prescribed, the validity of such approval shall be conclusively presumed, and no court shall have authority to inquire into such approval. Copies of the certificate of approval of the proposed project will be given to the agency, the governing body of the county in which the proposed project is to be located and the secretary of the Local Government Commission.

The certificate of approval shall become effective immediately following the expiration of the 30-day period or the expiration of any appeal period after a final determination by any court of any action timely filed pursuant to this section. The certificate shall expire one year after its date unless extended by the Secretary who shall not extend the certificate unless the Secretary again approves the proposed project as provided in this section. If bonds are issued within that year pursuant to the authorization of this Article or Chapter 159C of the General Statutes to pay all or part of the costs of the project, however, the certificate expires three years after the date of the first issuance of the bonds.

(i) Certificate Issued Under Chapter 159C Effective. — Any certificate of approval with respect to a project which has become effective pursuant to G.S. 159C-7 satisfies the requirements of this section to the extent that the findings made by the Secretary pursuant to G.S. 159C-7 are consistent with the findings required to be made by the Secretary pursuant to this section. (1977, 2nd Sess., c. 1198, s. 1; 1987, c. 517, s. 6; c. 827, s. 1; 1989, c. 727, ss. 218(162), 219(39); c. 751, s. 8(30); 1991 (Reg. Sess., 1992), c. 959, s. 82; 1997-443, s. 11A.123; 2000-179, s. 2; 2002-172, s. 5.2; 2003-416, s. 2; 2004-132, s. 2.)

Editor's Note. — Session Laws 2002-172, s. 5.1, provides: "The General Assembly finds that there are small manufacturing companies in the State that are eligible for industrial development bond financing for capital improvements and expansions, but are not able to take advantage of that financing because of the administrative costs involved. This problem can be addressed by reviving the composite bond program under Chapter 159D of the General Statutes, under which the North Carolina Capital Facilities Finance Agency could combine several series of bonds into a single bond offering, thereby reducing transaction costs and permitting eligible small manufacturers to access tax exempt financing for capital investments. The composite bond program would be facilitated by the changes proposed to Chapter 159D in this part [Part 5 of Session Laws 2002-172] that will streamline the procedures for composite issues by requiring only one public hearing and align the review standard for bonds issued as part of a composite bond program with the standard for bonds issued by county industrial development projects."

Session Laws 2004-132, s. 3, provides: "The Department of Commerce shall encourage projects applying for industrial revenue bonds under Chapter 159C or Chapter 159D of the General Statutes to locate the projects in development zones."

§ 159D-8. Approval of bonds.

(a) No bonds may be issued by the agency pursuant to this Article unless the issuance is first approved by the Local Government Commission.

The agency shall file an application for approval of its proposed bond issue with the secretary of the Local Government Commission, and shall notify the Secretary of the Department of Commerce of such filing.

(b) In determining whether a proposed bond issue should be approved, the Local Government Commission may consider, without limitation, the following:

(1) Whether the proposed operator and obligor have demonstrated or can demonstrate the financial responsibility and capability to fulfill their obligations with respect to the financing agreement. In making such determination, the commission may consider the operator's experience and the obligor's ratio of current assets to current liabilities, net worth, earnings trends and coverage of fixed charges, the nature of the industry or business involved and its stability and any additional security such as credit enhancement, insurance, guaranties or property to be pledged or secure such bonds.

(2) Whether the political subdivisions in or near which the proposed project is to be located have the ability to cope satisfactorily with the impact of such project and to provide, or cause to be provided, the public facilities and services, including utilities, that will be necessary for such project and on account of any increase in population which are expected to result therefrom.

(3) Whether the proposed date and manner of sale will have an adverse effect upon any scheduled or anticipated sale of obligations by the State or any political subdivision or any agency of either of them.

(c) To facilitate the review of the proposed bond issue by the commission, the Secretary may require the agency to obtain and submit such financial data and information about the proposed bond issue and the security therefor, including the proposed prospectus or offering circular, the proposed financing agreement and security document and annual and other financial reports and statements of the obligor, as the Secretary may prescribe. The Secretary may also prescribe forms and rules that the Secretary considers reasonably necessary to implement the provisions of this section. (1977, 2nd Sess., c. 1198, s. 1; 1989, c. 751, s. 7(52); 1991 (Reg. Sess., 1992), c. 959, s. 83; 2000-179, s. 2; 2002-172, s. 5.3; 2003-416, s. 2.)

§ 159D-9. Sale of bonds.

Bonds issued under this Article may be sold in such manner, either at public or private sale, and for such price as the Local Government Commission determines to be for the best interests of the agency and effectuate best the purposes of this Article irrespective of the interest limitations set forth in G.S. 24-1.1, as amended, and successor provisions, as long as the sale is approved by the agency and the obligor. (1977, 2nd Sess., c. 1198, s. 1; 2000-179, s. 2.)

§ 159D-10. Location of projects.

Any project of the agency shall be located within the boundaries of the State. Bonds may not be issued to finance any project or group of projects in any county of the State unless the board of commissioners for the county in which the project is located has consented to the location of the project within the county. (1977, 2nd Sess., c. 1198, s. 1; 1993, c. 130, s. 2; 2000-179, s. 2.)

§ 159D-11. Financing agreements.

(a) Every financing agreement shall provide that:

(1) Repealed by Session Laws 1987, c. 517, s. 7.

(2) The amounts payable under the financing agreement shall be sufficient to pay all of the principal of and interest and redemption premium, if any, and interest on the bonds issued by the agency to pay the cost of the project as they respectively become due;

(3) The obligor shall pay all costs incurred by the agency in connection with the financing and administration of the project, except as may be paid out of the proceeds of bonds or otherwise, including, but without limitation, insurance costs, the cost of administering the financing agreement and the security document and the fees and expenses of the fiscal agent or trustee, paying agents, attorneys, consultants and others;

(4) The obligor shall pay all the costs and expenses of operation, maintenance and upkeep of the project; and

(5) The obligor's obligation to provide for the payment of the bonds in full shall not be subject to cancellation, termination or abatement until payment of the bonds or provision for payment has been made.

(b) The financing agreement may be in the nature of:

(1) A sale and leaseback,
(2) A lease purchase,
(3) A conditional sale,
(4) An installment sale,
(5) A secured or unsecured loan,
(6) A loan and mortgage, or
(7) Another similar transaction.

(c) The financing agreement, if in the nature of a lease agreement, shall either provide that the obligor has an option to purchase, or require that the obligor purchase, the project upon the expiration or termination of the financing agreement subject to the condition that payment in full of the principal of, and the interest and any redemption premium on, the bonds, or provision for payment has been made.

(d) The financing agreement may provide the agency with rights and remedies in the event of a default by the obligor under it including, without limitation, any one or more of the following:

(1) Acceleration of all amounts payable under the financing agreement;
(2) Reentry and repossession of the project;
(3) Termination of the financing agreement;
(4) Leasing or sale or foreclosure of the project to others; and
(5) Taking whatever actions at law or in equity may appear necessary or desirable to collect the amounts payable under, and to enforce covenants made in, the financing agreement.

(e) The agency's interest in a project under a financing agreement may be that of owner, lessor, lessee, conditional or installment vendor, mortgagor, mortgagee, secured party or otherwise, but the agency need not have any ownership or possessory interest in the project.

(f) The agency may assign all or any of its rights and remedies under the financing agreement to the trustee or bondholders under the security document.

(g) The financing agreement may contain any additional provisions the agency considers necessary or convenient to effectuate the purposes of this Article. (1977, 2nd Sess., c. 1198, s. 1; 1987, c. 517, s. 7; 2000-179, s. 2.)

§ 159D-12. Security documents.

(a) Bonds issued under the provisions of this Article may be secured by a security document which may be a trust instrument between the agency and a bank or trust company or individual within the State, or a bank or a trust company without the State, as trustee. Such security document may pledge and assign the revenues provided for the security of the bonds, including proceeds from the sale of any project, or part thereof, insurance proceeds and condemnation awards, and may convey or mortgage the project and other property to secure a bond issue.

The revenues and other funds derived from the project, except any part necessary to provide reserves shall be set aside at such regular intervals as may be provided in such security document in a sinking fund which may be pledged to, and charged with, the payment of the principal of and the interest on such bonds as they become due and the redemption price or the purchase price of bonds retired by call or purchase as therein provided. Such pledge shall be valid and binding from the time when the pledge is made. The revenues so pledged and thereafter received by the agency shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the agency, irrespective of whether such parties have notice thereof. The use and disposition of money to the credit of such sinking fund shall be subject to the provisions of the security document. Such security document may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including, without limitation, any one or more of the following:

(1) Acceleration of all amounts payable under the security document;
(2) Appointment of a receiver to manage the project and any other property mortgaged or assigned as security for the bonds;
(3) Foreclosure and sale of the project and any other property mortgaged or assigned as security for the bonds; and
(4) Rights to bring and maintain such other actions at law or in equity as may appear necessary or desirable to collect the amounts payable under, or to enforce the covenants made in, the security document.

(b) It is lawful for any bank or trust company incorporated under the laws of this State which may act as depositary of the proceeds of bonds, revenues or other funds provided under this Article to furnish such indemnifying bonds or to pledge such securities as may be required by the agency. All expenses incurred in carrying out the provisions of such security document may be treated as a part of the cost of the project in connection with which bonds are issued or as an expense of administration of such project.

The agency may subordinate the bonds or its rights under the financing agreement or otherwise to any prior, contemporaneous or future securities or obligations or lien, mortgage or other security interest.

Any such security document may contain such additional provisions as in the determination of the agency are necessary or convenient or effectuate the purposes of this Article. (1977, 2nd Sess., c. 1198, s. 1; 2000-179, s. 2.)

§ 159D-13. Trust funds.

Notwithstanding any other provisions of law to the contrary, all money received pursuant to the authority of this Article, whether as proceeds from the sale of bonds or as revenues, are trust funds to be held and applied solely as provided in this Article. The security document may provide that any of the money may be temporarily invested and reinvested pending its disbursement in any securities and other investments as provided in such security document, and shall provide that any officer with whom, or any bank or trust company with which, the money is deposited shall act as trustee and shall hold and apply it for the purpose of this Article, subject to any regulations this Article and the security document provide. (1977, 2nd Sess., c. 1198, s. 1; 2000-179, s. 2.)

§ 159D-14. Tax exemption.

The agency is not required to pay any taxes on any project or on any other property owned by the agency under the provisions of this Article or upon the income from the property.

The interest on bonds issued by the agency is exempt from all income taxes within the State.

All projects and all transactions for them are subject to taxation to the extent they would be subject to taxation if no public body were involved with them. (1977, 2nd Sess., c. 1198, s. 1; 2000-179, s. 2.)

§ 159D-15. Construction contracts.

The agency may agree with the prospective operator that all contracts relating to the acquisition, construction, installation and equipping of a project shall be solicited, negotiated, awarded and executed by the prospective operator and its agents subject only to such approval by the agency as the agency may require in such agreement. Such agreement may provide that the agency may, out of the proceeds of bonds, make advances to or reimburse the operator for all or a portion of its costs incurred in connection with such contracts. (1977, 2nd Sess., c. 1198, s. 1; 2000-179, s. 2.)

§ 159D-16. Conflict of interest.

If any officer, commissioner or employee of the agency is interested either directly or indirectly in any contract with the agency, such interest shall be disclosed to the agency and shall be set forth in the minutes of the agency, and the officer, commissioner, employee or member having such interest shall not participate on behalf of the agency in the authorization of the project. This section does not apply to the ownership of less than one percent (1%) of the stock of any operator or obligor. Failure to take any or all actions necessary to carry out the purposes of this section does not affect the validity of bonds issued pursuant to the provisions of this Article. (1977, 2nd Sess., c. 1198, s. 1; 2000-179, s. 2.)

§ 159D-17. Credit of State not pledged.

Bonds issued under the provisions of this Article do not constitute a debt of the State or any political subdivision or a pledge of the faith and credit of the State or any political subdivisions, but shall be payable solely from the revenues and other funds provided for payment. Each bond issued under this Chapter shall contain on its face a statement to the effect that the agency shall not be obligated to pay the bonds or the interest on it except from the revenues and other funds pledged for payment and that neither the faith and credit nor the taxing power of the State or any political subdivision is pledged to the payment of the principal of or the interest on the bonds. (1977, 2nd Sess., c. 1198, s. 1; 2000-179, s. 2.)

§ 159D-18. Bonds eligible for investment.

Bonds issued by the agency under the provisions of this Article are securities in which all public officers and agencies of the State and all political subdivisions, and all insurance companies, trust companies, banking associations, investment companies, executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. (1977, 2nd Sess., c. 1198, s. 1; 2000-179, s. 2.)

§ 159D-19. Revenue refunding bonds.

(a) The agency is authorized to provide by resolution for the issuance of refunding bonds of the agency for the purpose of refunding any bonds then outstanding that have been issued under the provisions of this Article, or under the provisions of Chapter 159C of the General Statutes, including the payment of any redemption premium and any interest accrued or to accrue to the date of redemption of such bonds, and, if considered advisable by the agency, for either or both of the following additional purposes:

(1) Constructing improvements, additions, extensions or enlargements of the project or projects in connection with which the bonds to be refunded shall have been issued; and

(2) Paying all or any part of the cost of any additional project or projects.

(a1) The issuance of bonds, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties and obligations of the agency in respect to the bonds are governed by the provisions of this Article that relate to the issuance of bonds.

The approvals required by G.S. 159D-7 and G.S. 159D-8 shall be obtained prior to the issuance of any refunding bonds, except that in the case where the refunding bonds of all or a portion of an issue are to be issued solely for the purpose of refunding outstanding bonds issued under this Article, the approval required by G.S. 159D-7 is not required as to the project financed with the bonds to be refunded.

(b) Refunding bonds issued under this section may be sold or exchanged for outstanding bonds issued under this Article and, if sold, the proceeds may be applied, in addition to any other authorized purposes, to the purchase, redemption or payment of such outstanding bonds. Refunding bonds may be issued, in the determination of the agency, at any time not more than five years prior to the date of maturity or maturities or the date selected for the redemption of the bonds being refunded thereby. Pending the application of the proceeds of such refunding bonds, with any other available funds, to the payment of the principal of and accrued interest and any redemption premium on the bonds being refunded, and, if so provided or permitted in the security document securing the bonds to the payment of any interest on such refunding bonds, such proceeds may be invested in direct obligations of, or obligations the principal of and the interest on which are unconditionally guaranteed by, the United States of America if these obligations mature or are subject to redemption by the holder, at the holder's option not later than the respective dates when the proceeds, together with the interest accruing on them will be required for the purposes intended. (1977, 2nd Sess., c. 1198, s. 1; 1987, c. 517, s. 8; 2000-179, s. 2.)

§ 159D-20. No power of eminent domain.

The agency shall not have any right or power to acquire any property through the exercise of eminent domain or any proceedings in the nature of eminent domain. (1977, 2nd Sess., c. 1198, s. 1; 2000-179, s. 2.)

§§ 159D-21, 159D-22: Repealed by Session Laws 2000-179, s. 2, effective July 1, 2000.

§ 159D-23: Repealed by Session Laws 2001-218, s. 5, effective July 1, 2001.

Editor's Note. — This section was also amended by Session Laws 2001-487, s. 35, effective July 1, 2001, which deleted the former second paragraph, which consisted of language that had been added by Session Laws 2000-179, s. 2, and that was inadvertently retained. The section is set out above as repealed.

§ 159D-24. Officers not liable.

No member of the Board of Directors of the agency shall be subject to any personal liability or accountability by reason of the issuance or execution of any bonds. (1977, 2nd Sess., c. 1198, s. 1; 2000-179, s. 2.)

§ 159D-25. Additional method.

The foregoing sections of this Article provide an additional and alternative method for the doing of the things authorized and are supplemental and additional to powers conferred by other laws. They do not derogate any other powers. The issuance of bonds or refunding bonds under the provisions of this Article need not comply with the requirements of any other law applicable to the issuance of bonds. (1977, 2nd Sess., c. 1198, s. 1; 2000-179, s. 2.)

§ 159D-26. Liberal construction.

This Article, being necessary for the prosperity and welfare of the State and its inhabitants, shall be liberally construed to effect its purposes. (1977, 2nd Sess., c. 1198, s. 1; 2000-179, s. 2.)

§ 159D-27. Inconsistent laws inapplicable.

Insofar as the provisions of this Article are inconsistent with the provisions of any general, special or local laws, or parts thereof, the provisions of this Article shall be controlling. (1977, 2nd Sess., c. 1198, s. 1; 2000-179, s. 2.)

§§ 159D-28 through 159D-34: Reserved for future codification purposes.

ARTICLE 2.

Private Capital Facilities Finance Act.

§ 159D-35. Short title.

This Article shall be known, and may be cited, as the "Private Capital Facilities Finance Act." (1985 (Reg. Sess., 1986), c. 794, s. 1; 1998-124, s. 2; 2000-179, s. 2.)

Cross References. — For constitutional provision relating to enactment of general laws dealing with transactions of the type contemplated by this Article, see N.C. Const., Art. V, § 12.

Editor's Note. — Session Laws 1985 (Reg. Sess., 1986), c. 794, s. 27 made this Article effective upon certification by the State Board of Elections that an amendment to the North Carolina Constitution authorizing the enactment of general laws dealing with transactions of the type contemplated by the act has been approved by the people of the State. Such an amendment was proposed by Session Laws 1985 (Reg. Sess., 1986), c. 814. It was adopted by the People at the general election held Nov. 4, 1986, and was certified by the State Board of Elections on Nov. 25, 1986.

This Article is Chapter 115E as rewritten by Session Laws 2000-179, s. 2, and recodified as Article 2 of Chapter 159D. The historical citations to the sections in the former Chapter have been retained in corresponding sections in the Article as rewritten and recodified.

§ 159D-36. Legislative findings.

It is declared that for the benefit of the people of the State of North Carolina, the increase of their commerce, welfare and prosperity and the improvement of their health and living conditions it is essential that they be given the fullest opportunity to learn and to develop their intellectual capacities; that it is essential for institutions for higher education and institutions for elementary and secondary education within the State to be able to construct and renovate facilities to assist its citizens in achieving the fullest development of their intellectual capacities; and that it is the purpose of this Article to provide a measure of assistance and an alternative method to enable private institutions for higher education and institutions for elementary and secondary education in the State to provide the facilities and the structures that are needed to accomplish the purposes of this Article, all to the public benefit and good, to the extent and in the manner provided in this Article.

It is further declared that this purpose will benefit the people as a way to improve student learning, increase learning opportunities for all students, encourage the use of different and innovative teaching methods, create new professional opportunities for teachers, provide parents and students with expanded choices in the types of educational opportunities that are available, and lower the overall cost of education to the State and to parents and students.

The General Assembly also finds that the private sector often provides services and opportunities to the people of the State of North Carolina in activities that constitute a public purpose, and that these activities by the private sector are to be fostered and encouraged. The people of the State of North Carolina will benefit from the enactment of laws and creation of programs that assist the private sector in obtaining financing for capital improvements of facilities that will be used in conducting these activities. (1985 (Reg. Sess., 1986), c. 794, s. 2; 1998-124, s. 3; 2000-179, s. 2.)

§ 159D-37. Definitions.

As used or referred to in this Article, the following words and terms have the following meanings, unless the context clearly indicates otherwise:

(1) "Agency" means the North Carolina Capital Facilities Finance Agency or, should this agency be abolished or otherwise divested of its functions under this Article, the public body succeeding it in its principal functions, or upon which are conferred by law the rights, powers and duties given by this Article to the agency.

(1a) "Bonds" or "notes" means the revenue bonds or bond anticipation notes, respectively, authorized to be issued by the agency under this Article, including revenue refunding bonds, notwithstanding that they may be secured by a deed of trust or the full faith and credit of a participating institution or any other lawfully pledged security of a participating institution.

(2) "Cost", as applied to any project or any portion of a project financed under the provisions of this Article, means all or any part of the cost of construction, acquisition, alteration, enlargement, reconstruction and remodeling of a project, including all lands, structures, real or personal property, rights, rights-of-way, franchises, easements and interests acquired or used for or in connection with a project, the cost

of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any lands to which such buildings or structures may be moved, the cost of all machinery and equipment, financing charges, interest prior to and during construction and, if deemed advisable by the agency, for a period not exceeding two years after the estimated date of completion of construction, the cost of engineering and architectural surveys, plans and specifications, the cost of consulting and legal services and other expenses necessary or incident to determining the feasibility or practicability of constructing or equipping a project, the cost of administrative and other expenses necessary or incident to the construction or acquisition of a project and the financing of the construction or acquisition thereof, including reasonable provision for working capital and a reserve for debt service, and the cost of reimbursing any participating institution for any payments made for any cost described above or the refinancing of any cost described above, including any evidence of indebtedness incurred to finance such cost; provided, however, that no payment shall be reimbursed or any cost or indebtedness be refinanced if such payment was made or such cost or indebtedness was incurred before November 25, 1981.

(3), (4) Repealed by Session Laws 2000, c. 179. s. 2, effective July 1, 2000.

(4a) "Institution for elementary and secondary education" means a nonprofit institution within the State of North Carolina authorized by law and engaged or to be engaged in the providing of kindergarten, elementary, or secondary education, or any combination of these.

(5) "Institution for higher education" means a nonprofit private educational institution within the State of North Carolina authorized by law to provide a program of education beyond the high school level.

(6) "Participating institution" means an institution for higher education, an institution for elementary and secondary education, or a special purpose institution that, pursuant to the provisions of this Article, undertakes the financing, refinancing, acquiring, constructing, equipping, providing, owning, repairing, maintaining, extending, improving, rehabilitating, renovating, or furnishing of a project or undertakes the refunding or refinancing of obligations or of a deed of trust or a mortgage or of advances as provided in this Article.

(6a) "Project" means any one or more buildings, structures, equipment, improvements, additions, extensions, enlargements, or other facilities comprising any of the following:

a. Educational facilities used by an institution for higher education or an institution for elementary and secondary education, including dormitories and other housing facilities, housing facilities for student nurses, dining halls and other food preparation and food service facilities, student unions, administration buildings, academic buildings, libraries, laboratories, research facilities, classrooms, athletic facilities, health care facilities, laundry facilities, and other structures or facilities related to these facilities or required or useful for the instruction of students, the conducting of research, or the operation of the institution.

b. Student housing facilities to be owned or operated by an owner or operator other than an institution for higher education or an institution for elementary and secondary education.

c. A special purpose project as defined in G.S. 159C-3.

The term "project" includes landscaping, site preparation, furniture, equipment and machinery, and other similar items necessary or convenient for operation of a particular facility in the manner for which its use is intended. The term also includes all appurtenances and incidental facilities, such as headquarters or office facilities, maintenance, storage, or utility facilities, parking facilities, and other facilities related to, required, or useful for the operation of the project or essential or convenient for the orderly conduct of the facility. The term "project" does not include the cost of items that customarily result in a current operating charge, such as books, fuel, or supplies. The term does not include any facility used or to be used for sectarian instruction or as a place of religious worship nor any facility that is used or to be used primarily in connection with any part of the program of a school or department of divinity for any religious denomination.

(6b) "Special purpose institution" means a for-profit or not-for-profit corporation or similar entity that undertakes any of the activities set forth in sub-subdivisions (6a)b. and (6a)c. of this section.

(7) "State" means the State of North Carolina. (1985 (Reg. Sess., 1986), c. 794, s. 3; 1998-124, s. 4; 2000-179, s. 2; 2007-128, s. 2.)

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A charter school is an "institution for elementary and secondary education" within the meaning of this section and, therefore, is eligible for financing pursuant to Article 2, Chapter 159D, G.S. 159D-35 et seq. See opinion of Attorney General to Mr. Brad Sneeden, Deputy Superintendent of Public Instruction, Department of Public Instruction, 2001 N.C. AG LEXIS 37 (10/2/01).

§ 159D-38. Capital facilities finance agency.

(a) There is created a body politic and corporate to be known as "North Carolina Capital Facilities Finance Agency" which shall be constituted a public agency and an instrumentality of the State for the performance of essential public functions. The agency shall be governed by a board of directors composed of seven members. Two of the members of the board shall be the State Treasurer and the State Auditor, both of whom shall serve ex officio. The remaining directors of the agency shall be residents of the State and shall not hold other public office. The General Assembly upon the recommendation of the President Pro Tempore of the Senate shall appoint one director in accordance with G.S. 120-121, the General Assembly upon the recommendation of the Speaker of the House of Representatives shall appoint one director in accordance with G.S. 120-121, and the Governor shall appoint three directors of the agency. The five appointive directors of the agency shall be appointed for staggered four-year terms, two being appointed initially for one year by the President of the Senate and the Speaker of the House, respectively, and one for two years, one for three years and one for four years, respectively, as designated by the Governor. Each director shall continue in office until a successor is duly appointed and qualified, except that any person appointed to fill a vacancy shall serve only for the unexpired term. Any vacancy in a position held by an appointive member shall be filled by a new appointment made by the officer who originally made the appointment. Any member of the board of directors is eligible for reappointment. Each appointive member of the board of directors may be removed by the Governor for misfeasance, malfeasance or neglect of duty after reasonable notice and a public hearing, unless the notice and hearing are in writing expressly waived. Each appointive member of the board of directors shall take an oath of office to administer the duties of office faithfully and impartially and a record of the oath shall be filed in the office of the Secretary of State. The Governor shall designate from among the members of the board of directors a chair and a vice-chair, whose terms extend to the earlier of either two years or the date of expiration of their then current terms as members of the board of directors of the agency. The board of directors shall elect and appoint and prescribe the duties of a secretary-treasurer and any other officers it considers necessary or advisable, which officers need not be members of the board of directors.

(b) No part of the revenues or assets of the agency shall inure to the benefit of or be distributable to its members or officers or other private persons. The members of the agency shall receive no compensation for their services but shall be entitled to receive, for attendance at meetings of the agency or any committee thereof and for other services for the agency, reimbursement for such actual expenses as may be incurred for travel and subsistence in the performance of official duties and such per diem as is allowed by law for members of other State boards, commissions and committees.

(c) The secretary-treasurer of the agency shall keep a record of the proceedings of the agency and shall be custodian of all books, documents and papers filed with the agency, the minute book or journal of the agency and its official seal. The secretary-treasurer shall have authority to cause copies to be made of all minutes and other records and documents of the agency and to give certificates under the official seal of the agency to the effect that such copies are true copies, and all persons dealing with the agency may rely upon such certificates.

(d) Four members of the board of directors of the agency shall constitute a quorum and the affirmative vote of a majority of the members present at a meeting of the board of directors duly called and held shall be necessary for any action taken by the board of directors of the agency. The board of directors may, however, appoint an executive committee to act on behalf of the board during the period between regular meetings of said board, and said committee shall have full power to act upon the vote of a majority of its members. No vacancy in the membership of the agency impairs the rights of a quorum to exercise all the rights and to perform all the duties of the agency.

(e) The North Carolina Capital Facilities Finance Agency shall be contained within the Department of State Treasurer as if it had been transferred to that department by a Type II transfer as defined in G.S. 143A-6(b). (1985 (Reg. Sess., 1986), c. 794, s. 4; 1995, c. 490, s. 17(a); 2000-179, s. 2.)

§ 159D-39. General powers.

The agency shall have all of the powers necessary or convenient to carry out and effectuate the purposes and provisions of this Article, including all of the following:

(1) To make and execute contracts and agreements necessary or incidental to the exercise of its powers and duties under this Article, including loan agreements and agreements of sale or leases with, mortgages and deeds of trust and conveyances to participating institutions, persons, firms, corporations, governmental agencies and others and including credit enhancement agreements.

(2) To acquire by purchase, lease, gift or otherwise, or to obtain options for the acquisition of any property, real or personal, improved or unimproved, including interests in land in fee or less than fee for any project, upon such terms and at such cost as shall be agreed upon by the owner and the agency.

(3) To arrange or contract with any county, city, town or other political subdivision or instrumentality of the State for the opening or closing of streets or for the furnishing of utility or other services to any project.

(4) To sell, convey, lease as lessor, mortgage, exchange, transfer, grant a deed of trust in, or otherwise dispose of, or to grant options for these

purposes with respect to, any real or personal property or interest in property.

(5) To pledge or assign any money, purchase price payments, rents, loan repayments, charges, fees or other revenues, including any federally guaranteed securities and moneys received from them whether the securities are initially acquired by the agency or a participating institution, and any proceeds derived by the agency from sales of property, insurance, condemnation awards or other sources.

(6) To pledge or assign the revenues and receipts from any project and from any loan agreement, agreement of sale, or lease, including any loan repayments, purchase price payments, rent, or other income received under a loan agreement, agreement of sale, or lease.

(7) To borrow money as provided in this Article to carry out and effectuate its corporate purposes and to issue bonds and notes for the purpose of providing funds to pay all or any part of the cost of any project, to lend money to any participating institution for the acquisition of any federally guaranteed securities, and to issue revenue refunding bonds.

(8) To finance, refinance, acquire, construct, equip, provide, operate, own, repair, maintain, extend, improve, rehabilitate, renovate and furnish any project and to pay all or any part of the cost thereof from the proceeds of bonds or notes or from any contribution, gift or donation or other funds available to the agency for this purpose.

(9) To fix, revise, charge and collect or cause to be fixed, revised, charged and collected purchase price payments, rents, loan repayments, fees, rates and charges for the use of, or services rendered by, any project.

(10) To employ fiscal consultants, consulting engineers, architects, attorneys, feasibility consultants, appraisers and any other consultants and employees as may be required in the judgment of the agency and to fix and pay their compensation from funds available to the agency.

(11) To conduct studies and surveys respecting the need for projects and their location, financing and construction.

(12) To apply for, accept, receive and agree to and comply with the terms and conditions governing grants, loans, advances, contributions, interest subsidies and other aid with respect to any project from federal and State agencies or instrumentalities.

(13) To sue and be sued in its own name, plead and be impleaded.

(14) To acquire and enter into commitments to acquire any federally guaranteed security or federally insured mortgage note and to pledge or otherwise use the federally guaranteed security or federally insured mortgage note as the agency considers in its best interest to secure or otherwise provide a source of repayment on any of its bonds or notes issued on behalf of any participating institution to finance or refinance the cost of any project.

(15) To make loans to any participating institution for the cost of a project in accordance with an agreement between the agency and the participating institution.

(16) To make loans to a participating institution to refund outstanding loans, obligations, deeds of trust or advances issued, made or given by the participating institutions for the cost of a project.

(17) To charge and to apportion among participating institutions its administrative costs and expenses incurred in the exercise of its powers and duties conferred by this Article.

(18) To adopt an official seal and alter it at pleasure.

(19) To do all other things necessary or convenient to carry out the purposes of this Article. (1985 (Reg. Sess., 1986), c. 794, s. 5; 1998-124, s. 5; 2000-179, s. 2.)

§ 159D-40. Criteria and requirements.

(a) In undertaking any project pursuant to this Article, the agency shall be guided by and shall observe the following criteria and requirements listed below. The determination of the agency as to its compliance with these criteria and requirements is conclusive.

(1) No project shall be sold or leased nor any loan made to any participating institution that is not financially responsible and capable of fulfilling its obligations, including its obligations under an agreement of sale or lease or a loan agreement to make purchase price payments, to pay rent, to make loan repayments, to operate, repair and maintain at its own expense the project and to discharge any other responsibilities imposed under the agreement of sale or lease or loan agreement.

(2) Adequate provision shall be made for the payment of the principal of and the interest on the bonds and any necessary reserves for payment and for the operation, repair and maintenance of the project at the expense of the participating institution.

(3) The public facilities, including utilities, and public services necessary for the project will be made available.

(4) The projects shall be operated to serve and benefit the public and there shall be no discrimination against any person based on race, creed, color, or national origin.

(b) In making these determinations, the agency may consider the participating institution's experience and ratio of current assets to current liabilities; the participating institution's net worth, earnings trends, and coverage of fixed charges; the nature of the project involved; and any additional security for payment of the bonds and performance of the participating institution's obligations under the agreement of sale or lease or loan agreement, such as credit enhancement, insurance, guaranties, or property pledged to secure the payment and performance. (1985 (Reg. Sess., 1986), c. 794, s. 6; 1998-124, s. 6; 2000-179, s. 2.)

§ 159D-41. Procedural requirements.

Any participating institution may submit to the agency, and the agency may consider, a proposal for financing a project using forms and following instructions prescribed by the agency. The proposal shall set forth the type and location of the project and may include other information and data respecting the project and the extent to which the project conforms to the criteria and requirements set forth in this Article. The agency may request the applicant to provide additional information and data respecting the project. The agency is authorized to make or cause to be made any investigation, surveys, studies, reports and reviews as in its judgment are necessary and desirable to determine the feasibility and desirability of the project, the extent to which the project will contribute to the health and welfare of the area in which it will be located, the powers, experience, background, financial condition, record of service and capability of the management of the applicant, the extent to which the project otherwise conforms to the criteria and requirements of this Article, and any other factors the agency considers relevant or convenient in carrying out the purposes of this Article. (1985 (Reg. Sess., 1986), c. 794, s. 7; 1998-124, s. 7; 2000-179, s. 2.)

§ 159D-42. Operations of projects; agreements of sale on leases; conveyance of interest in projects.

(a) The agency may sell or lease any project to a participating institution for operation and maintenance or lend money to any participating institution to effectuate the purposes of this Article, under a loan agreement or an agreement of sale or lease in form and substance not inconsistent with this Article. The loan agreement or agreement of sale or lease may include provisions that:

(1) The participating institution shall, at its own expense, operate, repair and maintain the project covered by the agreement.

(2) The purchase price payments to be made under the agreement of sale, the rent payable under the agreement of lease or the loan repayments under the loan agreement shall in the aggregate be not less than an amount sufficient to pay all of the interest, principal and any redemption premium on the bonds or notes issued by the agency to pay the cost of the project sold or leased or with respect to which the loan was made.

(3) The participating institution shall pay all other costs incurred by the agency in connection with the providing of the project covered by any agreement, except costs paid out of the proceeds of bonds or notes or otherwise, including insurance costs, the cost of administering the resolution authorizing the issuance of, or any trust agreement securing, the bonds or notes and the fees and expenses of trustees, paying agents, attorneys, consultants, and others.

(4) The loan agreement or the agreement of sale or lease shall terminate not earlier than the date on which all bonds and all other obligations incurred by the agency in connection with the project covered by the agreement are retired or provision for their retirement is made.

(5) The obligation of the participating institution to make loan repayments or purchase price payments or to pay rent shall not be subject to cancellation, termination or abatement by the participating institution until the bonds have been retired or provision has been made for their retirement.

(b) If the agency has acquired a possessory or ownership interest in any project it has undertaken on behalf of a participating institution, it shall promptly convey, without the payment of any consideration, all its right, title and interest in the project to that participating institution upon the retirement or provision for the retirement of all bonds or notes issued and obligations incurred by the agency in connection with that project. (1985 (Reg. Sess., 1986), c. 794, s. 8; 1998-124, s. 8; 2000-179, s. 2.)

§ 159D-43. Construction contracts.

If the agency determines that the purposes of this Article will be more effectively served, the agency in its discretion may award or cause to be awarded contracts for the construction of any project on behalf of a participating institution upon a negotiated basis as determined by the agency. The agency shall prescribe any bid security requirements and other procedures in connection with the award of the contracts as in its judgment will protect the public interest. The agency may by written contract engage the services of the participating institution in the construction of the project and may provide in the contract that the participating institution, subject to any conditions and requirements consistent with the provisions of this Article prescribed in the contract, may act as an agent of, or an independent contractor for, the agency for the performance of the functions described in the contract including the acquisition of the site and other real property for the project, the preparation of plans, specifications and contract documents, the award of construction and other contracts upon a competitive or negotiated basis, the construction of the project directly by the participating institution, the inspection and supervision of construction, the employment of engineers, architects, builders and other contractors and the provision of money to pay the cost of these functions pending reimbursement by the agency. The contract may provide that the agency may, out of proceeds of bonds or notes, make advances to or reimburse the participating institution for its costs incurred in the performance of these functions, and shall set forth the supporting documents required to be submitted to the agency and the reviews, examinations and audits that are required in connection to assure compliance with the provisions of this Article and the contract. (1985 (Reg. Sess., 1986), c. 794, s. 9; 1998-124, s. 9; 2000-179, s. 2.)

§ 159D-44. Credit of State not pledged.

Bonds or notes issued under the provisions of this Article shall not be secured by a pledge of the faith and credit of the State or of any political subdivision of the State, or create an indebtedness of the State, or of any political subdivision of the State requiring any voter approval, but shall be payable solely from the revenues and other funds provided for payment. Each bond or note issued under this Article shall contain on its face a statement to the effect that the agency is not obligated to pay it nor the interest on it except from the revenues and other funds pledged for its payment and that neither the faith and credit nor the taxing power of the State or of any political subdivision of the State is pledged as security for the payment of the principal of or the interest on the bond or note.

Expenses incurred by the agency in carrying out the provisions of this Article may be made payable from funds pròvided pursuant to, or made available for use under, this Article and no liability shall be incurred by the agency under this Article beyond the extent to which moneys have been so provided. (1985 (Reg. Sess., 1986), c. 794, s. 10; 2000-179, s. 2.)

§ 159D-45. Bonds and notes.

(a) The agency is authorized to provide for the issuance, at one time or from time to time, of bonds, or notes in anticipation of the issuance of bonds, of the agency to carry out and effectuate its corporate purposes. The principal of and the interest on such bonds or notes shall be payable solely from funds provided under this Article for such payment. Any such notes may be made payable from the proceeds of bonds or renewal notes or, in the event bond or renewal note proceeds are not available, such notes may be paid from any available revenues or other funds provided therefor. The bonds or notes of each issue shall be dated and may be made redeemable before maturity at the option of the agency at such price or prices and upon such terms and conditions as may be determined by the agency. The bonds may also be made payable from time to time on demand or tender for purchase by the owner upon such terms and conditions as may be determined by the agency. Any such bonds or notes shall bear interest at such rate or rates (including variable rates) as may be determined by the Local Government Commission with the approval of the agency. Notes shall mature at such time or times not exceeding 10 years from their date or dates and bonds shall mature at such time or times not exceeding 40 years from their date or dates, as may be determined by the agency. The agency shall determine the form and manner of execution of the bonds or notes, including any interest coupons to be attached thereto, and shall fix the denomination or denominations and the place or places of payment of principal and interest, which may be any bank or trust company within or without the State. In case any officer whose signature or a facsimile of whose signature appears on any bonds or notes or coupons attached to them ceases to be that officer before their delivery, the signature or facsimile shall nevertheless be valid and sufficient for all purposes the same as if the officer had remained in office until delivery. The agency may also provide for the authentication of the bonds or notes by a trustee or fiscal agent. The bonds or notes may be issued in coupon or in registered form, or both, as the agency may determine, and provision may be made for the registration of any coupon bonds or notes as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds or notes of any bonds or notes registered as to both principal and interest, and for the interchange of registered and coupon bonds or notes. No bonds or notes may be issued by the agency under this Article unless the issuance thereof is approved by the Local Government Commission.

(b) The agency shall file with the Secretary of the Local Government Commission an application requesting approval of the issuance of the bonds or notes. The application must include any information and documents concerning the proposed financing and prospective borrower, vendee or lessee required by the Secretary.

In determining whether a proposed bond or note issue should be approved, the Local Government Commission may consider, in addition to the criteria and requirements in this Article, the effect of the proposed financing upon any scheduled or proposed sale of tax-exempt obligations by the State or any of its agencies or departments or by any unit of local government in the State.

The Local Government Commission shall approve the issuance of the bonds or notes if, upon the information and evidence it receives, it finds that the proposed financing will effectuate the purposes of this Article.

Upon the filing with the Local Government Commission of a resolution of the agency requesting that its bonds or notes be sold, the bonds or notes may be sold in such manner, either at public or private sale, and for such price as the Local Government Commission determines to be for the best interests of the agency and to effectuate best the purposes of this Article, as long as the sale is approved by the agency.

(c) The proceeds of any bonds or notes shall be used solely for the purposes for which issued and shall be disbursed in such manner and under such restrictions, if any, as the agency may provide in the resolution authorizing the issuance of, or any trust agreement securing, the bonds or notes.

(d) Prior to the preparation of definitive bonds, the agency may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds, when the bonds have been executed and are available for delivery. The agency may also provide for the replacement of any bonds or notes which become mutilated or are destroyed or lost.

(e) Bonds or notes may be issued under the provisions of this Article without obtaining, except as otherwise expressly provided in this Article, the consent of any department, division, commission, board, body, bureau or agency of the State, and without any other proceedings or the happening of any conditions or things other than those proceedings, conditions or things specifically required by this Article and the provisions of the resolution authorizing the issuance of, or any trust agreement securing, the bonds or notes.

(f) Before the issuance of bonds pursuant to this Article to finance a project, the Agency shall hold a public hearing with respect to the proposed project and the issuance of the bonds to finance the proposed project. The public hearing may be held at any location designated by the Agency, including at the offices of the Agency in Raleigh, North Carolina.

The public hearing may be conducted by the Agency or by a hearing officer designated by the Agency to conduct public hearings. Notice of the public hearing must be published at least once in at least one newspaper of general circulation in the county where the proposed project is to be located not less than 14 days before the public hearing. The notice must describe generally the bonds proposed to be issued and the proposed project, including its general location, and any other information the Agency considers appropriate. A copy of the notice of public hearing must be mailed to the clerk of the Board of Commissioners of the county in which the proposed project is to be located and to the governing body of any city or town in which the proposed project is to be operated.

(g) A county or city that receives an allocation to issue recovery zone facility bonds within the meaning of the American Recovery and Reinvestment Tax Act of 2009 to finance recovery zone property may designate the agency as the governmental entity authorized to issue recovery zone facility bonds. (1985 (Reg. Sess., 1986), c. 794, s. 11; 2000-179, s. 2; 2009-140, s. 9.)

Effect of Amendments. — Session Laws 2009-140, s. 9, effective June 19, 2009, added subsection (g).

§ 159D-46. Trust agreement or resolution.

In the discretion of the agency any bonds or notes issued under the provisions of this Article may be secured by a trust agreement by and between the agency and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the State. Such trust agreement or the resolution authorizing the issuance of such bonds or notes may pledge or assign all or any part of the revenues of the agency received pursuant to this Article, including, without limitation, fees, loan repayments, purchase price payments, rents, charges, insurance proceeds, condemnation awards and any other revenues and funds received in connection with any project and may grant a deed of trust or a mortgage on any project. Such trust agreement or resolution may contain such provisions for protecting and enforcing the rights and remedies of the holders of any such bonds or notes as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the agency in relation to the purposes to which bond or note proceeds may be applied, the disposition or pledging of the revenues of the agency, including any payments in respect of any federally guaranteed security or any federally insured mortgage note, the duties of the agency with respect to the acquisition, construction, maintenance, repair and operation of any project, the fees, loan repayments, purchase price payments, rents and charges to be fixed and collected in connection therewith, the terms and conditions for the issuance of additional bonds or notes, and the custody, safeguarding and application of all moneys. All bonds issued under this Article shall be equally and ratably secured by a pledge, charge, and lien upon revenues provided for in such trust agreement or resolution, without priority by reason of number, or of dates of bonds, execution, or delivery, in accordance with the provisions of this Article and of such trust agreement or resolution; except that the agency may provide in such trust agreement or resolution that bonds issued pursuant thereto shall to the extent and in the manner prescribed in such trust agreement or resolution be subordinated and junior in standing, with respect to the payment of principal and interest and the security thereof, to any other bonds. It shall be lawful for any bank or trust company incorporated under the laws of the State which may act as depositary of the proceeds of bonds or notes, revenues or other money hereunder to furnish such indemnifying bonds or to pledge such securities as may be required by the agency. Any such trust agreement or resolution may set off the rights and remedies, including foreclosure of any deed of trust or mortgage, of the holders of any bonds or notes and of the trustee, and may restrict the individual right of action by any such holders. In addition to the foregoing, any such trust agreement or resolution may contain such other provisions as the agency considers reasonable and proper for the security of the holders of any bonds or notes. Expenses incurred in carrying out the provisions of such trust agreement or resolution may be treated as a part of the cost of any project or paid from the revenues pledged or assigned to the payment of the principal of and the interest on bonds or notes or from any other funds available to the agency. (1985 (Reg. Sess., 1986), c. 794, s. 12; 2000-179, s. 2.)

§ 159D-47. Revenues; pledges of revenues.

(a) The agency is authorized to fix and to collect fees, loan repayments, purchase price payments, rents and charges for the use of any project, and any part or section of the project and to contract with any participating institution for its use. The agency may require that the participating institution operate, repair or maintain such project and bear the cost and other costs of the agency in connection with the project all as may be provided in the agreement of sale or lease, loan agreement or other contract with the agency, in addition to other obligations imposed under the agreement or contract.

(b) The fees, loan repayments, purchase price payments, rents and charges shall be fixed so as to provide a fund sufficient, with any other available funds, (i) to pay the costs of operating, repairing and maintaining the project to the extent that adequate provision for the payment of such costs has not otherwise been provided for, (ii) to pay the principal of and the interest on all bonds or notes as they become due and payable and (iii) to create and maintain any reserves provided for in the resolution authorizing the issuance of, or any trust agreement securing, the bonds. The fees, loan repayments, purchase price payments, rents and charges may be applied or pledged to the payment of debt service on the bonds prior to the payment of the costs of operating, repairing and maintaining the project.

(c) All pledges of fees, loan repayments, purchase price payments, rents, charges and other revenues under the provisions of this Article are valid and binding from the time when they are made. All revenues so pledged and thereafter received by the agency are immediately subject to the lien of the pledge without any physical delivery or further act, and the lien of the pledge is valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the agency, irrespective of whether the parties have notice of it. The resolution or any trust agreement by which a pledge is created or any loan agreement, agreement of sale or lease need not be filed or recorded except in the records of the agency.

(d) The State of North Carolina pledges to and agrees with the holders of any bonds or notes issued by the agency that so long as any of the bonds or notes are outstanding and unpaid the State will not limit or alter the rights vested in the agency at the time of issuance of the bonds or notes to fix, revise, charge, and collect or cause to be fixed, revised, charged and collected loan repayments, purchase price payments, rents, fees and charges for the use of or services rendered by any project in connection with which the bonds or notes were issued, so as to provide a fund sufficient, with any other available funds to pay the costs of operating, repairing and maintaining the project, to pay the principal of and the interest on all bonds and notes as they become due and payable, to create and maintain any reserves provided for their payment, and to fulfill the terms of any agreements made with the bondholders or noteholders. The State will not in any way impair the rights and remedies of the bondholders or noteholders until the bonds or notes and all costs and expenses in connection with any action or proceedings by or on behalf of the bondholders or noteholders, are fully paid, met and discharged. (1985 (Reg. Sess., 1986), c. 794, s. 13; 1998-124, s. 10; 2000-179, s. 2.)

§ 159D-48. Trust funds.

Notwithstanding any other provisions of law to the contrary, all moneys received pursuant to the authority of this Article, including fees, loan repayments, purchase price payments, rents, charges, insurance proceeds, condemnation awards and any other revenues and funds received in connection with any project, are trust funds to be held and applied solely as provided in this Article. The resolution authorizing the issuance of, or any trust agreement securing, any bonds or notes may provide that any of these moneys may be temporarily invested pending their disbursement and shall provide that any officer with whom, or any bank or trust company with which, such moneys are deposited shall act as trustee of such moneys and shall hold and apply them for the purposes of this Article, subject to any limitations provided in this Article and in the resolution or trust agreement. The moneys may be invested as provided in G.S. 159-30, as it may from time to time be amended. (1985 (Reg. Sess., 1986), c. 794, s. 14; 2000-179, s. 2.)

§ 159D-49. Remedies.

Any holder of bonds or notes issued under the provisions of this Article or any coupons appertaining thereto, and the trustee under any trust agreement or resolution authorizing the issuance of such bonds or notes, except to the extent the rights herein given may be restricted by such trust agreement or resolution, may, either at law or in equity, by suit, action, mandamus or other proceeding, protect and enforce any and all rights under the laws of the State or granted hereunder or under such trust agreement or resolution, or under any other contract executed by the agency pursuant to this Article, and may enforce and compel the performance of all duties required by this Article or by such trust agreement or resolution to be performed by the agency or by any officer of the agency. (1985 (Reg. Sess., 1986), c. 794, s. 15; 2000-179, s. 2.)

§ 159D-50. Investment securities.

All bonds, notes and interest coupons issued under this Article are investment securities within the meaning of and for all the purposes of Article 8 of the Uniform Commercial Code as enacted in this State, whether or not they are of such form and character as to be investment securities under that Article, subject only to the provisions of the bonds and notes pertaining to registration. (1985 (Reg. Sess., 1986), c. 794, s. 16; 2000-179, s. 2.)

§ 159D-51. Bonds or notes eligible for investment.

Bonds or notes issued under the provisions of this Article are securities in which all public officers and public bodies of the State and its political subdivisions, and all insurance companies, trust companies, banking associations, investment companies, executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. These bonds or notes are securities which may properly and legally be deposited with and received by any State or municipal officer or any agency or political subdivision of the State for any purpose for which the deposit of bonds, notes or obligations of this State is authorized by law. (1985 (Reg. Sess., 1986), c. 794, s. 17; 2000-179, s. 2.)

§ 159D-52. Refunding bonds or notes.

(a) The agency is authorized to provide for the issuance of refunding bonds or notes for the purpose of refunding any bonds or notes then outstanding which have been issued under the provisions of this Article, including the payment of any redemption premium and any interest accrued or to accrue to the date of redemption of the bonds or notes and, if considered advisable by the agency, for any corporate purpose of the agency, including, without limitation:

(1) Constructing improvements, additions, extensions or enlargements of the project in connection with which the bonds or notes to be refunded shall have been issued, and

(2) Paying all or any part of the cost of any additional project.

(b) The issuance of refunding bonds or notes, their maturities and other details the rights of their holders, and the rights, duties and obligations of the agency are governed by the provisions of this Article which relate to the issuance of bonds or notes, as appropriate.

Refunding bonds may be sold or exchanged for outstanding bonds issued under this Article and, if sold, their proceeds, and investment earnings on them, may be applied, with any other available funds, to the purchase, redemption, or payment of the bonds being refunded, to the payment of any interest on the refunding bonds, and to the payment of any expenses in connection with the refunding. The proceeds may be invested in direct obligations of, or obligations the principal of and the interest on which are unconditionally guaranteed by, the United States of America if the obligations mature or are subject to redemption by the holders, at their option not later than the respective dates when the proceeds, together with the interest accrued thereon, will be required for the purposes intended. (1985 (Reg. Sess., 1986), c. 794, s. 18; 2000-179, s. 2.)

§ 159D-53. Annual report.

The agency shall, promptly following the close of each fiscal year, submit an annual report of its activities under this Article for the preceding year to the Governor, the State Auditor, the General Assembly, the Advisory Budget Commission and the Local Government Commission. The agency shall cause an audit of its books and accounts relating to its activities under this Article to be made at least once in each year by an independent certified public accountant and the cost of the audit may be paid from any available moneys of the agency. (1985 (Reg. Sess., 1986), c. 794, s. 19; 2000-179, s. 2.)

§ 159D-54. Officers not liable.

No member or officer of the agency shall be subject to any personal liability or accountability by reason of the issuance or execution of any bonds or notes. (1985 (Reg. Sess., 1986), c. 794, s. 20; 2000-179, s. 2.)

§ 159D-55. Tax exemption.

The exercise of the powers granted by this Article will be in all respects for the benefit of the people of the State and will promote their health and welfare.

Any bonds or notes issued by the agency under the provisions of this Article are at all times be free from taxation by the State or any local unit or political subdivision or other instrumentality of the State, excepting inheritance or gift taxes, income taxes on the gain from the transfer of the bonds and notes, and franchise taxes. The interest on the bonds and notes is not subject to taxation as income. (1985 (Reg. Sess., 1986), c. 794, s. 21; 1995, c. 46, s. 5; 2000-179, s. 2.)

§ 159D-56. Conflict of interest.

If any member, officer or employee of the agency is interested either directly or indirectly, or is an officer or employee of or has an ownership interest in any firm or corporation interested directly or indirectly, in any contract with the agency, this interest shall be disclosed to the agency and shall be set forth in the minutes of the agency, and the member, officer or employee having an interest in a contract shall not participate on behalf of the agency in the authorization of the contract. (1985 (Reg. Sess., 1986), c. 794, s. 22; 2000-179, s. 2.)

§ 159D-57. Additional method.

The foregoing sections of this Article provide an additional and alternative method for the doing of the things authorized and are supplemental and additional to powers conferred by other laws. This Article does not derogate any existing powers. The issuance of bonds or notes under the provisions of this Article need not comply with the requirements of any other law applicable to the issuance of bonds or notes. (1985 (Reg. Sess., 1986), c. 794, s. 23; 2000-179, s. 2.)

§§ 159D-58 through 159D-64.: Reserved for future codification purposes.

ARTICLE 3.

Life Sciences Revenue Bond Authority.

§§ 159D-65 through 159D-69: Repealed by Session Laws 2007-527, s. 40, effective August 31, 2007.

firm or corporation interested directly or indirectly in any contract with the agency, this interest shall be disclosed to the agency and shall be set forth in the minutes of the agency, and the member, officer or employee having an interest in a contract shall not participate on behalf of the agency in the authorization of the contract. (1985 (Reg. Sess., 1986), c. 794, s. 22; 2000-179, s. 2.)

§ 159D-57. Additional method.

The foregoing sections of this Article provide an additional and alternative method for the doing of the things authorized and are supplemental and additional to powers conferred by other laws. This Article does not derogate any existing powers. The issuance of bonds or notes under the provisions of this Article need not comply with the requirements of any other law applicable to the issuance of bonds or notes. (1985 (Reg. Sess., 1986), c. 794, s. 23; 2000-179, s. 2.)

§§ 159D-58 through 159D-64: Reserved for future codification purposes.

Article 3.

Life Sciences Revenue Bond Authority.

§§ 159D-65 through 159D-69: Repealed by Session Laws 2007-527, s. 40, effective August 31, 2007.

Chapter 159E.

Registered Public Obligations Act.

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§ 159E-1. Short title.

This Chapter may be cited as the "Registered Public Obligations Act." (1983, c. 322, s. 1.)

§ 159E-2. Definitions.

As used in this Chapter, the following terms have the following meanings, unless the context otherwise requires:

(1) "Authorized officer" means any individual required or permitted, alone or with others, by any provision of law or by the issuing public entity, to execute on behalf of the public entity a certificated registered public obligation or a writing relating to an uncertificated registered public obligation.

(2) "Certificated registered public obligation" means a registered public obligation which is represented by an instrument.

(3) "Code" means the Internal Revenue Code of 1954, as amended.

(4) "Commission" means the Local Government Commission.

(5) "Facsimile seal" means the reproduction by engraving, imprinting, stamping, or other means of the seal of the issuer, official or official body.

(6) "Facsimile signature" means the reproduction by engraving, imprinting, stamping, or other means of the manual signature.

(7) "Financial intermediary" means a bank, broker, clearing corporation or other person or the custodian for or nominee of any of them which in the ordinary course of its business maintains registered public obligation accounts for its customers, when so acting.

(8) "Issuer" means a public entity which issues an obligation.

(9) "Obligation" means an agreement of a public entity issuer to pay principal and any interest thereon, whether in the form of a contract to repay borrowed money, a lease, an installment purchase agreement or otherwise, and includes a share, participation, or other interest in any such agreement.

(10) "Official actions" means the actions by statute, order, ordinance, resolution, contract, or other authorized means by which the issuer provides for issuance of a registered public obligation.

(11) "Official or official body" means the officer or board that is empowered under the laws applicable to an issuer to provide for original issuance of an obligation of the issuer, by defining the obligation and its terms, conditions and other incidents, the successor or successors of any such

official or official body, and such other person or group of persons as shall be assigned duties of such official or official body with respect to a registered public obligation under applicable law from time to time. Unless otherwise provided by law, the State Treasurer shall be the "official" for the issuance of all State obligations.

(12) "Public entity" means any entity, department, or agency which is empowered under the laws of this State, to issue obligations any interest with respect to which may, under any provision of law, be provided an exemption from the income tax referred to in the Code. The term "public entity" may thus include, without limitation, this State, an entity deriving powers from and acting pursuant to the State Constitution or a special legislative act, a political subdivision, a municipal corporation, a State university or college, a special district, a public authority and other similar entities.

(13) "Registered public obligation" means an obligation issued by a public entity pursuant to a system of registration.

(14) "System of registration" and its variants means a plan that provides:

a. With respect to a certificated registered public obligation, that (i) the certificated registered public obligation specify a person entitled to the registered public obligation or the rights it represents, and (ii) transfer of the certificated registered public obligation and the rights it represents may be registered upon books maintained for that purpose by or on behalf of the issuer; and

b. With respect to an uncertificated registered public obligation, that (i) books maintained by or on behalf of the issuer for the purpose of registration of the transfer of a registered public obligation specify a person entitled to the registered public obligation and the rights evidenced thereby, and (ii) transfer of the uncertificated registered public obligation and the rights evidenced thereby be registered upon such books.

(15) "Uncertificated registered public obligation" means a registered public obligation which is not represented by an instrument. (1983, c. 322, s. 1.)

§ 159E-3. Declaration of State interest; purposes.

(a) The Code provides that interest with respect to certain obligations may not be exempt from federal income taxation unless they are in registered form. It is therefore a matter of State concern that public entities be authorized to provide for the issuance of obligations in such form. It is a purpose of this Chapter to empower all public entities to establish and maintain a system pursuant to which obligations may be issued in registered form within the meaning of the applicable provisions of the Code.

(b) Obligations have traditionally been issued predominantly in bearer rather than in registered form, and a change from bearer to registered form may affect the relationships, rights and duties of issuers of and the persons that deal with obligations, and by such effect, the costs. Such effects will impact the various issuers and varieties of obligations differently depending on their legal and financial characteristics, their markets and their adaptability to recent and prospective technological and organizational developments. It is therefore a matter of State concern that public entities be provided flexibility in the development of such systems and control over system incidents, so as to accommodate such differing impacts. It is a purpose of this Chapter to empower the establishment and maintenance, and amendment from time to time, of differing systems of registration of obligations, including system incidents, so as to accommodate the differing impacts upon issuers and varieties of obligations. It is further a purpose of this Chapter to authorize systems that will facilitate the prompt and accurate transfer of registered public obligations and the development of practices with regard to the registration and transfer of registered public obligations in order to maintain market acceptance for obligations of public entities. (1983, c. 322, s. 1.)

§ 159E-4. Systems of registration.

(a) Each issuer, with the approval of the Commission, is authorized to establish and maintain a system of registration with respect to each obligation which it issues. The system may either be (i) a system pursuant to which only certificated registered public obligations are issued, or (ii) a system pursuant to which only uncertificated registered public obligations are issued, or (iii) a system pursuant to which both certificated and uncertificated registered public obligations are issued. The issuer may amend, discontinue and reinstitute any system, from time to time, subject to covenants.

(b) The system shall be established, amended, discontinued, or reinstituted, for the issuer by the official or official body.

(c) The system shall be described in the registered public obligation or in the official actions which provide for original issuance of the registered public obligation, and in subsequent official actions providing for amendments and other matters from time to time. Such description may be by reference to a program of the issuer which is established by the official or official body.

(d) The system shall define the method or methods by which transfer of the public obligations shall be effective with respect to the issuer, and by which payment of principal and any interest shall be made. The system may permit the issuance of registered public obligations in any denomination to represent several registered public obligations of smaller denominations. The system may also provide for the form of any certificated registered public obligation, or of any writing relating to an uncertificated registered public obligation, for identifying numbers or other designations, for a sufficient supply of certificates for subsequent transfers, for record and payment dates, for varying denominations, for communications to holders or owners of obligations, and for accounting, cancelled certificate destruction and other incidental matters. Unless the issuer otherwise provides, the record date for interest payable on the first or fifteenth day of a month shall be the fifteenth day or the last business day of the preceding month, respectively, and for interest payable on other than the first or fifteenth day of a month, shall be the fifteenth calendar day before the interest payment date.

(e) Under a system pursuant to which both certificated and uncertificated registered public obligations are issued, both types of registered public obligations may be regularly issued, or one type may be regularly issued and the other type issued only under described circumstances or to particular described categories of owners.

(f) The system may include covenants of the issuer as to amendments, discontinuances, and reinstitutions of the system and the effect of such on the exemption of interest from the income tax provided for by the Code.

(g) Whenever an issuer shall issue an uncertificated registered public obligation, the system of registration may provide that a true copy of the official actions of the issuer relating to such uncertificated registered public obligation be maintained by the issuer or by the person, if any, maintaining such system on behalf of the issuer, so long as the uncertificated registered public obligation remains outstanding and unpaid. A copy of such official actions, verified to be such by an authorized officer, shall be admissible before any court of record, administrative body or arbitration panel without further authentication.

(h) Nothing in this Chapter shall preclude a conversion from one of the forms of registered public obligations provided for by this Chapter to a form of obligation not provided for by this Chapter if interest on the obligation so converted will continue to be exempt from the income tax provided for by the Code.

(i) The rights provided by other laws with respect to obligations in forms not provided for by this Chapter shall, to the extent not inconsistent with this Chapter, apply with respect to registered public obligations issued in forms authorized by this Chapter. This includes Subchapter IV of Chapter 159 of the General Statutes and the "State Debt" provisions of Chapter 142 of the General Statutes. (1983, c. 322, s. 1.)

§ 159E-5. Certificated registered public obligations; execution; authentication.

(a) A certificated registered public obligation shall be executed by the issuer by the manual or facsimile signature or signatures of authorized officers. Any signature of an authorized officer may be attested by the manual or facsimile signature of another authorized officer.

(b) In addition to the signatures referred to in (a) of this section any certificated registered public obligation or any writing relating to an uncertificated registered public obligation may include a certificate or certificates signed by the manual or facsimile signature of an authenticating agent, registrar, transfer agent or the like. (1983, c. 322, s. 1; 1987, c. 282, s. 29.)

§ 159E-6. Certificated registered public obligation; signatures.

(a) Any certificated registered public obligation signed by the authorized officers at the time of the signing thereof shall remain valid and binding, notwithstanding that before the issuance thereof any or all of such officers shall have ceased to fill their respective offices.

(b) Any authorized officer empowered to sign any certificated registered public obligation may adopt as and for the signature of such officer the signature of a predecessor in office in the event that such predecessor's signature appears on such certificated registered public obligation. An unauthorized officer incurs no liability by adoption of a predecessor's signature that would not be incurred by such authorized officer if the signature were that of such authorized officer. (1983, c. 322, s. 1.)

§ 159E-7. Certificated registered public obligation; seal.

When a seal is required or permitted in the execution of any certificated registered public obligation, an authorized officer may cause the seal to be printed, engraved, stamped, or otherwise placed in facsimile thereon. The facsimile seal has the same legal effect as the impression of the seal. (1983, c. 322, s. 1.)

§ 159E-8. Agents; depositories.

(a) An issuer, with the approval of the Commission, may appoint for such term as may be agreed, including for so long as a registered public obligation may be outstanding, corporate or other authenticating agents, transfer agents, registrars, paying or other agents and specify the terms of their appointment, including their rights, their compensation and duties, limits upon their liabilities and provision for their payment of liquidated damages in the event of breach of certain of the duties imposed, which liquidated damages may be made payable to the issuer, the owner or a financial intermediary. None of such agents need have an office or do business within this State.

(b) An issuer may agree with financial intermediaries in connection with the establishment and maintenance by others of a depository system for the transfer or pledge of registered public obligations or any interest therein. Any such financial intermediaries may, if qualified and acting as fiduciaries, also serve as authenticating agents, transfer agents, registrars, paying or other agents of the issuer with respect to the same issue of public obligations.

(c) Nothing in this Chapter shall preclude the issuer from itself performing, either alone or jointly with others, any transfer, registration, authentication, payment, depository or other function described in this section. (1983, c. 322, s. 1.)

§ 159E-9. Costs; collection.

(a) An issuer, prior to or at original issuance of registered public obligations, may provide as a part of a system of registration that the transferor or transferee of the registered public obligations pay all or a designated part of the costs of the system as a condition precedent to transfer, that costs be paid out of proceeds of the registered public obligations, or that both methods be used. The portion of the costs of the system not provided to be paid for by the transferor or transferee or out of proceeds shall be the responsibility of the issuer. Moneys for the discharge of this responsibility may be appropriated annually.

(b) The issuer may as a part of the system of registration provide for reimbursement or for satisfaction of its responsibility for costs by others. The issuer may enter into agreements with others respecting such reimbursement or satisfaction, may establish fees and charges pursuant to such agreements or otherwise, and may provide that the amount or estimated amount of such fees and charges shall be reimbursed or satisfied from the same sources and by means of the same collection and enforcement procedures and with the same priority and effect as with respect to the obligation. (1983, c. 322, s. 1.)

§ 159E-10. Security for deposits.

Obligations issued by public entities under the laws of one or more states, territories, or possessions of the United States, the Commonwealth of Puerto Rico, or the District of Columbia, which are in registered form, whether or not represented by an instrument, and which, except for their form, satisfy the requirements with regard to security for deposits of moneys of public agencies prescribed pursuant to any law of this State, shall be deemed to satisfy all such requirements even though they are in registered form if a security interest in such obligations is perfected under the laws of this State on behalf of the public agencies whose moneys are so deposited. (1983, c. 322, s. 1.)

§ 159E-11. Public records; locations.

(a) Records, with regard to the ownership of or security interests in registered public obligations, are not subject to inspection or copying under any law of this State relating to the right of the public to inspect or copy public records, notwithstanding any law to the contrary. This provision shall not exempt from public inspection records of ownership of a public entity's own holdings in this type of security.

(b) Registration records of the issuer may be maintained at such locations within or without this State as the issuer shall determine. (1983, c. 322, s. 1.)

§ 159E-12. Applicability; determination.

(a) Unless at any time prior to or at original issuance of a registered public obligation the official or official body of the issuer determines otherwise, this Chapter shall be applicable to such registered public obligation notwithstanding any provision of law to the contrary. When this Chapter is applicable, no contrary provision shall apply.

(b) Nothing in this Chapter limits or prevents issuance of obligations in any other form or manner authorized by law.

(c) Unless determined otherwise pursuant to subsection (a) of this section, the provisions of this Chapter shall be applicable with respect to obligations which have heretofore been approved by vote, referendum or hearing authorizing or permitting the authorization of obligations in bearer and registered form, or in bearer form only, and such obligations need not be resubmitted for a further vote, referendum or hearing for the purpose of authorizing or permitting the authorization of registered public obligations pursuant to this Chapter. (1983, c. 322, s. 1.)

§ 159E-13. Construction.

This Chapter shall be construed in conjunction with the Uniform Commercial Code and the principles of contract law relative to the registration and transfer of obligations. (1983, c. 322, s. 1.)

§ 159E-14. Amendment or repeal; effect.

The State hereby covenants with the owners of any registered public obligations that it will not amend or repeal this Chapter if the effect may be to impair the exemption from income taxation of interest on registered public obligations. (1983, c. 322, s. 1.)

§ 159E-15. Severability.

If any provision or the application of any provision of this Chapter shall be invalid, such shall not affect the validity of other provisions or other applications, it hereby being declared that the provisions or the applications of this Chapter are separable and this Chapter would have been enacted with the invalid provision omitted or without the invalid application in any event. (1983, c. 322, s. 1.)

Chapter 159F.

North Carolina Energy Development Authority.

§§ 159F-1 through 159F-9: Repealed by Session Laws 1993, c. 16, s. 1.

Editor's Note. — Session Laws 1993, c. 16, which repealed this Chapter, in s. 2 provides that upon the effective date of the act (July 1, 1993), the Secretary of Administration shall deliver all records and any remaining assets of the North Carolina Development Authority to the Director of the Energy Division of the Department of Commerce.

Chapter 159G.

Water Infrastructure.

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ARTICLE 1.

General Provisions.

§§ 159G-1 through 159G-18: Repealed by Session Laws 2005-454, s. 2, effective January 1, 2006.

Eligibility under the Clean Water Revolving Loan and Grant Act. — Session Laws 2005-190, s. 3(d), provides: "The definitions set out in G.S. 159G-3 apply to this subsection. The operator of a wastewater treatment works that is owned by an agency of the State may apply for a loan or grant under Chapter 159G of the General Statutes on the same basis as any other applicant if the operator is a local government unit and if the local government unit operates the wastewater treatment works pursuant to a contract with the State agency that contemplates that the local government unit will eventually acquire ownership of the wastewater treatment works."

State Match for Federal Safe Drinking Water Act Funds. — Session Laws 2005-276, s. 12.1, provides: "Notwithstanding the provisions of Chapter 159G of the General Statutes, the Department of Environment and Natural Resources may transfer from the General Water Supply Revolving Loan Account up to one million five hundred thousand dollars ($1,500,000) to the Department of Environment and Natural Resources to be used to match the federal grant moneys authorized by section 1452 of the federal Safe Drinking Water Act amendments of 1996 for the 2005-2006 fiscal year. The General Water Supply Revolving Loan Account is an account under the Clean Water Revolving Loan and Grant Fund and is established under G.S. 159G-4. The Clean Water Revolving Loan and Grant Fund is established by G.S. 159G-5."

Session Laws 2005-276, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2005'."

Session Laws 2005-276, s. 46.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2005-2007 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2005-2007 fiscal biennium."

Session Laws 2005-276, s. 46.5 is a severability clause.

Editor's Note. — Session Laws 2005-238, s. 11, effective August 1, 2005, amended G.S. 159G-18; however, since G.S. 159G-18 was repealed by Session Laws 2005-454, s. 1, the amendment has not been given effect.

§ 159G-19: Reserved for future codification purposes.

§ 159G-20. Definitions.

The following definitions apply in this Chapter:

(1) Construction costs. — The costs of planning, designing, and constructing a project for which a loan or grant is available under this Chapter. The term includes the following:
  a. Excess or reserve capacity costs attributable to no more than 20-year projected domestic growth plus ten percent (10%) unspecified industrial growth.
  b. Legal, fiscal, administrative, and contingency costs.
  c. The fee imposed under G.S. 159G-24 to obtain a loan or grant for a project.
  d. A fee payable to the Department for a permit to implement a project for which a loan or grant is obtained.
  e. The cost to acquire real property or an interest in real property.

(2) CWSRF. — The Clean Water State Revolving Fund established in G.S. 159G-22 as an account in the Water Infrastructure Fund.

(3) Department. — The Department of Environment and Natural Resources.

(4) Division of Environmental Health. — The Division of Environmental Health of the Department of Environment and Natural Resources.

(5) Division of Water Quality. — The Division of Water Quality of the Department of Environment and Natural Resources.

(6) Drinking Water Reserve. — The Drinking Water Reserve established in G.S. 159G-22 as an account in the Water Infrastructure Fund.

(7) DWSRF. — The Drinking Water State Revolving Fund established in G.S. 159G-22 as an account in the Water Infrastructure Fund.

(8) Grant. — A sum of money given to an applicant without any obligation on the part of the applicant to repay the sum.

(9) High-unit-cost project. — A project that results in an estimated average household user fee for water and sewer service in the area served by the project in excess of the high-unit-cost threshold. The average household user fee is calculated for a continuous 12-month period.

(10) High-unit-cost threshold. — Either of the following amounts determined on the basis of data from the most recent federal decennial census and updated by the U.S. Department of Housing and Urban Development's annual estimated income adjustment factors:
  a. One and one-half percent (1.5%) of the median household income in an area that receives both water and sewer service.
  b. Three-fourths of one percent (¾%) of the median household income in an area that receives only water service or only sewer service.

(11) Loan. — A sum of money loaned to an applicant with an obligation on the part of the applicant to repay the sum.

(12) Local Government Commission. — The Local Government Commission of the Department of the State Treasurer, established in G.S. 159-3.

(13) Local government unit. — Any of the following:
  a. A city as defined in G.S. 160A-1.
  b. A county.
  c. A consolidated city-county as defined in G.S. 160B-2.
  d. A county water and sewer district created pursuant to Article 6 of Chapter 162A of the General Statutes.
  e. A metropolitan sewerage district or a metropolitan water district created pursuant to Article 4 of Chapter 162A of the General Statutes.
  f. A water and sewer authority created under Article 1 of Chapter 162A of the General Statutes.
  g. A sanitary district created pursuant to Part 2 of Article 2 of Chapter 130A of the General Statutes.
  h. A joint agency created pursuant to Part 1 of Article 20 of Chapter 160A of the General Statutes.
  i. A joint agency that was created by agreement between two cities and towns to operate an airport pursuant to G.S. 63-56 and that provided drinking water and wastewater services off the airport premises before 1 January 1995.

(14) Nonprofit water corporation. — A nonprofit corporation that is incorporated under Chapter 55A of the General Statutes solely for the purpose of providing drinking water or wastewater services and is an eligible applicant for a federal loan or grant from the Rural Utility Services Division, U.S. Department of Agriculture.

(15) Public water system. — Defined in G.S. 130A-313.

(16) Reserved.

(17) Reserved.

(18) Secretary.— The Secretary of Environment and Natural Resources.

(19) State. — The State of North Carolina.

(20) Stormwater quality project. — A project whose primary purpose is to prevent or remove pollution from stormwater rather than collect, store, or convey stormwater for drainage or flood control purposes.

(21) Targeted interest rate project. — Either of the following types of projects:
  a. A high-unit-cost project that is awarded a loan.
  b. A project that is awarded a loan from the CWSRF or the DWSRF and is in a category for which federal law encourages a special focus.

(22) Treasurer. — The Treasurer of the State elected pursuant to Article III, Section 7, of the Constitution.

(23) Wastewater collection system. — A unified system of pipes, conduits, pumping stations, force mains, and appurtenances for collecting and transmitting water-carried human wastes and other wastewater from residences, industrial establishments, or any other buildings.

(24) Wastewater Reserve. — The Wastewater Reserve established in G.S. 159G-22 as an account in the Water Infrastructure Fund.

(25) Wastewater system. — A wastewater collection system, wastewater treatment works, stormwater quality project, or nonpoint source pollution project.

(26) Wastewater treatment works. — The various facilities and devices used in the treatment of sewage, industrial waste, or other wastes of a liquid nature, including the necessary interceptor sewers, outfall sewers, nutrient removal equipment, pumping equipment, power and other equipment, and their appurtenances.

(27) Water Infrastructure Fund. — The fund established in G.S. 159G-22. (2005-454, s. 3.)

Editor's Note. — The definitions have been put in alphabetical order at the direction of the Revisor of Statutes.

§ 159G-21. Revenue for water projects.

This Chapter governs the use of the following revenue:

(1) Revenue appropriated to the Department to match federal funds received for loans and grants for wastewater and drinking water projects and revenue received by the Department from the repayment of loans made with the use of the federal funds.

(2) Revenue appropriated to the Department to provide a source of State funds to make loans and grants for wastewater and drinking water projects and revenue received by the Department from the repayment of loans made with the use of these funds. (2005-454, s. 3.)

§ 159G-22. Water Infrastructure Fund.

(a) Fund Established. — The Water Infrastructure Fund is established as a special revenue fund. The Fund is comprised of the accounts set out in this section. The Fund provides revenue through its accounts for loans and grants as provided in this Chapter to meet the water infrastructure needs of the State. The Treasurer is responsible for distributing and investing all revenue received by the Fund. Interest and other investment income earned by the Fund accrues to it and must be allocated to the account to which the income is attributable. Accounts to which federal funds are credited must be kept separate from accounts that do not receive federal funds. A payment of the principal of or interest on a loan made from an account of the Fund must be credited to the account from which the loan was made.

(b) CWSRF. — The Clean Water State Revolving Fund is established as an account within the Water Infrastructure Fund. The account receives federal funds for wastewater projects and the State funds required to match the federal funds. The account is established under and must be managed in accordance with Title VI of the Federal Water Quality Act of 1987, Pub. L. 100-4, to achieve the purposes of that act and the Federal Water Pollution Control Act of 1972, 33 U.S.C. §§ 1251 through 1387. The account must comply with these federal acts and the federal regulations adopted to implement the acts. Revenue credited to the account is available in perpetuity and must be used only to provide construction loans and other assistance allowed under federal law. Grants are available from this account only to the extent allowed under federal law.

(c) DWSRF. — The Drinking Water State Revolving Fund is established as an account within the Water Infrastructure Fund. The account receives federal funds for public water systems and the State funds required to match the federal funds. The account is established under and must be managed in accordance with section 130 of Title 1 of the federal Safe Drinking Water Act of 1996 as amended, 42 U.S.C. § 300J-12, to achieve the purposes of that act. The account must comply with that act and the federal regulations adopted to implement the act. Revenue credited to the account is available in perpetuity and must be used only to provide construction loans and other assistance allowed under federal law. Grants are available from this account only to the extent allowed under federal law.

(d) Wastewater Reserve. — The Wastewater Reserve is established as an account within the Water Infrastructure Fund. The account is established to receive State funds that are to be used for loans and grants for wastewater systems. Revenue credited to the Reserve is neither received from the federal government nor provided as a match for federal funds.

(e) Wastewater Accounts. — The Department is directed to establish accounts within the Wastewater Reserve to administer loans and grants for wastewater collection systems, wastewater treatment works, stormwater quality projects, and nonpoint source pollution projects. The wastewater accounts must include an account for each type of loan or grant set out in G.S. 159G-33.

(f) Drinking Water Reserve. — The Drinking Water Reserve is established as an account within the Water Infrastructure Fund. The account is established to receive State funds that are to be used for loans and grants for public water systems. Revenue credited to the Reserve is neither received from the federal government nor provided as a match for federal funds.

(g) Drinking Water Accounts. — The Department is directed to establish accounts within the Drinking Water Reserve to administer loans and grants for public water systems. The drinking water accounts must include an account for each type of loan or grant set out in G.S. 159G-34. (2005-454, s. 3.)

§ 159G-23. Common criteria for loan or grant from Wastewater Reserve or Drinking Water Reserve.

The criteria in this section apply to a loan or grant from the Wastewater Reserve or the Drinking Water Reserve. The Division of Water Quality and the Division of Environmental Health must each establish a system of assigning points to applications based on the following criteria:

(1) Public necessity. — An applicant must explain how the project promotes public health and protects the environment. A project that improves a system that is not in compliance with permit requirements or is under orders from the Department, enables a moratorium to be lifted, or replaces failing septic tanks with a wastewater collection system has priority.

(2) Effect on impaired waters. — A project that improves designated impaired waters of the State has priority.

(3) Efficiency. — A project that achieves efficiencies in meeting the State's water infrastructure needs or reduces vulnerability to drought consistent with Part 2A of Article 21 of Chapter 143 of the General Statutes by one of the following methods has priority:
  a. The combination of two or more wastewater or public water systems into a regional wastewater or public water system by merger, consolidation, or another means.
  b. Conservation or reuse of water, including bulk water reuse facilities and waterlines to supply reuse water for irrigation and other approved uses.
  c. Construction of an interconnection between water systems intended for use in drought or other water shortage emergency.
  d. Repair or replacement of leaking waterlines.
  e. Replacement of meters and installation of new metering systems.

(4) Comprehensive land-use plan. — A project that is located in a city or county that has adopted or has taken significant steps to adopt a comprehensive land-use plan under Article 18 of Chapter 153A of the General Statutes or Article 19 of Chapter 160A of the General Statutes has priority over a project located in a city or county that has not adopted a plan or has not taken steps to do so. The existence of a plan has more priority than steps taken to adopt a plan, such as adoption of a zoning ordinance. A plan that exceeds the minimum

State standards for protection of water resources has more priority than one that does not. A project is considered to be located in a city or county if it is located in whole or in part in that unit. A land-use plan is not considered a comprehensive land-use plan unless it has provisions that protect existing water uses and ensure compliance with water quality standards and classifications in all waters of the State affected by the plan.

(5) Flood hazard ordinance. — A project that is located in a city or county that has adopted a flood hazard prevention ordinance under G.S. 143-215.54A has priority over a project located in a city or county that has not adopted an ordinance. A plan that exceeds the minimum standards under G.S. 143-215.54A for a flood hazard prevention ordinance has more priority than one that does not. A project is considered to be located in a city or county if it is located in whole or in part in that unit. If no part of the service area of a project is located within the 100-year floodplain, the project has the same priority under this subdivision as if it were located in a city or county that has adopted a flood hazard prevention ordinance. The most recent maps prepared pursuant to the National Flood Insurance Program or approved by the Department determine whether an area is within the 100-year floodplain.

(6) Sound management. — A project submitted by a local government unit that has demonstrated a willingness and ability to meet its responsibilities through sound fiscal policies and efficient operation and management has priority.

(7) Capital improvement plan. — A project that implements the applicant's capital improvement plan for the wastewater system or public water system it manages has priority over a project that does not implement a capital improvement plan. To receive priority, a capital improvement plan must set out the applicant's expected water infrastructure needs for at least 10 years.

(8) Coastal habitat protection. — A project that implements a recommendation of a Coastal Habitat Protection Plan adopted by the Environmental Management Commission, the Coastal Resources Commission, and the Marine Fisheries Commission pursuant to G.S. 143B-279.8 has priority over other projects that affect counties subject to that Plan. (2005-454, s. 3; 2008-143, s. 15.)

Editor's Note. — Session Laws 2008-143, s. 20, provides: "Nothing in this act shall be construed to expand or limit the authority of a unit of government or public water supply system to regulate water use from a well located outside of its jurisdiction, a well not connected to its water system, or any other private well."

Session Laws 2008-143, s. 21, provides in part that Water Shortage Response Plans revised to comply with G.S. 143-355.2 shall be submitted no later than July 1, 2009.

Effect of Amendments. — Session Laws 2008-143, s. 15, effective July 31, 2008, in subdivision (3), inserted "or reduces vulnerability to drought consistent with Part 2A of Article 21 of Chapter 143 of the General Statutes" in the introductory language; in subdivision (3)b, added "including bulk water reuse facilities and waterlines to supply reuse water for irrigation and other approved uses"; and added subdivisions (3)c through (3)e.

§ 159G-24. Fee imposed on a loan or grant from Wastewater Reserve or Drinking Water Reserve.

(a) Amount. — A loan awarded from the Wastewater Reserve or the Drinking Water Reserve is subject to a fee of two and one-half percent (2 ½%) of the loan. A grant awarded from the Wastewater Reserve or the Drinking

Water Reserve is subject to a fee of one and one-half percent (1 ½%) of the grant. The fee is payable when a loan or grant is awarded.

(b) Departmental Receipt. — The fee on a loan from the Wastewater Reserve or the Drinking Water Reserve is a departmental receipt and must be applied to the Department's and the Local Government Commission's costs in administering loans from these Reserves. The Department and the Local Government Commission must determine how to allocate the fee receipts between their agencies. The fee on a grant from the Wastewater Reserve or the Drinking Water Reserve is a departmental receipt of the Department and must be applied to the Department's costs in administering grants from these Reserves. (2005-454, s. 3.)

§ 159G-25. Expenditure for emergency corrective action at a wastewater treatment works.

(a) The Department may use revenue in any account of the Wastewater Reserve to provide funds for emergency corrective action at a wastewater treatment works under the circumstances set out in this section. The amount expended in a fiscal year for corrective action under this section may not exceed two hundred thousand dollars ($200,000). An expenditure for emergency corrective action is authorized only under the following circumstances:

(1) A person holding a wastewater discharge or nondischarge permit issued under Article 21 of Chapter 143 of the General Statutes is violating the terms of the permit.
(2) The wastewater treatment works operated under the permit has a design flow capacity of no more than 100,000 gallons a day.
(3) The Department has given the permit holder written notice of the violation.
(4) The permit holder refuses to take the action required to comply with the permit.
(5) The inaction by the permit holder poses a threat to public health.
(6) The Department has informed the permit holder in writing that the Department plans to take emergency corrective action and then bring a civil action against the permit holder to recover the cost of the emergency corrective action.

(b) The Department may bring a civil action against the holder of the permit for the wastewater treatment works to recover the amount expended from the Wastewater Reserve for the emergency corrective action. The amount recovered in a civil action must be credited to the account in the Wastewater Reserve from which the funds were expended. (2005-454, s. 3.)

§ 159G-26. Annual reports on Water Infrastructure Fund.

(a) Requirement. — The Department must publish a report each year on the accounts in the Water Infrastructure Fund that are administered by the Division of Water Quality or the Division of Environmental Health. The report must be published by 1 November of each year and cover the preceding fiscal year. The Department must make the report available to the public and must give a copy of the report to the Environmental Review Commission and the Fiscal Research Division of the General Assembly.

(b) Content. — The report required by this section must contain the following information concerning the accounts of the Water Infrastructure Fund:

(1) The beginning and ending balance of the account for the fiscal year.
(2) The amount of revenue credited to the account during the fiscal year, by source.

(3) The total amount of loans and grants awarded from the account, by type, and the amount of any expenditure for emergency corrective action made from the account.
(4) For each loan or grant awarded, the recipient of the award, the amount of the award, the amount of the award that was disbursed, and the amount of the award remaining to be disbursed in a subsequent fiscal year.
(5) The amount disbursed for loans and grants awarded but not disbursed in a prior fiscal year and the amount remaining to be disbursed in a subsequent fiscal year.
(6) An assessment of the expected impact on water quality and water supply of the projects for which the loans and grants were awarded. (2005-454, s. 3.)

§§ 159G-27 through 159G-29: Reserved for future codification purposes.

ARTICLE 2.

Water Infrastructure Loans and Grants Administered by Department.

§ 159G-30. Department's responsibility.

The Department, through the Division of Water Quality and the Division of Environmental Health, administers loans and grants made from the CWSRF, the DWSRF, the Wastewater Reserve, and the Drinking Water Reserve. The Division of Water Quality administers loans and grants from the CWSRF and the Wastewater Reserve. The Division of Environmental Health administers loans and grants from the DWSRF and the Drinking Water Reserve. (2005-454, s. 3.)

Editor's Note. — Session Laws 2005-454, s. 12, made this Article effective January 1, 2006.

§ 159G-31. Entities eligible to apply for loan or grant.

A local government unit or a nonprofit water corporation is eligible to apply for a loan or grant from the CWSRF, the DWSRF, the Wastewater Reserve, or the Drinking Water Reserve. Other entities are not eligible for a loan or grant from these accounts. (2005-454, s. 3.)

§ 159G-32. Projects eligible for loan or grant.

(a) CWSRF and DWSRF. — Federal law determines whether a project is eligible for a loan or grant from the CWSRF and the DWSRF. A project must meet the eligibility requirements set under federal law.

(b) Wastewater Reserve. — The Department is authorized to make loans and grants from the Wastewater Reserve for the following types of projects:
(1) Wastewater collection system.
(2) Wastewater treatment works.
(3) Stormwater quality project.
(4) Nonpoint source pollution project.

(c) Drinking Water Reserve. — The Department is authorized to make loans and grants from the Drinking Water Reserve for public water system projects. (2005-454, s. 3.)

§ 159G-33. Loans and grants available from Wastewater Reserve.

(a) Types. — The Department is authorized to make the types of loans and grants listed in this subsection from the Wastewater Reserve. Each type of loan or grant must be administered through a separate account within the Wastewater Reserve.

(1) General. — A loan or grant is available for a project authorized in G.S. 159G-32(b).

(2) High-unit-cost grant. — A high-unit-cost grant is available for the portion of the construction costs of a wastewater collection system project or a wastewater treatment works project that results in an estimated average household user fee for water and sewer service in the area served by the project that exceeds the high-unit-cost threshold.

(3) Technical assistance grant. — A technical assistance grant is available to determine the best way to correct the deficiencies in a wastewater collection system or wastewater treatment works that either is not in compliance with its permit limits or, as identified in the most recent inspection report by the Department under G.S. 143-215.3, is experiencing operational problems and is at risk of violating its permit limits.

(4) Emergency loan. — An emergency loan is available in the event the Secretary certifies that a serious public health hazard related to the inadequacy of an existing wastewater collection system or wastewater treatment works is present or imminent in a community.

(b) Interaccount Transfer. — The Secretary may use revenue in any account in the Wastewater Reserve to provide funds for an emergency loan. (2005-454, s. 3.)

§ 159G-34. Loans and grants available from Drinking Water Reserve.

(a) Types. — The Department is authorized to make the types of loans and grants listed in this section from the Drinking Water Reserve. Each type of loan or grant must be administered through a separate account within the Drinking Water Reserve.

(1) General. — A loan or grant is available for a project for a public water system.

(2) High-unit-cost grant. — A grant is available for the portion of the construction costs of a public water system project that results in an estimated average household user fee for water and sewer service in the area served by the project that exceeds the high-unit-cost threshold.

(3) Technical assistance grant. — A technical assistance grant is available to determine the best way to correct the deficiencies in a public water system that does not comply with State law or the rules adopted to implement that law.

(4) Emergency loan. — An emergency loan is available to an applicant in the event the Secretary certifies that either a serious public health hazard or a drought emergency related to the water supply system is present or imminent in a community.

(b) Interaccount Transfer. — The Secretary may use revenue in any account in the Drinking Water Reserve to provide funds for an emergency loan. (2005-454, s. 3.)

§ 159G-35. Criteria for loans and grants.

(a) CWSRF and DWSRF. — Federal law determines the criteria for awarding a loan or grant from the CWSRF or the DWSRF. An award of a loan or grant from one of these accounts must meet the criteria set under federal law. The Department is directed to establish through negotiation with the United States Environmental Protection Agency the criteria for evaluating applications for loans and grants from the CWSRF and the DWSRF and the priority assigned to the criteria. The Department must incorporate the negotiated criteria and priorities in the Capitalization Grant Operating Agreement between the Department and the United States Environmental Protection Agency. The criteria and priorities incorporated in the Agreement apply to a loan or grant from the CWSRF or the DWSRF. The common criteria in G.S. 159G-23 do not apply to a loan or grant from the CWSRF or the DWSRF.

(b) Reserves. — The common criteria in G.S. 159G-23 apply to a loan or grant from the Wastewater Reserve or the Drinking Water Reserve. The Department may establish by rule other criteria that apply to a loan or grant from the Wastewater Reserve or the Drinking Water Reserve. (2005-454, s. 3.)

§ 159G-36. Limits on loans and grants.

(a) CWSRF and DWSRF. — Federal law governs loans and grants from the CWSRF and the DWSRF. An award of a loan or grant from one of these accounts must be consistent with federal law.

(b) Reserve Cost Limit. — The amount of a loan or grant from the Wastewater Reserve or the Drinking Water Reserve may not exceed the construction costs of a project. A loan or grant from one of these Reserves is available only to the extent that other funding sources are not reasonably available to the applicant.

(c) Reserve Recipient Limit. — The following limits apply to a loan or grant made from the Wastewater Reserve or the Drinking Water Reserve to the same local government unit or nonprofit water corporation:

(1) The amount of loans awarded for a fiscal year may not exceed three million dollars ($3,000,000).

(2) The amount of loans awarded for three consecutive fiscal years for targeted interest rate projects may not exceed three million dollars ($3,000,000).

(3) The amount of high-unit-cost grants awarded for three consecutive fiscal years may not exceed three million dollars ($3,000,000).

(4) The amount of technical assistance grants awarded for three consecutive fiscal years may not exceed fifty thousand dollars ($50,000). (2005-454, s. 3.)

§ 159G-37. Application to CWSRF, Wastewater Reserve, DWSRF, and Drinking Water Reserve.

An application for a loan or grant from the CWSRF or the Wastewater Reserve must be filed with the Division of Water Quality of the Department. An application for a loan or grant from the DWSRF or the Drinking Water Reserve must be filed with the Division of Environmental Health of the Department. An application must be submitted on a form prescribed by the Division and must contain the information required by the Division. An applicant must submit to the Division any additional information requested by the Division to enable the Division to make a determination on the application. An application that does not contain information required on the application or requested by the Division is incomplete and is not eligible for consideration. An applicant may submit an application in as many categories as it is eligible for consideration under this Article. (2005-454, s. 3.)

§ 159G-38. Environmental assessment and public hearing.

(a) Required Information. — An application submitted under this Article for a loan or grant for a project must state whether the project requires an environmental assessment. If the application indicates that an environmental assessment is not required, it must identify the exclusion in the North Carolina Environmental Policy Act, Article 1 of Chapter 113A of the General Statutes, that applies to the project. If the application does not identify an exclusion in the North Carolina Environmental Policy Act, it must include an environmental assessment of the project's probable impacts on the environment.

(b) Division Review. — If, after reviewing an application, the Division of Water Quality or the Division of Environmental Health, as appropriate, determines that a project requires an environmental assessment, the assessment must be submitted before the Division continues its review of the application. If, after reviewing an environmental assessment, the Division concludes that an environmental impact statement is required, the Division may not continue its review of the application until a final environmental impact statement has been completed and approved as provided in the North Carolina Environmental Policy Act.

(c) Hearing. — The Division of Water Quality or the Division of Environmental Health, as appropriate, may hold a public hearing on an application for a loan or grant under this Article if it determines that holding a hearing will serve the public interest. An individual who is a resident of any county in which a proposed project is located may submit a written request for a public hearing. The request must set forth each objection to the proposed project or other reason for requesting a hearing and must include the name and address of the individual making the request. The Division may consider all written objections to the proposed project, any statement submitted with the hearing request, and any significant adverse effects the proposed project may have on the environment. The Division's decision on whether to hold a hearing is conclusive. The Division must keep all written requests for a hearing on an application as part of the records pertaining to the application. (2005-454, s. 3.)

§ 159G-39. Review of applications and award of loan or grant.

(a) Point Assignment. — The Division of Water Quality or the Division of Environmental Health, as appropriate, must review all applications filed for a loan or grant under this Article for an application period. The Division must rank each application in accordance with the points assigned to the evaluation criteria. The Division must make a written determination of an application's rank and attach the determination to the application. The Division's determination of rank is conclusive.

(b) Initial Consideration. — The Division may consider an application for an emergency loan from the Wastewater Reserve or the Drinking Water Reserve at any time. The Division must consider all other loan applications and all grant applications filed during an application period at the same time in order to rank the applications.

(c) Reconsideration. — When an application's rank is too low to receive an award of a loan or grant for an application period, the Division must include the application with those considered for the next application period. If the application's rank is again too low to receive an award, the application is not eligible for consideration in a subsequent application period. An applicant whose application does not receive an award after review in two application periods may file a new application.

(d) Notification of Decision. — When the Division determines that an application's rank makes it eligible for an award of a loan or grant, the Division must send the applicant a letter of intent to award the loan or grant. The notice must set out any conditions the applicant must meet to receive an award of a loan or grant. When the applicant satisfies the conditions set out in the letter of intent, the Division must send the applicant an offer to award a loan or grant. The applicant must give the Division written notice of whether it accepts or rejects the offer. A loan or grant is considered awarded when an offer to award the loan or grant is issued. (2005-454, s. 3.)

§ 159G-40. Terms of loan and execution of loan documents.

(a) Approval by Local Government Commission. — The Department may not award a loan under this Article unless the Local Government Commission approves the award of the loan and the terms of the loan. The terms of a loan awarded from the CWSRF and the DWSRF must be consistent with federal law. In reviewing a proposed loan to a local government unit, the Local Government Commission must consider the loan as if it were a bond proposal and review the proposed loan in accordance with the factors set out in G.S. 159-52 for review of a proposed bond issue. The Local Government Commission must review a proposed loan to a nonprofit water corporation in accordance with the factors set out in G.S. 159-153.

(b) Interest Rate and Maturity. — The interest rate payable on and the maximum maturity of a loan are subject to the following limitations:

(1) Interest rate. — The interest rate for a loan may not exceed the lesser of four percent (4%) or one half the prevailing national market rate for tax-exempt general obligation debt of similar maturities derived from a published indicator. When recommended by the Department, the Local Government Commission may set an interest rate for a loan for a targeted interest rate project at a rate that is lower than the standard rate to achieve the purpose of the target.

(2) Maturity. — The maximum maturity for a loan for a project that is not a high-unit-cost project may not exceed 20 years or the project's expected life, whichever is shorter. The maximum maturity for a loan for a high-unit-cost project is 30 years or the project's expected life, whichever is shorter.

(c) Security for Loan. — A local government unit may pledge any of the following, alone or in combination, as security for an obligation to repay the principal of and interest on a loan awarded under this Article:

(1) User fee revenues derived from operation of the wastewater system or public water system that benefits from the project for which the loan is awarded.

(2) A mortgage, deed of trust, security interest, or similar lien on part or all of the real and personal property comprising the wastewater system or public water system that benefits from the project for which the loan is awarded.

(3) Its full faith and credit if it meets the requirements of Article 4 of Chapter 159 of the General Statutes.

(4) Nontax revenue not included in subdivision (1) of this subsection.

(d) Debt Instrument. — A local government unit and a nonprofit water corporation may execute a debt instrument payable to the State to evidence an obligation to repay the principal of and interest on a loan awarded under this Article. The Treasurer, with the assistance of the Local Government Commission, must develop debt instruments for use by local government units and nonprofit water corporations under this section. The Local Government Commission must develop procedures for loan recipients to deliver debt instruments to the State without public bidding. (2005-454, s. 3.)

§ 159G-41. Withdrawal of loan or grant.

A letter of intent to offer an award for a loan or grant for a project is withdrawn if the applicant fails to enter into a construction contract for the project within two years after the date of the letter, unless the Department finds that the applicant has good cause for the failure. An award for a loan or grant for a project is withdrawn if the applicant fails to enter into a construction contract for the project within one year after the date of the award, unless the Department finds that the applicant has good cause for the failure. If the Department finds good cause for an applicant's failure, the Department must set a date by which the applicant must take action or forfeit the loan or grant. (2005-454, s. 3.)

§ 159G-42. Disbursement of loan or grant.

The Department must disburse the proceeds of a loan or grant to a recipient in a series of payments based on the progress of the project for which the loan or grant was awarded. To obtain a payment, a loan or grant recipient must submit a request for payment to the Department and document the expenditures for which the payment is requested. (2005-454, s. 3.)

§ 159G-43. Inspection of project.

(a) Authority. — The Department may inspect a project for which it awards a loan or grant under this Article to determine the progress made on the project and whether the construction of the project is consistent with the project described in the loan or grant application. The inspection may be performed by personnel of the Department or by a professional engineer licensed under Chapter 89C of the General Statutes.

(b) Disqualification. — An individual may not perform an inspection of a project under this section if the individual meets any of the following criteria:

(1) Is an officer or employee of the local government unit or nonprofit water corporation that received the loan or grant award for the project.

(2) Is an owner, officer, employee, or agent of a contractor or subcontractor engaged in the construction of the project for which the loan or grant was made. (2005-454, s. 3.)

§ 159G-44. Rules.

The Department may adopt rules to implement this Chapter. Chapter 150B of the General Statutes, the Administrative Procedure Act, governs the adoption of rules by the Department. A rule adopted to administer a loan or grant from the CWSRF or the DWSRF must be consistent with federal law. The Department must give a copy of the rules adopted to implement this Article without charge to a person who requests a copy. (2005-454, s. 3.)

§§ 159G-45 through 159G-50: Reserved for future codification purposes.

ARTICLE 3.

[Reserved.]

§§ 159G-51 through 159G-64: Reserved for future codification purposes.

ARTICLE 4.

State Water Infrastructure Commission.

§ 159G-65. State Water Infrastructure Commission.

(a) Purpose. — The State Water Infrastructure Commission is established in the Office of the Governor. The purpose of the Commission is to identify the State's water infrastructure needs, develop a plan to meet those needs, and monitor the implementation of the plan.

(b) Membership. — The Commission consists of 13 members as follows:

(1) The Secretary of Commerce or a Department of Commerce employee designated by the Secretary who is familiar with the State programs that fund water or other infrastructure improvements for the purpose of promoting economic development.

(2) The Secretary of Environment and Natural Resources or a Department of Environment and Natural Resources employee designated by the Secretary who is familiar with the water infrastructure financing, regulatory, and technical assistance programs of the Department.

(3) The President of the Rural Economic Development Center or a Rural Center employee designated by the President who is familiar with the water infrastructure financing programs of the Rural Center.

(4) The Executive Director of the Clean Water Management Trust Fund or a Trust Fund employee designated by the Executive Director who is familiar with wastewater, drinking water, and stormwater issues.

(5) The Director of the Local Government Commission or an employee of the State Treasurer's Office designated by the Director who is familiar with the functions of the Commission.

(6) The Executive Director of the League of Municipalities or a League employee designated by the Executive Director who is familiar with the League's programs.

(7) The Executive Director of the North Carolina Association of County Commissioners or an Association employee designated by the Executive Director who is familiar with the Association's programs.

(8) One member appointed by the Chancellor of North Carolina State University.

(9) An engineer appointed by the American Council of Engineering Companies.

(10) One member appointed by the Water Resources and Research Institute.

(11) One member appointed by the Governor who is a representative of a local government wastewater system or public water system.

(12) One member appointed by the President Pro Tempore of the Senate.

(13) One member appointed by the Speaker of the House of Representatives.

(c) Terms. — The members appointed by the Governor, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives serve two-year terms. The other members, who are ex officio members or designees of those members, serve until they are no longer in office or are replaced with another designee. Members may be removed in accordance with G.S. 143B-13 as if that section applied to this Article.

(d) Chair. — The Governor appoints the initial chair of the Commission. The chair appointed by the Governor must call the first meeting, at which the members must elect a chair. The Chair serves a term of one year. The Commission must elect a chair annually.

(e) Meetings. — The Commission must meet at least four times a year and may meet as often as needed. A majority of the members of the Commission constitutes a quorum for the transaction of business. The affirmative vote of a majority of the members present at a meeting of the Commission is required for action to be taken by the Commission.

(f) Vacancies. — A vacancy in the Commission or as chair of the Commission resulting from the resignation of a member or otherwise is filled in the same manner in which the original appointment was made. The term of an appointment to fill a vacancy is for the balance of the unexpired term.

(g) Compensation. — The Commission members receive no salary or other monetary compensation for serving on the Commission. (2005-454, s. 3.)

Editor's Note. — Session Laws 2005-454, s. 12, made this Article effective January 1, 2006.

§ 159G-66. Duties of the Commission.

The Commission has the following duties:

(1) To assess and make recommendations on the role of the State in the development and funding of wastewater, drinking water, and stormwater infrastructure in the State.

(2) To analyze the adequacy of projected funding to meet projected needs over the next five years.

(3) To propose State priorities for funding.

(4) To make recommendations on ways to maximize the use of current funding resources, whether federal, State, or local, and to ensure that funds are used in a coordinated manner.

(5) To review the application of management practices in wastewater, drinking water, and stormwater utilities and determine the best practices.

(6) To assess the role of public-private partnerships in the future provision of utility service.

(7) To assess the application of the river basin approach to utility planning and management.

(8) To assess the need for a "troubled system" protocol. (2005-454, s. 3.)

Editor's Note. — Session Laws 2008-143, s. 17, provides: "The State Water Infrastructure Commission, in consultation with the Department of Environment and Natural Resources, the School of Government at the University of North Carolina at Chapel Hill, the North Carolina Utilities Commission, the Public Staff of the North Carolina Utilities Commission, and the Local Government Commission, shall develop guidelines for water rate structures that are adequate to pay the cost of maintaining, repairing, and operating the system, including payment of principal and interest on indebtedness incurred for maintenance or improvement of the water system. The guidelines shall also consider the effect of water rates on water conservation and recommend rate structures that support water conservation. Copies of the guidelines shall be made available to the Department of Environment and Natural Resources, the North Carolina Utilities Commission, and to all local government water systems and large community water systems, as defined in G.S. 143-350. The Commission shall report to the Environmental Review Commission on its progress in developing the guidelines no later than January 1, 2009."

§ 159G-67. Commission reports.

The Commission must publish an annual report by 1 November of each year on its activity and findings. The Commission must give a copy of the report to the Environmental Review Commission and the Fiscal Research Division of the General Assembly. The report must include any recommendations of the Commission that require action by the General Assembly to implement. (2005-454, s. 3.)

Chapter 159H.

Reserved for future codification purposes.

Chapter 159I.

Solid Waste Management Loan Program and Local Government Special Obligation Bonds.

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§ 159I-1. Short title.

This Chapter may be cited as the Solid Waste Management Loan Program and Local Government Special Obligation Bond Act. (1989, c. 756, s. 1; 2002-72, s. 21.)

Editor's Note. — Session Laws 1989, c. 756, s. 9, provides: "This act shall be construed liberally to effectuate the legislative intent and the purposes as complete and independent authority for the performance of each and every act and thing authorized by this act, and all powers granted shall be broadly interpreted to effectuate the intent and purposes and not as a limitation of powers."

Session Laws 2001-238, s. 2, amended the Chapter heading, which formerly read: "Solid Waste Management Loan Program," so that it now reads: "Solid Waste Management Loan Program and Local Government Special Obligation Bonds." However, the act did not amend G.S. 159I-1, which states that the short title for the Chapter may be cited as the "North Carolina Solid Waste Management Loan Program."

§ 159I-2. Findings and purpose.

The General Assembly finds that units of local government need a source of funds to implement solid waste management programs. Units of local government will confront a crisis in solid waste management in the near future. Within five years of the creation of this program, one-third of all the landfills in this State will have reached their capacity. Many local governments do not have the funds to meet:

(1) The increased costs of constructing new landfills that meet current standards for the protection of the environment; or
(2) The cost of constructing a local or regional incinerator that would serve to reduce the volume of waste to be landfilled; or
(3) The costs of implementing alternative programs to reduce the amount of waste generated, to decrease the volume of waste that is generated,

or to recover or to recycle that part of the waste stream that can be recovered or used for another purpose.

The General Assembly finds that comprehensive solid waste management programs at a local or regional level are needed in order to preserve the quality of North Carolina's groundwater. It is the purpose of the General Assembly to facilitate the implementation of local and regional solid waste management programs by establishing a loan fund for financing the capital expenses of these programs. The General Assembly seeks to encourage and assist units of local government to continue to voluntarily provide solid waste collection and disposal for their citizens, thereby maintaining a clean and healthful environment and an adequate supply of clean water. (1989, c. 756, s. 1.)

§ 159I-3. Definitions.

(a) Unless a different meaning is required by the context, the following definitions shall apply throughout this Chapter:

(1) "Administrative charges" means any charge made by the Agency to a unit of local government for the providing of financing pursuant to this Chapter and may include, without limitation, charges for financing costs, charges for the costs of bond and reserve fund insurance, of credit-enhancement and liquidity facilities, and of interest-rate agreements, charges in respect of nonasset bond and investment income deficiencies, and charges for administrative expenses of the Agency incurred in the exercise of its powers and duties conferred by this Chapter.

(2) "Agency" means the North Carolina Solid Waste Management Capital Projects Financing Agency.

(3) "Board" means the board of directors of the Agency or any other governing body of the Agency succeeding to the principal functions of the Agency.

(4) "Bonds" means the revenue bonds authorized to be issued by the Agency under this Chapter. As used in this Chapter, the term "bonds" does not include any loan agreement.

(5) "Costs" means the capital cost of acquiring or constructing any project, including, without limitation, the following:

a. The costs of doing any or all of the following deemed necessary or convenient by a unit of local government:
    1. Acquiring, constructing, erecting, providing, developing, installing, furnishing, and equipping;
    2. Reconstructing, remodeling, altering, renovating, replacing, refurnishing, and re-equipping;
    3. Enlarging, expanding, and extending; and
    4. Demolishing, relocating, improving, grading, draining, landscaping, paving, widening, and resurfacing.

b. The costs of all property, both real and personal and both improved and unimproved, and of plants, works, appurtenances, structures, facilities, furnishings, machinery, equipment, vehicles, easements, water rights, air rights, franchises, and licenses used or useful in connection with the purpose authorized;

c. The costs of demolishing or moving structures from land acquired and acquiring any lands to which such structures thereafter are to be moved;

d. Financing charges, including estimated interest during the acquisition or construction of such project and for six months thereafter;

e. The costs of services to provide and the cost of plans, specifications, studies and reports, surveys, and estimates of costs and revenues;

f. The costs of paying any interim financing, including principal, interest, and premium, related to the acquisition or construction of a project;

g. Administrative and legal expenses and administrative charges;

h. The costs of obtaining bond and reserve fund insurance and investment contracts, of credit-enhancement facilities, liquidity facilities and interest-rate agreements, and of establishing and maintaining debt service and other reserves; and

i. Any other services, costs, and expenses necessary or incidental to the purpose authorized.

(6) "Division" means the Division of Waste Management of the Department of Environment and Natural Resources and any successor of the Division of Waste Management.

(7) "Loan" means moneys loaned by the Agency to a unit of local government for a project authorized by this Chapter.

(8) "Loan agreement" means any bond, note, contract, loan agreement, or other written agreement of a unit of local government delivered to the Agency and evidencing the unit's receipt of loan proceeds from the sale of all or a portion of the Agency's bonds or from other available money of the Agency and setting forth the terms of the unit's agreement to make payments to the Agency in respect of such loan.

(9) "Local Government Commission" means the Local Government Commission of the Department of the State Treasurer, established by Article 2 of Chapter 159 of the General Statutes and any successor of said Commission.

(10) "Notes" means the revenue notes or revenue bond anticipation notes authorized to be issued by the Agency under this Chapter. As used in this Chapter, the term "notes" does not include any loan agreement.

(11) "Project" means any capital project authorized to be financed in G.S. 159I-8.

(12) "Revenues" means all moneys received by the Agency, other than the proceeds received by the Agency from the sale of bonds or notes and moneys appropriated by the State for the Solid Waste Management Loan Fund, in connection with the providing of financing to units of local government, including without limitation:

a. The payments received by the Agency of the principal of and premium, if any, and interest on loan agreements;

b. Administrative charges, but only to the extent determined by the Agency; and

c. Investment earnings on all revenues, funds, and other moneys of the Agency.

(13) "Unit of local government" or "unit" means:

a. A unit of local government as defined in G.S. 159-44(4);

b. Any combination of units, as defined in G.S. 160A-460(2), entering into a contract or agreement with each other under G.S. 160A-461;

c. Any joint agency established under G.S. 160A-462; as any such section may be amended from time to time;

d. Any regional solid waste management authority created pursuant to G.S. 153A-421; or

e. A consolidated city-county as defined by G.S. 160B-2(1), including such a consolidated city-county acting with respect to an urban service district defined by a consolidated city-county.

(b) Unless a different meaning is required by the context, the definitions set out in G.S. 130A-290, as such section may be amended from time to time, shall apply throughout this Chapter. (1989, c. 756, s. 1; 1989 (Reg. Sess., 1990), c.

888, s. 2; c. 1004, ss. 20, 47.1; c. 1024, s. 48; 1995, c. 461, s. 12; 1995 (Reg. Sess., 1996), c. 743, s. 24; 1997-443, s. 11A.123.)

§ 159I-4. Creation of Agency.

(a) A body politic and corporate to be known as the "North Carolina Solid Waste Management Capital Projects Financing Agency" is created. This Agency shall be a public agency and an instrumentality of the State for the performance of essential governmental and public functions.

(b) The Board of Directors of this Agency shall be its governing board, which shall consist of five members. One of the members of the Board shall be the State Treasurer who shall serve ex officio. The State Treasurer shall be Chairman of the Board of Directors. Two members shall be appointed by the Governor, one member shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121 and one member shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore in accordance with G.S. 120-121. The appointments to be made initially by the Governor shall be for terms beginning on the dates of their respective appointments and expiring on June 30, 1990, and June 30, 1992. The appointments to be made initially by the General Assembly as recommended by the Speaker of the House of Representatives and by the General Assembly as recommended by the President Pro Tempore of the Senate shall be for terms beginning on the date of their respective appointments and expiring on June 30, 1991. Appointments made to succeed the initial appointments shall be for two-year terms commencing, respectively, on July 1, 1990, July 1, 1991, and July 1, 1992, and subsequent appointments shall be for two-year terms.

(c) All members of the Board shall remain in office until their successors are appointed and qualify. Vacancies in appointments made by the Governor shall be filled by the Governor for the remainder of the unexpired terms. Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122. Persons appointed to fill vacancies shall qualify in the same manner as persons appointed for full terms.

(d) Any member of the Board may be removed from office for misfeasance, malfeasance, nonfeasance, or improper influence in accordance with the provisions of G.S. 143B-13 and the resulting vacancy shall be filled as provided herein for vacancies in general.

(e) The Board of Directors shall adopt bylaws with respect to the call of meetings, quorums, voting procedures, the keeping of records, and such other organizational and administrative matters as the Board of Directors may determine. A quorum shall consist of no less than three members of the Board.

(f) No vacancy in the membership of the Board of Directors shall impair the right of a quorum to exercise all rights and to perform all the duties of the Board of Directors and the Agency.

(g) No part of the revenues or assets of the Agency shall inure to the benefit of or be distributable to its members or officers or other private persons. The members of the Board of Directors shall receive no salary for their services but shall be entitled to receive per diem and allowances in accordance with the provisions of G.S. 138-5.

(h) The Agency shall be contained within the Department of State Treasurer as if it had been transferred to that Department by a Type II transfer as defined in G.S. 143A-6(b). (1989, c. 756, s. 1.)

§ 159I-5. General powers of the Agency.

The Agency shall have all of the powers necessary or convenient to carry out and to effect the purposes and provisions of this Chapter, including, without limitation, the powers:

(1) To make and execute contracts and agreements necessary or incidental to the exercise of its powers and duties under this Chapter, including, without limitation, agreements in respect of loan agreements and agreements with issuers of credit-enhancement facilities, liquidity facilities, bond insurance policies, reserve fund insurance policies and investment contracts, and interest-rate agreements;
(2) To contract with any unit of local government with respect to any of the matters covered by this Chapter;
(3) To establish a debt service reserve fund or funds, from moneys in the Solid Waste Management Loan Fund or from other available moneys, and other reserve funds and to borrow money to purchase insurance and investment contracts to establish, maintain, or increase such funds;
(4) To agree to apply and assign any money, loan agreements, and other revenues;
(5) To borrow money as herein provided to carry out and effect its corporate purposes and to issue in evidence thereof bonds, notes, or bond anticipation notes for the purpose of providing funds therefor, including funds for the financing and refinancing of the cost of the acquisition or construction of projects, including the payment or advance on behalf of units of local government of the costs of such projects;
(6) To apply any payments, or prepayments, or principal of or interest on any loan agreement, to the extent such payment or prepayment is not necessary to pay debt service on the Agency's bonds or notes, to the financing of the cost of the acquisition or construction of projects for units of local government to the same extent as provided in G.S. 159I-6;
(7) To fix, revise, charge and collect, or cause to be fixed, revised, charged, and collected, and to apportion administrative charges among units of local government participating in any program of the Agency.
(8) To employ an administrator to administer the operations of the Agency, fiscal and financial consultants, underwriters, attorneys, trustees, remarketing agents, and such other consultants, agents, and employees as may be required in the judgment of the Agency and to fix and pay their compensation from funds available to the Agency;
(9) To apply for, accept, receive and agree to, and to comply with the terms and conditions governing grants, loans, advances, contributions, gifts, and other aid from any source whatsoever, including federal and State sources;
(10) To sue and be sued in its own name, to plead and be impleaded;
(11) To adopt an official seal and to alter the same at its pleasure;
(12) To establish and revise from time to time minimum financial standards and criteria for determining the eligibility of specific units of local government to obtain financing and to make loans as provided in this Chapter;
(13) To deposit, disburse, and invest, pursuant to the provisions of this Chapter, the proceeds of any fund established in accordance with this Chapter and to determine the application of the proceeds of any earnings thereon, subject to the specific provisions of this Chapter; and
(14) To act as otherwise necessary or convenient to carry out the purposes of this Chapter. (1989, c. 756, s. 1.)

§ 159I-6. Specific powers of the Agency.

(a) The Agency shall have the discretion to enter into one or more loan agreements with a unit of local government, providing for the making of a loan by the Agency to the unit of local government, to finance or refinance the cost of the acquisition or construction of a project; and

(b) Any loan agreement entered into by the Agency with a unit of local government shall be in writing and shall set forth the terms and conditions agreed to between the Agency and the unit of local government for the Agency's loan to such unit of local government including, without limitation, the following:

(1) The term of such loan agreement;

(2) The payment provisions and prepayment provisions, if any, required:
  a. To enable the Agency to administer its programs;
  b. To pay when due the principal of and premium, if any, and interest on bonds or notes or other obligations of the Agency incurred to make such loan; and
  c. To pay or reimburse the Agency for such unit's administration charges and the cost of establishing and maintaining any reserves;

(3) The security for payment by the unit of local government of the loan; and

(4) Such other provisions and covenants as the Board may require.

(c) Nothing in this Chapter shall be deemed to change the application of the provisions of Article 8 of Chapter 143 of the General Statutes, relating to competitive bidding for public contracts, or the application of the provisions of Article 3 of Chapter 143 of the General Statutes specifically including the provisions of G.S. 143-49(6), as it applies to units of local government financing projects under this Chapter. To the extent that units comply with such competitive bidding requirements, there shall be no further requirements in respect of the Agency. (1989, c. 756, s. 1.)

§ 159I-7. Solid Waste Management Loan Fund.

(a) A Fund to be known as the Solid Waste Management Loan Fund is established. Moneys appropriated to, paid to, or earned by this Fund shall be deposited with the State Treasurer or a corporate trustee as provided for in G.S. 159I-16, as may be determined by the Board.

(b) Moneys in the Solid Waste Management Loan Fund may be invested in the same manner as permitted for investments of funds belonging to the State or held in the State treasury. Interest earnings derived from such investments shall be credited to the Fund, credited to such other use as may be provided in a trust agreement or resolution securing any bonds or notes issued under the provisions of this Chapter, or credited to such other use, including the payment of administrative expenses of the Agency, the costs of research for solid waste management programs and the making of grants for such research, as may be directed by the Board.

(b1) In connection with solid waste research to be contracted for by the Division, the Secretary of Environment and Natural Resources shall negotiate, with the Board of the Agency, a memorandum of agreement which shall contain necessary rules and provisions for certifying that proper competitive bid procedures, and when appropriate, proper sole source bid procedures, for contracts have been executed in connection with a Request for Proposals (RFP); and, which shall state that a previously determined one-to-one match requirement from private sector sources has been met in accordance with rules and provisions set out in the memorandum of agreement, and that the Secretary is ready to award a contract for a specified amount. The Treasurer, at the direction of the Board, shall certify that funds are available and that the purpose of the contract is consistent with provisions for the use of solid waste loan program proceeds.

(c) Moneys in the Solid Waste Management Loan Fund may be used, as shall be determined by the Board, for any one or more of the following purposes:

(1) The establishment of one or more debt service reserve funds;
(2) The obtaining of one or more credit facilities as hereinafter defined in this Chapter;
(3) The making of loans to units of local government, which loans may be evidenced by debt instruments; and
(4) The subsidization of interest rates on loans to units of local government.

In addition, any investment income or profit on moneys in the Solid Waste Management Loan Fund or on any moneys transferred from the Fund to a debt service reserve fund may be used, as shall be determined by the Board, to pay administrative expenses of the Agency.

(d) As used in this section, "debt instrument" means an instrument in the nature of a promissory note executed by a unit of local government to evidence a debt to the Agency in respect of a loan made to the unit from the Solid Waste Management Loan Fund and obligation to repay the principal, plus interest, under stated terms. (1989, c. 756, s. 1; 1989 (Reg. Sess., 1990), c. 1004, s. 21; c. 1024, s. 49; 1997-443, s. 11A.119(a).)

§ 159I-8. Eligible purpose.

(a) Loans may be made by the Agency to finance the cost of acquisition or construction of projects. Projects shall include solid waste management projects and capital expenditures to implement such projects, including, without limitation, the purchase of equipment or facilities, construction costs of an incinerator; land to be used for recycling facilities or landfills; leachate collection and treatment systems; liners for landfills; monitoring wells; recycling equipment and facilities; volume reduction equipment; and financing charges.

(b) Projects may not include:

(1) The operational and maintenance costs of solid waste management facilities or programs;
(2) General planning or feasibility studies; or
(3) The purchase of land, unless the land is to be used for a recycling facility or a landfill. (1989, c. 756, s. 1; 1995, c. 384, s. 1.)

§ 159I-9. Application.

(a) All applications for loans shall be filed with the Division. The information required in the application shall be sufficient to permit the Division to determine the eligibility of the applicant pursuant to G.S. 159I-10 and to establish the priority of the application pursuant to G.S. 159I-11. An applicant shall furnish information in addition or supplemental to the information contained in its application upon written request.

(b) Applicants may apply for a loan prior to arranging for repayment. (1989, c. 756, s. 1.)

§ 159I-10. Eligible applicant.

(a) In determining the eligibility of a unit of local government for financing a project with a loan from the Agency, the Agency may consider:

(1) The type and useful life of and the need for the project to be financed or refinanced;
(2) The amount of financing or the cost of the project sought;

(3) The credit rating, if any, of the unit of local government;
(4) The future financing and capital needs of the unit of local government;
(5) The availability and cost to the unit of local government of other methods of financing;
(6) The construction, disbursement, and management procedures in effect in the unit of local government; and
(7) Such other factors as the Agency may, in its discretion, determine to be relevant in the providing of such financing.

(b) As a condition of determining eligibility for participating in one or more financing programs, the Agency may establish:
(1) Procedures requiring compliance by units of local government with such construction, disbursement and accounting procedures, and programs as the Agency may determine;
(2) Minimum credit ratings or criteria;
(3) Minimum and maximum amounts with respect to the cost of the projects to be financed under this Chapter;
(4) Procedures that may be employed by the Agency in respect of units of local government that default in their obligations under loan agreements; and
(5) Such other procedures, conditions, and requirements as the Agency determines to be necessary or desirable in establishing its programs.

Nothing in this Chapter shall be deemed to restrict or limit the powers otherwise available to a unit of local government except to the extent restricted by the terms of any loan agreements or other agreements between a unit and the Agency, to obtain financing or refinancing for projects from a source other than the Agency or to establish or continue its own financing program or to enter into any other financing program.

(c) A unit of local government is not eligible to finance a project with a loan from the Agency unless the unit holds a public hearing on the issue of obtaining a loan from the Agency before it applies for the loan. The unit must publish notice of the hearing in a newspaper that is qualified for legal advertising in the unit at least ten days before the date fixed for the hearing. (1989, c. 756, s. 1.)

§ 159I-11. Priority factors.

(a) The Commission for Public Health shall adopt, pursuant to Chapter 150B of the General Statutes, rules for the assignment of a priority to each application for a loan under this Chapter.

(b) An application for a loan under this Chapter shall be assigned a priority by the Division. Factors to be taken into consideration in assigning such priorities shall include, but are not limited to, projects identified by the Division as addressing emergency solid waste management situations, current implementation by the unit of local government of a recycling program or a waste stream reduction program; financial need; multi-county solid waste management projects; groundwater protection needs; local effort; public health needs; and the proposed purpose of the applicant's loan is to implement a method of disposal that is an alternative to landfilling.

(c) A written statement of each priority assigned shall be prepared by the Division and shall be attached to the application. The priority assigned shall be conclusive.

(d) Any application that does not qualify for a loan for the period in which the application was eligible for consideration by reason of the priority assigned shall be considered for a loan during the next period upon written request of the applicant. If the second application should fail to qualify for a loan during the period for consideration by reason of the priority assigned, the application shall receive no further consideration. An applicant may file a new or amended application at any time. (1989, c. 756, s. 1; 2007-182, s. 2.)

§ 159I-12. Units of local government authorized to borrow money from the Agency by loans.

(a) Any unit of local government determined by the Agency to be eligible pursuant to G.S. 159I-10 may borrow money from the Agency for the purpose of financing or refinancing the cost of the acquisition or construction of a project by a unit. The unit shall enter into a loan agreement with the Agency. The loan agreement shall set forth the terms and conditions of the loan, including the terms and conditions described in G.S. 159I-6(b), as determined and approved by the governing body of the unit.

(b) The obligation of a unit of local government under any loan agreement entered into with the Agency pursuant to this section shall be payable and otherwise secured as provided in G.S. 159I-13.

(c) In connection with entering into a loan obligation, any unit of local government may enter into a credit facility, as defined in G.S. 159I-13(g), and the obligation of a unit of local government under the credit facility to repay any drawing thereunder may be made payable and otherwise secured, to the extent applicable, as provided in G.S. 159I-13.

(d) The Agency or a unit of local government may propose an amendment, including an amendment restructuring or otherwise relating to the principal repayment schedule and the interest payment schedule set forth in such loan agreement, upon a determination by the Agency that such amendment is:

(1) Consistent with the then existing financial condition of the unit of local government and its ability to meet its agreement under the loan agreement; and

(2) Consistent with the then existing financial condition of the Agency and the administration of the Agency's duties and responsibilities under this Chapter.

Nothing in this Chapter shall be deemed as restricting the power of the Agency or the unit of local government to agree to any amendment to a loan agreement.

(e) No loan agreement or amendment to a loan agreement may become effective without the approval of the Local Government Commission. In determining whether a loan agreement or any amendment thereto should be approved, the Local Government Commission may consider, to the extent applicable as shall be determined by the Local Government Commission, the criteria set forth in G.S. 159-52 and G.S. 159-86. The Local Government Commission shall approve any such loan agreement, or any amendment thereto, if, upon the information and evidence it receives, it finds and determines that such loan agreement, or amendment thereto, will satisfy its criteria and is consistent with the purposes of this Chapter. After considering a loan agreement or an amendment thereto, the Local Government Commission shall enter its order either approving or disapproving such agreement or amendment. An order of approval may not be regarded as an approval of the legality of such agreement or amendment. The order of the Local Government Commission disapproving such agreement or amendment is final. (1989, c. 756, s. 1.)

§ 159I-13. Sources and security for units of local government.

(a) The source or sources of and the security for payment of each loan agreement shall be determined by the governing body of such unit of local government and shall be set forth in the loan agreement.

(b) In the event that, under the provisions of The Local Government Bond Act a bond order authorizing the issuance of bonds that pledge the faith and credit of a unit of local government, that is otherwise authorized to issue bonds under the act, for the purpose of providing funds for one or more purposes that constitute eligible projects within the meaning of this Chapter has taken effect, then, in lieu of issuing any bonds authorized or any bond anticipation note in anticipation of such bonds, but not sold and delivered pursuant to such order, the governing body of any unit of local government may enter into a loan agreement authorized by this Chapter and may pledge the faith and credit of such unit to secure its obligation to make the payments required under such loan agreement or a credit facility in support of such loan agreement, provided the following conditions are met:

(1) The aggregate principal amount due under such loan agreement does not exceed the aggregate amount of authorized but unissued bonds, or any bond anticipation notes in anticipation of such bonds, under the bond order; and

(2) The project to be acquired is a purpose for which proceeds of bonds or bond anticipation notes may be expended under the bond order.

(c) Each unit of local government may agree to apply to the payment of a loan agreement any available source or sources of revenues of such unit and, to the extent the generation of such revenues is within the power of such unit, to enter into covenants to take action in order to generate such revenues, provided such agreement to use such sources to make payments or such covenant to generate revenues does not constitute a pledge of the unit's taxing power.

(d) Each unit of local government otherwise having the power of taxation may enter into loan agreements constituting a continuing contract and providing for the making of payments in ensuing fiscal years from any available source or sources of revenues, including the proceeds of taxes realized from the exercise of the unit's power of taxation, appropriated by the unit in its annual budget provided:

(1) The governing body of such unit shall have appropriated sufficient funds to pay any amount to be paid under the loan agreement in the fiscal year in which such contract is entered into, this appropriation to be made prior to the entering into of the loan agreement;

(2) There is included in the loan agreement a provision automatically cancelling the loan agreement in the event the governing body of the unit decides not to appropriate funds to make payment in an ensuing fiscal year in which event the obligation of the unit to make any future payments in any ensuing fiscal year shall cease;

(3) No deficiency judgment requiring the exercise of the unit's power of taxation may be entered against the unit in any action for breach of a contractual obligation authorized by this subsection; and

(4) The taxing power of the unit is not pledged to secure any payments to be made pursuant to the loan agreement and the Agency shall have agreed that it has no right to require the exercise of a unit's power of taxation to secure such loan agreement.

No loan agreement may contain a nonsubstitution clause which restricts the right of a unit to replace or provide a substitute for any project financed pursuant to the loan agreement.

(e) The obligation of a unit of local government with respect to the sources of revenues authorized by subsections (c) and (d) of this section shall be specifically identified in the proceedings of the governing body authorizing the unit to enter into a loan agreement. This loan agreement shall be valid and binding from the date the unit enters into the loan agreement. The sources of payment so specifically identified and then held or thereafter received by a unit, any fiduciary, or the Agency shall immediately be subject to the lien of the loan agreement without any physical delivery of such sources or further act. This lien shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against a unit without regard to whether such parties have notice thereof. The proceedings, the loan agreement, or any other document or action by which the lien on a source of payment is created need not be filed or recorded in any manner other than as provided in the Chapter.

Any loan agreement secured by a source or sources of revenue authorized by subsection (b), (c) or (d) of this section may provide additional security by the granting of a security interest in the project financed to secure payment of the purchase money provided by the loan agreement, including a deed of trust on any real property so acquired.

(f) The interest payable by a unit to the Agency on any loan agreement may be at such rate or rates, including variable rates, as may be determined by the Local Government Commission with the approval of the governing body of such unit. Such approval may be given as the governing body of such unit may direct, including without limitation, a certificate signed by a representative of the unit designated by the governing body of such unit. The Agency may determine that it is necessary that certain provisions in the Agency's bonds or notes be reflected, in similar terms, in loan agreements, so that if it is necessary to vary the interest rate or call the principal prior to maturity of certain of the Agency's bonds or notes the Agency will have the power to effect a similar variation in interest rate or a similar call prior to maturity of certain loan agreements. Accordingly, in fixing the details of a loan agreement, the governing body of such unit may provide that a loan agreement be:

(1) Made payable from time to time on demand or tender for purchase by the Agency, provided a credit facility supports such a loan agreement. A credit facility is not required if the governing body of such unit specifically determines that a credit facility is not required upon a finding and determination by the governing body that the absence of a credit facility will not affect the unit's ability to make payments on demand or tender, and will not materially and adversely affect the financial position of the unit and the entering into of the loan agreement at a reasonable interest cost to the unit;

(2) Additionally supported by a credit facility;

(3) Made subject to redemption or a mandatory tender for purchase by the unit prior to maturity; and

(4) Bear interest at a rate or rates that may vary for such period or periods of time, all as may be provided in the proceedings of the governing body providing for the entering into of the loan agreement, including, without limitation, such variation as may be permitted pursuant to a par formula.

(g) As used in this section:

(1) "Credit facility" means an agreement entered into by the unit of local government with a bank, savings and loan association, or other banking institution; an insurance company, reinsurance company, surety company or other insurance institution; a corporation, investment banking firm or other investment institution; or any financial institution providing for prompt payment of all or any part of the principal or purchase price (whether at maturity, presentment, or tender for purchase, redemption, or acceleration), redemption premium, if any, and interest on any loan agreement payable on demand or tender by the Agency, in consideration of the unit agreeing to repay the provider of such credit facility in accordance with the terms and provisions of the agreement; the provider of any credit facility may be located either within or without the United States of America.

(2) "Par formula" shall mean any provision or formula adopted by the unit to provide for the adjustment from time to time, of the interest rate or rates borne by any loan agreement, including:

  a. A provision for such adjustment so that the purchase price of such loan agreement in the open market would be as close to par as possible.
  b. A provision providing for such adjustment based upon a percentage or percentages of a prime rate or base rate, which percentage or percentages may vary or be applied for different periods of time.
  c. A provision providing for such adjustment based upon the adjustments of the interest rate or rates of the Agency's bonds and notes, or
  d. Such other provision as the unit may determine to be consistent with this Chapter and will not affect the unit's ability to pay the principal of and the interest on any loan agreement, and will not materially and adversely affect the financial position of the unit and the entering into of the loan agreement at a reasonable interest cost to the unit.

(h) Any loan agreement may provide for an acceleration of the repayment schedule. (1989, c. 756, s. 1.)

Editor's Note. — The Local Government Bond Act, referred to in subsection (b), is codified at G.S. 159-43 et seq.

§ 159I-14. Credit of State not pledged.

Bonds or notes issued by the Agency under the provisions of this Chapter shall not be secured by a pledge of the faith and credit of the State or of any political subdivision thereof or be deemed to create an indebtedness of the State, or of any such political subdivision thereof, requiring any voter approval, but shall be payable solely from Agency revenues and other funds provided therefor. Each bond or note issued by the Agency under this Chapter shall contain on its face a statement to the effect that the Agency shall not be obligated to pay the same, the interest, or the premium thereon except from Agency revenues and other funds pledged therefor and that neither the faith and credit nor the taxing power of the State or of any political subdivision thereof is pledged as security for the payment of the principal of or the interest or premium on such Agency bond or note.

Expenses incurred by the Agency in carrying out the provisions of this Chapter shall be payable from revenues and other funds provided pursuant to, or available for use under, this Chapter. No liability may be incurred by the Agency beyond the extent to which moneys shall have been so provided. (1989, c. 756, s. 1.)

§ 159I-15. Bonds and notes.

(a) The Agency may provide for the issuance at one time or from time to time of bonds and notes, including bond anticipation notes and renewal notes, of the Agency to carry out and effectuate its corporate purposes. The principal of and interest on such bonds or notes shall be payable solely from funds provided under this Chapter for such payment. Any bond anticipation notes may be made payable from the proceeds of bonds or renewal notes or, in the event bond or renewal note proceeds are not available, notes may be paid from any available Agency revenues or other funds provided for this purpose. Bonds and notes may also be paid from the proceeds of any credit facility. The bonds and notes of each issue shall be dated and may be made redeemable prior to maturity at the option of the Agency or otherwise, at such price or prices, on such date or dates, and upon such terms and conditions as may be determined by the Agency. The bonds or notes may also be made payable from time to time on demand or tender for purchase by owner, all upon such terms and conditions as may be determined by the Agency. Any such bonds or notes shall bear interest at such rate or rates, including variable rates, as may be determined by the Local Government Commission with the approval of the Agency.

The Agency may also issue one or more series of bonds and notes, including bond anticipation notes and renewal notes, from time to time, to make loans to an individual unit of local government upon a determination, by resolution, of the Board as follows:

(1) The issuance of a series of bonds or notes by the Agency in order to make a loan to an individual unit of local government, as distinct from the proceeds of such series of bonds or notes being used to provide a pool of money to make a number of such loans, does not materially adversely affect the ability of the Agency to effect its general policy of making loans on a pooled basis.

(2) The issuance of the series of bonds or notes will not economically disadvantage the Agency and will provide an economic benefit to the individual unit of local government.

(3) The use, if any, of any of the proceeds of the Solid Waste Management Loan Fund in connection with the Agency financing for an individual unit of local government is consistent with the Agency's use of any proceeds in connection with loans made on a pooled basis.

All of the provisions of this Chapter, including, without limitation, G.S. 159I-13 relating to the sources and security that may be used by units of local government in making loans, shall apply to any Agency financing for an individual unit of local government.

(b) In fixing the details of bonds or notes, the Agency may provide that any of the bonds or notes may:

(1) Be made payable from time to time on demand or tender for purchase by the owner thereof provided a credit facility supports such bonds or notes, unless the Local Government Commission specifically determines that a credit facility is not required upon a finding and determination by the Local Government Commission that the absence of a credit facility will not materially and adversely affect the financial position of the Agency and the marketing of the bonds or notes at a reasonable interest cost to the Agency;

(2) Be additionally supported by a credit facility;

(3) Be made subject to redemption or a mandatory tender for purchase prior to maturity;

(4) Bear interest at a rate or rates that may vary for such period or periods of time, all as may be provided in the proceedings providing for the issuance of such bonds or notes including, without limitation, such variations as may be permitted pursuant to a par formula; and

(5) Be made the subject of a remarketing agreement whereby an attempt is made to remarket the bonds or notes to new purchasers prior to their presentment for payment to the provider of the credit facility or to the Agency.

(c) As used in this section:

(1) "Credit facility" means an agreement entered into by the Agency with a bank, savings and loan association or other banking institution, an insurance company, reinsurance company, surety company or other insurance institution, a corporation, investment banking firm or other investment institution, or any financial institution providing for

prompt payment of all or any part of the principal or purchase price (whether at maturity, presentment or tender for purchase, redemption or acceleration), redemption premium, if any, and interest on any bonds or notes payable on demand or tender by the owner, in consideration of the Agency agreeing to repay the provider of such credit facility in accordance with the terms and provisions of such agreement; the provider of any credit facility may be located either within or without the United States of America.

(2) "Par formula" means any provision or formula adopted by the Agency to provide for the adjustment, from time to time, of the interest rate or rates borne by any bonds or notes including:

a. A provision providing for the adjustment so that the purchase price of the bonds or notes in the open market would be as close to par as possible;

b. A provision providing for the adjustment based upon a percentage or percentages of a prime rate or base rate, which percentage or percentages may vary or be applied for different periods of time; or

c. Such other provisions as the Agency may determine to be consistent with this Chapter and will not materially and adversely affect the financial position of the Agency and the marketing of the bonds or notes at a reasonable interest cost to the Agency.

(d) Notes shall mature at such time or times and bonds shall mature, not exceeding 40 years from their date or dates, as may be determined by the Agency. The Agency shall determine the form and manner of execution of the bonds or notes, including any interest coupons to be attached thereto, and shall fix the denomination or denominations and the place or places of payment of principal and interest, which may be any bank or trust company within or without the United States. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or notes or coupons, if any, shall cease to be this officer before the delivery thereof, this signature or the facsimile shall nevertheless be valid and sufficient for all purposes the same as if the officer had remained in office until the delivery and any bond or note or coupon may bear the facsimile signatures of such persons who at the actual time of the execution thereof shall be the proper officers to sign although at the date of the bond or note or coupon the persons may not have been these officers. The Agency may also provide for the authentication of the bonds or notes by a trustee or other authenticating agent. The bonds or notes may be issued as certificated or uncertificated obligations or both, and in coupon or in registered form, or both, as the Agency may determine. Provision may be made for the registration of any coupon bonds or notes as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds or notes of any bonds or notes registered as to both principal and interest, and for the interchange of registered and coupon bonds or notes. Any system for registration may be established as the Agency may determine.

(e) No bonds or notes may be issued by the Agency under this Chapter unless the issuance thereof is approved and the bonds or notes are sold by the Local Government Commission as provided in this Chapter. The Agency shall file with the Secretary of the Local Government Commission an application requesting approval of the issuance of the bonds or notes which application shall contain any such information and shall have attached to it any such documents concerning the proposed financing as the Secretary of the Local Government Commission may require.

In determining whether a proposed bond or note issue should be approved, the Local Government Commission may consider, to the extent applicable as shall be determined by the Local Government Commission, the criteria set forth in G.S. 159-52 and G.S. 159-86, as well as the effect of the proposed financing upon any scheduled or proposed sale of obligations by the State, by any of its agencies or departments, or by any unit of local government in the State. The Local Government Commission shall approve the issuance of such bonds or notes if, upon the information and evidence it receives, it finds and determines that the proposed financing will satisfy such criteria and will effect the purposes of this Chapter.

Upon the filing with the Local Government Commission of a written request of the Agency requesting that its bonds or notes be sold, the bonds or notes may be sold by the Local Government Commission in such manner, either at public or private sale, and for such price or prices as the Local Government Commission shall determine to be in the best interest of the Agency and to effect the purposes of this Chapter, provided that the sale shall be approved by the Agency.

(f) The proceeds of any bonds or notes shall be used solely for the purposes for which the bonds or notes were issued and shall be disbursed in such manner and under such restrictions, if any, as the Agency may provide in the resolution authorizing the issuance of, or in any trust agreement securing, such bonds or notes.

(g) Prior to the preparation of definitive bonds, the Agency may issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when the bonds have been executed and are available for delivery. The Agency may also provide for the replacement of any bonds or notes which shall become mutilated or shall be destroyed or lost.

(h) Bonds or notes may be issued under the provision of this Chapter without obtaining, except as otherwise expressly provided in this Chapter, the consent of any department, division, commission, board, body, bureau, or agency of the State and without any other proceedings or the happening of any conditions or things other than those proceedings, conditions, or things that are specifically required by this Chapter and the provisions of the resolution authorizing the issuance of, or any trust agreement securing, such bonds or notes. (1989, c. 756, s. 1; 1989 (Reg. Sess., 1990), c. 1004, ss. 22, 23; c. 1024, s. 38(a), (b).)

§ 159I-16. Trust agreement or resolution.

(a) In the discretion of the Agency, any bonds and notes issued under the provisions of this Chapter may be secured by a trust agreement by and between the Agency and a corporate trustee or by a resolution providing for the appointment of a corporate trustee. The corporate trustee may be, in either case, any trust company or bank having the powers of a trust company within or without the State. Such trust agreement or resolution may pledge or assign all or part of the revenues or assets of the Agency, including, without limitation, loan agreements, agreements or commitments to enter into loan agreements, contracts, agreements and other security or investment obligations, any fees or charges made or received by the Agency, the moneys received in payment of loans and interest thereon, and any other moneys received by the Agency. The trust agreement or resolution may contain such provisions for protecting and enforcing the rights and remedies of the owners of any bonds or notes issued thereunder as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the Agency in respect of the purposes to which bond or note proceeds may be applied, the disposition and application of the revenues or assets of the Agency, the duties of the Agency with respect to the acquisition and disposition of any project and the purchase, acceptance and disposition of any loan agreement, the charges and collection of any revenues and administrative charges, the terms and conditions for the issuance of additional bonds and notes, and the custody, safeguarding, investment, and application of all moneys. All bonds and notes issued under this Chapter shall be equally and ratably secured by a pledge, charge, and lien upon the revenues or assets provided in such trust agreement or resolution, without priority by reason of number, or dates of bonds or notes, execution, or delivery, in accordance with the provision of this Chapter and of such trust agreement or resolution; except that the Agency may provide in such trust agreement or resolution that bonds or notes issued pursuant thereto shall, to the extent and in the manner prescribed in such trust agreement or resolution, be subordinated and junior in standing, with respect to the payment of principal and interest and to the security thereof, to any other bonds or notes. It shall be lawful for any bank or trust company that may act as depositary of the proceeds of bonds or notes, revenues, assets, or other money hereunder to furnish such indemnifying bonds or to pledge such securities as may be required by the Agency. Any trust agreement or resolution may set out the rights and remedies of the owners of any bonds or notes and of any trustee, and may restrict the individual rights of action by any such owners. In addition to the foregoing, any trust agreement or resolution may contain such other provisions as the Agency may deem reasonable and proper for the security of the owners of any bonds or notes. Expenses incurred in carrying out the provisions of any trust agreement or resolution may be treated as a part of the cost of any project or as an administrative charge and may be paid from the revenues or assets pledged or assigned to the payment of the principal of and the interest on bonds and notes or from any other funds available to the Agency.

(b) The Agency may set the terms and conditions of loan agreements, including, without limitation, the repayment terms, so as to provide a fund sufficient, with such other funds as may be made available therefor, including, without limitation, investment income and the proceeds of administrative charges to the extent determined by the Agency:

(1) To pay the costs of operation of the Agency,
(2) To pay the principal of and the interest on all bonds and notes as the same shall become due and payable, and
(3) To create and maintain any reserves provided for in the trust agreement or resolution securing such bonds or notes.

(c) All pledges of any assets or revenues of the Agency as authorized by this Chapter shall be valid and binding from the time when such pledges are made. All such assets or revenues so pledged and thereafter received by the Agency shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the Agency, irrespective of whether such parties have notice thereof. The trust agreement or resolution by which a pledge is created or any loan obligation need not be filed or recorded except in the records of the Agency.

(d) The State does pledge to and agree with the holders of any bonds or notes issued by the Agency that so long as any of such bonds or notes are outstanding and unpaid the State will not limit or alter the rights vested in the Agency at the time of issuance of the bonds or notes to set the terms and conditions of loan agreements in connection with which the bonds or notes were issued, so as to provide a fund sufficient, with such other funds as may be made available therefor, including without limitation, investment income and the proceeds of administrative charges to the extent determined by the Agency, to pay the costs of operation of the Agency, to pay the principal of and the interest on all bonds and notes as the same shall become due and payable, and to create and maintain any reserves provided therefor, and to fulfill the terms of any agreements made with the bondholders or noteholders. The State shall in no way impair the rights and remedies of the bondholders or noteholders until the bonds or notes and all costs and expenses in connection with any action or proceedings by or on behalf of the bondholders or noteholders, are fully paid, met, and discharged. (1989, c. 756, s. 1; 1989 (Reg. Sess., 1990), c. 1004, ss. 24, 25; c. 1024, s. 38(c), (d).)

§ 159I-17. Trust funds.

Notwithstanding any other provisions of law to the contrary, all moneys received pursuant to this Chapter, including, without limitation, payments made under and the proceeds received from the sale or other disposition of loan agreement, proceeds received from the disposition by the Agency of any project and any other revenues and funds received by the Agency, (except any portion, as designated by the Agency, representing administrative charges), shall be deemed to be trust funds to be held and applied solely as provided in this Chapter. The resolution authorizing the issuance of, or any trust agreement securing, any bonds or notes may provide that any of such moneys may be invested temporarily pending the disbursement thereof and shall provide that any officer with whom or any bank or trust company with which such moneys shall be deposited, shall act as trustee of such moneys and shall hold and apply the same for the purposes of this Chapter subject to such regulations as this Chapter or such resolution or trust agreement may provide. Any such moneys may be deposited and invested as provided in G.S. 159-30 and G.S. 147-69.1, as either section may be amended from time to time, provided, however that:

(1) Any deposit or investment authorized by G.S. 159-30 or G.S. 147-69.1 may be deposited or invested with any bank located inside or outside the State, including outside the United States of America, provided that any such bank is a bank whose unsecured obligations are rated in either of the two highest rating categories by either Moody's Investors Service or Standard & Poor's Corporation; and

(2) Any deposit or investment may be made pursuant to either G.S. 159-30 or G.S. 147-69.1. If one section is less restrictive or the other section authorizes additional deposit and investment options, the Agency may proceed under either section in order that the Agency shall have the broadest deposit and investment options available under either section. (1989, c. 756, s. 1.)

§ 159I-18. Remedies.

Any owner of bonds or notes issued under the provisions of this Chapter or any coupons appertaining thereto, and the trustee under any trust agreement securing or resolution authorizing the issuance of such bonds or notes, except to the extent the rights herein given may be restricted by such trust agreement or resolution, may either at law or in equity, by suit, action, mandamus, or other proceeding, protect and enforce any and all rights under the laws of the State or granted hereunder or under such trust agreement or resolution, or under any other contract executed by the Agency pursuant to this Chapter; and may enforce and compel the performance of all duties required by this Chapter or by such trust agreement or resolution by the Agency or by any officer thereof. (1989, c. 756, s. 1.)

§ 159I-19. Status of bonds and notes under Uniform Commercial Code.

All bonds and notes and interest coupons, if any, issued under this Chapter are hereby made investment securities within the meaning of and for all the purposes of Article 8 of the Uniform Commercial Code, as enacted in Chapter 25 of the General Statutes. (1989, c. 756, s. 1.)

§ 159I-20. Bonds and notes eligible for investment.

Bonds and notes issued under the provisions of this Chapter are hereby made securities in which all public offices, agencies, and public bodies of the State and its political subdivisions, all insurance companies, trust companies, investment companies, banks, savings banks, building and loan associations, credit unions, pension or retirement funds, other financial institutions engaged in business in the State, executors, administrators, trustees, and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such bonds or notes are hereby made securities, which may properly and legally be deposited with and received by any officer or agency of the State or political subdivision of the State for any purpose for which the deposit of bonds, notes, or obligations of the State or any political subdivision is now or may hereafter be authorized by law. (1989, c. 756, s. 1.)

§ 159I-21. Refunding bonds and notes.

(a) The Agency may issue bonds and notes for the purposes of refunding any bonds or notes issued pursuant to this Chapter, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption or maturity of such bonds or notes, and, if deemed advisable by the Agency, for any additional corporate purposes of the Agency.

Any such refunding bonds or notes may bear interest at rates, including variable rates as authorized in G.S. 159I-15, lower, the same as, or higher than and have maturities shorter than, the same as, or longer than the bonds or notes being refunded. The proceeds of any such refunding bonds or notes may be applied:

(1) To the payment and retirement of the bonds or notes being refunded by direct application to such payment and retirement;
(2) To the payment and retirement of the bonds or notes being refunded by the deposit in trust of such proceeds;
(3) To the payment of any expenses incurred in connection with such refunding; and
(4) For any other uses not inconsistent with such refunding.

(b) Any money so held in trust may be invested in:

(1) Direct obligations of the United States of America.
(2) Obligations, the principal of and the interest on which are guaranteed by the United States of America.
(3) Evidences of ownership of a proportionate interest in specified obligations described in subdivision (1) and (2) of this subsection, which obligations are held by a bank or trust company organized and existing under the laws of the United States of America or any state thereof in the capacity of custodian.
(4) Obligations of the State or local governments of the State, provision for the payment of the principal of and interest on which obligations shall have been made by deposit with a trustee or escrow agent of obligations described in subdivisions (1), (2) or (3) of this subsection, the maturing principal of any interest on which, when due and payable, shall provide sufficient money with any other money held in trust for such purpose to pay the principal of, premium, if any, and interest on such obligations of the State or units of local government and which are rated in the highest category by Standard & Poor's Corporation and Moody's Investors Service.

(5) Obligations of the State or local governments of the State, the principal of and interest on which, when due and payable, have been insured by a bond insurance company which is rated in the highest category by Standard & Poor's Corporation and Moody's Investors Service.

(6) Full faith and credit obligations of the State or local governments of the State, which are rated in the highest category by Standard & Poor's Corporation and Moody's Investors Service.

(7) Any obligations or investments in which the State Treasurer is authorized, at the time of such investment, to invest funds of the State.

The proceedings providing for the issuance of any refunding bonds or notes may limit the investments in which the proceeds of a particular refunding issue may be invested.

(c) Nothing in this section shall be construed as a limitation on:

(1) The duration of any deposit in trust for the retirement of bonds or notes being refunded, but which shall not have matured and which shall not be then redeemable or, if then redeemable, shall not have been called for redemption; or

(2) The power to issue bonds or notes for the combined purpose of refunding bonds or notes and providing moneys for any corporate purpose as provided in this Chapter. (1989, c. 756, s. 1.)

§ 159I-22. Officers not liable.

No member or officer of the Agency shall be subject to any personal liability or accountability by reason of his execution of any bonds or notes or the issuance thereof. (1989, c. 756, s. 1.)

§ 159I-23. Tax exemption.

All of the bonds and notes authorized by this Chapter shall be exempt from all State, county, and municipal taxation or assessment, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, excluding inheritance and gift taxes, income taxes on the gain from the transfer of the bonds and notes, and franchise taxes. The interest on the bonds and notes shall not be subject to taxation as income. (1989, c. 756, s. 1; 1995, c. 46, s. 19.)

§ 159I-24. Conflicts of interest.

If any member, officer, or employee of the Agency shall be interested either directly or indirectly, or shall be an officer or employee of or have an ownership interest in any firm or corporation, not including units of local government interested directly or indirectly, in any contract with the Agency, such interest shall be disclosed to the Agency and shall be set forth in the minutes of the Agency. The member, officer, or employee having an interest therein shall not participate on behalf of the Agency in the authorization of any such contract. Other provisions of law notwithstanding, failure to take any or all actions necessary to carry out the purposes of this section may not affect the validity of any bonds, notes, or loan agreements issued pursuant to the provisions of this Chapter. (1989, c. 756, s. 1.)

§ 159I-25. Disbursement.

(a) The proceeds of any bonds or notes to be used to make loans shall be disbursed by, or pursuant to the direction of, the Office of State Budget and

Management. No such proceeds shall be disbursed until the Office of State Budget and Management has received from the Division a certificate of eligibility that states that the applicant meets all eligibility criteria, and that all procedural requirements of this Chapter have been met.

(b) Once the prerequisites for disbursement have been satisfied pursuant to subsection (a) of this section, the proceeds shall be disbursed as the Board may provide. (1989, c. 756, s. 1; 2000-140, s. 93.1(a); 2001-424, s. 12.2(b).)

§ 159I-26. Withdrawal of commitment.

Failure of an applicant, within one year of the date of acceptance of a loan application to arrange for necessary financing of the proposed project, shall constitute sufficient cause for withdrawal of the commitment. Prior to withdrawal of a commitment, the Division shall give due consideration to any extenuating circumstances presented by the applicant as reasons for its failure to arrange necessary financing. The commitment may be extended for an additional period of time if, in the judgment of the Division, an extension is justified. (1989, c. 756, s. 1.)

§ 159I-27. Inspection.

(a) The Division shall perform one or more inspections of each project and shall monitor its progress. If the Division determines that the project is not in substantial compliance with the approved schedule of implementation, the Division may revoke its approval of the project, further disbursement of loan proceeds may be rescinded, and the outstanding loan, together with accrued interest, may immediately become due and payable.

(b) Inspection of a project for which a loan has been made under this Chapter may be performed by qualified personnel of the Division or by qualified professional engineers, registered in this State, who have been approved by the Division. No person may be approved to perform inspections who is an officer or employee of the unit of local government to which the loan was made or who is an owner, officer, employee or agent of a contractor or subcontractor engaged in the construction of any project for which the loan was made. (1989, c. 756, s. 1.)

§ 159I-28. Rules.

(a) The Office of State Budget and Management and the Commission for Public Health may adopt, modify and repeal rules establishing the procedures to be followed in the administration of this Chapter and regulations interpreting and applying the provisions of this Chapter, as provided in the Administrative Procedure Act. Uniform rules may be jointly adopted where feasible and desirable, and no rule jointly adopted may be modified or revoked except upon the concurrence of both agencies involved.

(b) A copy of the rules adopted to implement the provisions of this Chapter shall be furnished free of charge by the Division and the Office of State Budget and Management to any unit of local government. (1989, c. 756, s. 1; 1997-443, s. 11A.114; 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2007-182, s. 2.)

§ 159I-29. Annual reports to Joint Legislative Commission on Governmental Operations.

(a) The Office of State Budget and Management and the Division shall prepare and file on or before July 31 of each year with the Joint Legislative

Commission on Governmental Operations a consolidated report for the preceding fiscal year concerning the allocation of loans authorized by this Chapter.

(b) The portion of the report prepared by the Office of State Budget and Management shall set forth for the preceding fiscal year itemized and total allocations for loans authorized by the Division. The Office of State Budget and Management shall also prepare a summary report of all allocations for each fiscal year; the total funds received and allocations made; and the total unallocated funds as of the end of the preceding fiscal year.

(c) The portion of the report prepared by the Division shall include:

(1) Identification of each loan made during the preceding fiscal year; the total amount of the loan commitments; the sums actually paid during the preceding fiscal year to each loan disbursed and to each loan previously committed but unpaid; and the total loan funds paid during the preceding fiscal year;

(2) A summary for all preceding years of the total number of loans made; the total funds committed to these loans; the total sum actually paid to loans; and

(3) Assessment and evaluation of the effects that approved projects have had upon solid waste management within the purposes of this Chapter.

(d) The report shall be signed by each of the chief executive officers of the two State agencies preparing the report. (1989, c. 756, s. 1; 1993, c. 553, s. 57; 2000-140, s. 93.1(a); 2001-424, s. 12.2(b).)

§ 159I-30. Additional powers of units of local government; issuance of special obligation bonds and notes.

(a) Authorization. — Any unit of local government may borrow money for the purpose of financing or refinancing its cost of the acquisition or construction of a project and may issue special obligation bonds and notes, including bond anticipation notes and renewal notes, pursuant to the provisions of this section and the applicable provisions of this Chapter for this purpose.

(b) Pledge. — Each unit of local government may pledge for the payment of a special obligation bond or note any available source or sources of revenues of the unit and, to the extent the generation of the revenues is within the power of the unit, may enter into covenants to take action in order to generate the revenues, as long as the pledge of these sources for payments or the covenant to generate revenues does not constitute a pledge of the unit's taxing power.

No agreement or covenant shall contain a nonsubstitution clause which restricts the right of a unit of local government to replace or provide a substitute for any project financed pursuant to this section.

The sources of payment pledged by a unit of local government shall be specifically identified in the proceedings of the governing body authorizing the unit to issue the special obligation bonds or notes.

After the issuance of special obligation bonds or notes, the governing body of the issuing unit may identify one or more additional sources of payment for the bonds or notes and pledge these sources, as long as the pledge of the sources does not constitute a pledge of the taxing power of the unit. Each source of additional payment pledged shall be specifically identified in the proceedings of the governing body of the unit pledging the source. The governing body of the unit may not pledge an additional source of revenue pursuant to this paragraph unless the pledge is first approved by the Local Government Commission pursuant to the procedures provided in subsection (i) of this section.

The sources of payment so pledged and then held or thereafter received by a unit or any fiduciary thereof shall immediately be subject to the lien of the pledge without any physical delivery of the sources or further act. The lien shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against a unit without regard to whether the parties have notice thereof. The proceedings or any other document or action by which the lien on a source of payment is created need not be filed or recorded in any manner other than as provided in this Chapter.

(b1) Security Interest. — In connection with issuing its special obligation bonds or special obligation bond anticipation notes under this Chapter, a unit of local government may grant a security interest in the project financed, or in all or some portion of the property on which the project is located, or in both. If a unit of local government determines to provide additional security as authorized by this subsection, the following conditions apply:

(1) No bond order may contain a nonsubstitution clause that restricts the right of a unit of local government to:
   a. Continue to provide a service or activity; or
   b. Replace or provide a substitute for any municipal purpose financed pursuant to the bond order.

(2) A bond order is subject to approval by the Commission under Article 8 of Chapter 159 of the General Statutes if it:
   a. Meets the standards set out in G.S. 159-148(a)(1), 159-148(a)(2), and 159-148(a)(3), or involves the construction or repair of fixtures or improvements on real property; and
   b. Is not exempted from the provisions of that Article by one of the exemptions contained in G.S. 159-148(b)(1) and (2).

   The Commission approval required by this subdivision is in addition to the Commission approval required by subsection (i) of this section.

(3) No deficiency judgment may be rendered against any unit of local government in any action for breach of a bond order authorized by this section, and the taxing power of a unit of local government is not and may not be pledged directly or indirectly to secure any moneys due under a bond order authorized by this section. This prohibition does not impair the right of the holder of a bond or note to exercise a remedy with respect to the revenues pledged to secure the bond or note, as provided in the bond order, resolution, or trust agreement under which the bond or note is authorized and secured. A unit of local government may, in its sole discretion, use tax proceeds to pay the principal of or interest or premium on bonds or notes, but shall not pledge or agree to do so.

(4) Before granting a security interest under this subsection, a unit of local government shall hold a public hearing on the proposed security interest. A notice of the public hearing shall be published once at least 10 days before the date fixed for the hearing.

(c) Payment; Call. — Any bond anticipation notes may be made payable from the proceeds of bonds or renewal notes or, in the event bond or renewal note proceeds are not available, the notes may be paid from any sources available under G.S. 159I-30(b). Bonds or notes may also be paid from the proceeds of any credit facility. The bonds and notes of each issue shall be dated and may be made redeemable prior to maturity at the option of the unit of local government or otherwise, at such price or prices, on such date or dates, and upon such terms and conditions as may be determined by the unit. The bonds or notes may also be made payable from time to time on demand or tender for purchase by the owner, upon terms and conditions determined by the unit.

(d) Interest. — The interest payable by a unit on any special obligation bonds or notes may be at such rate or rates, including variable rates as authorized in this section, as may be determined by the Local Government Commission with the approval of the governing body of the unit. This approval may be given as the governing body of the unit may direct, including, without limitation, a certificate signed by a representative of the unit designated by the governing body of the unit.

(e) Nature of Obligation. — Special obligation bonds and notes shall be special obligations of the unit of local government issuing them. The principal of, and interest and any premium on, special obligation bonds and notes shall be secured solely by any one or more of the sources of payment authorized by this section as may be pledged in the proceedings, resolution, or trust agreement under which they are authorized or secured. Neither the faith and credit nor the taxing power of the unit of local government are pledged for the payment of the principal of, or interest or any premium on, any special obligation bonds or notes, and no owner of special obligation bonds or notes has the right to compel the exercise of the taxing power by the unit in connection with any default thereon. Every special obligation bond and note shall recite in substance that the principal and interest and any premium on the bond or note are secured solely by the sources of payment pledged in the bond order, resolution, or trust agreement under which it is authorized or secured. The following limitations apply to payment from the specified sources:

(1) Any such use of these sources will not constitute a pledge of the unit's taxing power; and

(2) The unit is not obligated to pay the principal or interest or premium except from these sources.

(f) Details. — In fixing the details of bonds or notes, the unit of local government may provide that any of the bonds or notes may:

(1) Be made payable from time to time on demand or tender for purchase by the owner thereof as long as a credit facility supports the bonds or notes, unless the Local Government Commission specifically determines that a credit facility is not required upon a finding and determination by the Local Government Commission that the absence of a credit facility will not materially and adversely affect the financial position of the unit and the marketing of the bonds or notes at a reasonable interest cost to the unit;

(2) Be additionally supported by a credit facility;

(3) Be made subject to redemption or a mandatory tender for purchase prior to maturity;

(4) Bear interest at a rate or rates that may vary for such period or periods of time, all as may be provided in the proceedings providing for the issuance of the bonds or notes including, without limitation, such variations as may be permitted pursuant to a par formula; and

(5) Be made the subject of a remarketing agreement whereby an attempt is made to remarket the bonds or notes to new purchasers prior to their presentment for payment to the provider of the credit facility or to the unit.

(g) Definitions. — The following definitions apply in this section:

(1) Credit facility. — An agreement entered into by the unit with a bank, a savings and loan association, or another banking institution; an insurance company, a reinsurance company, a surety company, or another insurance institution; a corporation, an investment banking firm, or another investment institution; or any financial institution, providing for prompt payment of all or any part of the principal, or purchase price (whether at maturity, presentment, or tender for purchase, redemption, or acceleration), redemption premium, if any, and interest on any bonds or notes payable on demand or tender by the owner, in consideration of the unit agreeing to repay the provider of the credit facility in accordance with the terms and provisions of the agreement; the provider of any credit facility may be located either within or without the United States of America.

(2) Par formula. — Any provision or formula adopted by the unit to provide for the adjustment, from time to time of the interest rate or rates borne by any bonds or notes including:
  a. A provision providing for such adjustment so that the purchase price of such bonds or notes in the open market would be as close to par as possible;
  b. A provision providing for such adjustment based upon a percentage or percentages of a prime rate or base rate, which percentage or percentages may vary or be applied for different periods of time; or
  c. Any other provision as the unit may determine to be consistent with this section and the applicable provisions of this Chapter and does not materially and adversely affect the financial position of the unit and the marketing of the bonds or notes at a reasonable interest cost to the unit.

(3) Project. — Any of the following:
  a. A project as defined in G.S. 159I-3.
  b. Any of the following as defined in S.L. 1998-132: water supply systems, water conservation projects, water reuse projects, wastewater collection systems, and wastewater treatment works.
  c. With respect to a city, any service or facility authorized by G.S. 160A-536 and provided in a municipal service district.

(g1) Credit Facility. — The obligation of a unit of local government under a credit facility to repay any drawing thereunder may be made payable and otherwise secured, to the extent applicable, as provided in this section.

(h) Term; Form. — Notes shall mature at such time or times and bonds shall mature, not exceeding 40 years from their date or dates, as may be determined by the unit of local government, except that no such maturity dates may exceed the maximum maturity periods prescribed by the Local Government Commission pursuant to G.S. 159-122, as it may be amended from time to time. The unit shall determine the form and manner of execution of the bonds or notes, including any interest coupons to be attached thereto, and shall fix the denomination or denominations and the place or places of payment of principal and interest, which may be any bank or trust company within or without the United States. In case any officer of the unit whose signature, or a facsimile of whose signature, appears on any bonds or notes or coupons, if any, ceases to be the officer before delivery thereof, the signature or facsimile shall nevertheless be valid and sufficient for all purposes the same as if the officer had remained in office until the delivery. Any bond or note or coupon may bear the facsimile signatures of such persons who at the actual time or the execution thereof were the proper officers to sign although at the date of the bond or note or coupon these persons may not have been the proper officers. The unit may also provide for the authentication of the bonds or notes by a trustee or other authenticating agent. The bonds or notes may be issued as certificated or uncertificated obligations or both, and in coupon or in registered form, or both, as the unit may determine, and provision may be made for the registration of any coupon bonds or notes as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds or notes of any bonds or notes registered as to both principal and interest, and for the interchange of registered and coupon bonds or notes. Any system for registration may be established as the unit may determine.

(i) Local Government Commission Approval. — No bonds or notes may be issued by a unit of local government under this section unless the issuance is approved and the bonds or notes are sold by the Local Government Commission as provided in this section and the applicable provisions of this Chapter. The unit shall file with the Secretary of the Local Government Commission an application requesting approval of the issuance of the bonds or notes, which application shall contain such information and shall have attached to it such documents concerning the proposed financing as the Secretary of the Local Government Commission may require. The Commission may prescribe the form of the application. Before the Secretary accepts the application, the Secretary may require the governing body of the unit or its representatives to attend a preliminary conference, at which time the Secretary or the deputies of the Secretary may informally discuss the proposed issue and the timing of the steps taken in issuing the special obligation bonds or notes.

In determining whether a proposed bond or note issue should be approved, the Local Government Commission may consider, to the extent applicable as shall be determined by the Local Government Commission, the criteria set forth in G.S. 159-52 and G.S. 159-86, as either may be amended from time to time, as well as the effect of the proposed financing upon any scheduled or proposed sale of obligations by the State or by any of its agencies or departments or by any unit of local government in the State. The Local Government Commission shall approve the issuance of the bonds or notes if, upon the information and evidence it receives, it finds and determines that the proposed financing will satisfy such criteria and will effect the purposes of this section and the applicable provisions of this Chapter. An approval of an issue shall not be regarded as an approval of the legality of the issue in any respect. A decision by the Local Government Commission denying an application is final.

Upon the filing with the Local Government Commission of a written request of the unit requesting that its bonds or notes be sold, the bonds or notes may be sold by the Local Government Commission in such manner, either at public or private sale, and for such price or prices as the Local Government Commission shall determine to be in the best interests of the unit and to effect the purposes of this section and the applicable provisions of this Chapter, if the sale is approved by the unit.

(j) Proceeds. — The proceeds of any bonds or notes shall be used solely for the purposes for which the bonds or notes were issued and shall be disbursed in such manner and under such restrictions, if any, as the unit may provide in the resolution authorizing the issuance of, or in any trust agreement securing, the bonds or notes.

(k) Interim Documents; Replacement. — Prior to the preparation of definitive bonds, the unit may issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when definitive bonds have been executed and are available for delivery. The unit may also provide for the replacement of any bonds or notes which shall become mutilated or shall be destroyed or lost.

(*l*) No Other Conditions. — Bonds or notes may be issued under the provisions of this section and the applicable provisions of this Chapter without obtaining, except as otherwise expressly provided in this section and the applicable provisions of this Chapter, the consent of any department, division, commission, board, body, bureau, or agency of the State and without any other proceedings or the happening of any conditions or things other than those proceedings, conditions, or things that are specifically required by this section, the applicable provisions of this Chapter, and the provisions of the resolution authorizing the issuance of, or any trust agreement securing, the bonds or notes.

(m) Trust. — In the discretion of the unit of local government, any bonds and notes issued under the provisions of this section may be secured by a trust agreement by and between the unit and a corporate trustee or by a resolution providing for the appointment of a corporate trustee. Bonds and notes may also be issued under an order or resolution without a corporate trustee. The corporate trustee may be, in either case any trust company or bank having the powers of a trust company within or without the State. The trust agreement or resolution may pledge or assign such sources of revenue as may be permitted under this section. The trust agreement or resolution may contain such provisions for protecting and enforcing the rights and remedies of the owners of any bonds or notes issued thereunder as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the unit in respect of the purposes to which bond or note proceeds may be applied, the disposition and application of the revenues of the unit, the duties of the unit with respect to the project, the disposition of any charges and collection of any revenues and administrative charges, the terms and conditions of the issuance of additional bonds and notes, and the custody, safeguarding, investment, and application of all moneys. All bonds and notes issued under this section shall be equally and ratably secured by a lien upon the revenues pledged in the trust agreement or resolution, without priority by reasons of number, or dates of bonds or notes, execution, or delivery, in accordance with the provision of this section and of the trust agreement or resolution, except that the unit may provide in the trust agreement or resolution that bonds or notes issued pursuant thereto shall, to the extent and in the manner prescribed in the trust agreement or resolution, be subordinated and junior in standing, with respect to the payment of principal and interest and to the security thereof, to any other bonds or notes. It shall be lawful for any bank or trust company that may act as depository of the proceeds of bonds or notes, revenues, or any other money hereunder to furnish such indemnifying bonds or to pledge such securities as may be required by the unit. Any trust agreement or resolution may set out the rights and remedies of the owners of any bonds or notes and of any trustee, and may restrict the individual rights of action by the owners. In addition to the foregoing, any trust agreement or resolution may contain such other provisions as the unit may deem reasonable and proper for the security of the owners of any bonds or notes. Expenses incurred in carrying out the provisions of any trust agreement or resolution may be treated as a part of the cost of any project or as an administrative charge and may be paid from the revenues or from any other funds available.

The State does pledge to, and agree with, the holders of any bonds or notes issued by any unit that so long as any of the bonds or notes are outstanding and unpaid the State will not limit or alter the rights vested in the unit at the time of issuance of the bonds or notes to set the terms and conditions of the bonds or notes and to fulfill the terms of any agreements made with the bondholders or noteholders. The State shall in no way impair the rights and remedies of the bondholders or noteholders until the bonds or notes and all costs and expenses in connection with any action or proceedings by or on behalf of the bondholders or noteholders, are fully paid, met, and discharged.

(n) Applicable Provisions. — The provisions of G.S. 159I-15(a), (d), and (e) relating to the Agency and its bonds and notes shall apply to a unit of local government and its bonds and notes issued under this section and the applicable provisions of this Chapter, except that the source or sources of revenue pledged to pay bonds and notes of a unit of local government shall be limited as provided in this section.

The provisions of G.S. 159I-17 relating to the Agency and its trust funds and investments shall apply to a unit of local government and its trust funds and investments, except that any such moneys of a unit shall be deposited and invested only as provided in G.S. 159-30, as it may be amended from time to time.

The provisions of G.S. 159I-18, 159I-19, 159I-20, and 159I-23 relating to remedies, the Uniform Commercial Code, investment eligibility, and tax exemption, as they relate to the Agency's bonds and notes, shall apply to a unit of local government and its bonds and notes. (1989, c. 756, s. 1; 1989 (Reg. Sess., 1990), c. 1004, s. 26; c. 1024, s. 38(e); 1995 (Reg. Sess., 1996), c. 742, s. 39; c. 743, s. 26; 1997-6, s. 20; 1997-307, s. 1; 2001-238, s. 1; 2004-151, ss. 2, 3.)

Legal Periodicals. — For 1997 legislative survey, see 20 Campbell L. Rev. 491 (1998).

For note, "Tax Increment Financing in North Carolina: The Myth of the Countermajoritarian Difficulty," see 83 N.C. L. Rev. 1526 (2005).

[illegible] under this section. The trust agreement or resolution may contain such [illegible] in violation of law, including covenants [illegible] in respect of the purposes to which bond or note proceeds may be applied, the disposition and application of the revenues of the unit, the duties of the unit with respect to the project, the imposition of any charges and collection of any revenues and administrative charges, the terms and conditions of the issuance of additional bonds and notes, and the custody, safeguarding, investment, and application of all moneys. All bonds and notes issued under this section shall be equally and ratably secured by a lien upon the revenues pledged in the trust agreement or resolution, without priority by reasons of number, or dates of bonds or notes, execution, or delivery, in accordance with the provisions of this section and of the trust agreement or resolution, except that the unit may provide in the trust agreement or resolution that bonds or notes issued pursuant thereto shall, to the extent and in the manner prescribed in the trust agreement or resolution, be subordinated and junior in standing, with respect to the payment of principal and interest and to the security thereof, to any other bonds or notes. It shall be lawful for any bank or trust company that may act as depository of the proceeds of bonds or notes, revenues, or any other money hereunder to furnish such indemnifying bonds or to pledge such securities as may be required by the unit. Any trust agreement or resolution may set out the rights and remedies of the owners of any bonds or notes and of any trustee, and may restrict the individual rights of action by the owners. In addition to the foregoing, any trust agreement or resolution may contain such other provisions as the unit may deem reasonable and proper for the security of the owners of any bonds or notes. Expenses incurred in carrying out the provisions of any trust agreement or resolution may be treated as a part of the cost of any project or as an administrative charge and may be paid from the revenues or from any other funds available.

The State does pledge to, and agree with, the holders of any bonds or notes issued by any unit that so long as any of the bonds or notes are outstanding and unpaid the State will not limit or alter the rights vested in the unit at the time of issuance of the bonds or notes to set the terms and conditions of the bonds or notes and to fulfill the terms of any agreements made with the bondholders or noteholders. The State shall in no way impair the rights and remedies of the bondholders or noteholders until the bonds or notes and all costs and expenses in connection with any action or proceedings by or on behalf of the bondholders or noteholders, are fully paid, met, and discharged.

(e) Applicable Provisions. — The provisions of G.S. 159I-11(a), (d), and (e) relating to the Agency and its bonds and notes shall apply to a unit of local government and its bonds and notes issued under this section and the applicable provisions of this Chapter, except that the source or sources of revenue pledged to pay bonds and notes of a unit of local government shall be defined as provided in this section.

The provisions of G.S. 159I-17 relating to the Agency and its trust funds and investments shall apply to a unit of local government and its trust funds and investments, except that any such moneys of a unit shall be deposited and invested only as provided in G.S. 159-30, as it may be amended from time to time.

The provisions of G.S. 159I-18, 159I-19, 159I-20, and 159I-22 relating to taxation, the Uniform Commercial Code, investment eligibility, and tax exemptions, as they relate to the Agency's bonds and notes, shall apply to a unit

Chapter 160.

Municipal Corporations.

§§ 160-1 through 160-521: Repealed and transferred.

Editor's Note. — Most of the sections of this Chapter were repealed by one of the following acts: Session Laws 1945, c. 1052; Session Laws 1949, c. 1081; Session Laws 1953, c. 901, s. 3; Session Laws 1955, c. 698; Session Laws 1957, c. 863, s. 1; Session Laws 1963, c. 406, s. 1; Session Laws 1967, c. 826; Session Laws 1969, c. 629, s. 1; Session Laws 1969, c. 870; Session Laws 1969, c. 1003, s. 9; Session Laws 1969, c. 1010, s. 6; Session Laws 1969, c. 1065, s. 1; Session Laws 1971, c. 698, s. 2; and Session Laws 1971, c. 780, ss. 10 to 19.

The balance of the sections of the Chapter were transferred to Chapters 153 or 160A by Session Laws 1971, c. 698, ss. 3 and 4; Session Laws 1971, c. 896, ss. 4, 6, 7, 9 and 13; Session Laws 1973, c. 426, ss. 7, 74 and 75; and Session Laws 1979, 2nd Sess., c. 1247, ss. 44 and 45.

For provisions as to counties, see now Chapter 153A. For provisions as to cities and towns, see now Chapter 160A.

Chapter 160A.

Cities and Towns.

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160A-17.1. (Effective December 31, 2010) Grants from other governments.
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160A-39. Annexation recorded.
160A-40. Authorized expenditures.
160A-41. Definitions.
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160A-46. Authority to annex.
160A-47. Prerequisites to annexation; ability to serve; report and plans.
160A-47.1. Limitation on change in financial participation prior to annexation.
160A-48. Character of area to be annexed.
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160A-49.1. Contract with rural fire department.
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ARTICLE 1.

Definitions and Statutory Construction.

§ 160A-1. Application and meaning of terms.

Unless otherwise specifically provided, or unless otherwise clearly required by the context, the words and phrases defined in this section shall have the meaning indicated when used in this Chapter.

(1) "Charter" means the entire body of local acts currently in force applicable to a particular city, including articles of incorporation issued to a city by an administrative agency of the State, and any amendments thereto adopted pursuant to 1917 Public Laws, Chapter 136, Subchapter 16, Part VIII, sections 1 and 2, or Article 5, Part 4, of this Chapter.

(2) "City" means a municipal corporation organized under the laws of this State for the better government of the people within its jurisdiction and having the powers, duties, privileges, and immunities conferred by law on cities, towns, and villages. The term "city" does not include counties or municipal corporations organized for a special purpose. "City" is interchangeable with the terms "town" and "village," is used throughout this Chapter in preference to those terms, and shall mean any city as defined in this subdivision without regard to the terminology employed in charters, local acts, other portions of the General Statutes, or local customary usage. The terms "city" or "incorporated municipality" do not include a municipal corporation that, without regard to its date of incorporation, would be disqualified from receiving gasoline tax allocations by G.S. 136-41.2(a), except that the end of status as a city under this sentence shall not affect the levy or

collection of any tax or assessment, or any criminal or civil liability, and shall not serve to escheat any property until five years after the end of such status as a city, or until September 1, 1991, whichever comes later.

(3) "Council" means the governing board of a city. "Council" is interchangeable with the terms "board of aldermen" and "board of commissioners," is used throughout this Chapter in preference to those terms, and shall mean any city council as defined in this subdivision without regard to the terminology employed in charters, local acts, other portions of the General Statutes, or local customary usage.

(4) "General law" means an act of the General Assembly applying to all units of local government, to all cities, or to all cities within a class defined by population or other criteria, including a law that meets the foregoing standards but contains a clause or section exempting from its effect one or more cities or all cities in one or more counties.

(5) "Local act" means an act of the General Assembly applying to one or more specific cities by name, or to all cities within one or more specifically named counties. "Local act" is interchangeable with the terms "special act," "public-local act," and "private act," is used throughout this Chapter in preference to those terms, and shall mean a local act as defined in this subdivision without regard to the terminology employed in charters, local acts, or other portions of the General Statutes.

(6) "Mayor" means the chief executive officer of a city by whatever title known.

(7) "Publish," "publication," and other forms of the verb "to publish" mean insertion in a newspaper qualified under G.S. 1-597 to publish legal advertisements in the county or counties in which the city is located.

(8) "Rural Fire Department" means, for the purpose of Articles 4A or 14 of this Chapter, a bona fide department which, as determined by the Commissioner of Insurance, is classified as not less than class "9" in accordance with rating methods, schedules, classifications, underwriting rules, bylaws or regulations effective or applied with respect to the establishment of rates or premiums used or charged pursuant to Article 36 or Article 40 of Chapter 58 of the General Statutes, and which operates fire apparatus and equipment of the value of five thousand dollars ($5,000) or more; but it does not include a municipal fire department. (1971, c. 698, s. 1; 1973, c. 426, s. 3; 1983, c. 636, s. 17.1; 1985 (Reg. Sess., 1986), c. 934, s. 1.)

Local Modification. — Union: 1983, c. 150; (As to Chapter 160A) Cabarrus: 1985, c. 194, s. 3.

Editor's Note. — Session Laws 1983, c. 636, which amended this section, in s. 37.1, as amended by Session Laws 1983, c. 768, s. 25, provided: "The General Assembly intends by this act to repeal all acts and provisions of acts that modify the application to particular cities and towns of Parts 2 and 3 of Article 4A of Chapter 160A of the General Statutes or that exempt particular cities or towns from the application of either or both of those two Parts. Therefore, all such acts and provisions of acts, even if not specifically listed and repealed in Sections 26 through 35.4 of this act, are repealed. Neither this section nor Sections 26 through 35.4 of this act shall affect any annexation in progress on the dates of ratification of this act under any of the repealed or amended sections."

Section 38 of Session Laws 1983, c. 636 provided: "This act shall be effective with respect to all annexations where resolutions of intent are adopted on or after the date of ratification of this act, except that Sections 36 and 37 shall become effective with respect to all annexations where resolutions of intent are adopted on or after July 1, 1984, Sections 25.1 through 35.5 and Section 37.1 are effective upon ratification and Section 25 shall become effective as provided in that section. No annexation where a resolution of intent was adopted prior to the date of ratification of this act shall be affected by this act except as provided in Section 25."

The act was ratified June 29, 1983.

Session Laws 2008-181, ss. 36.1 through 36.6, provide:

"36.1. There is created the Legislative Study Commission on Urban Growth and Infrastructure Issues. The purpose of the Commission is to determine what measures the General Assembly may take to foster regional water resource and transportation planning, incentive-based local land use planning, and more responsive and cost-effective planning to accommodate rapid population growth in North Carolina's urban areas.

"36.2. The Commission shall consist of 14 members as follows:

"(1) Five members appointed by the Speaker of the House of Representatives.

"(2) Five members appointed by the President Pro Tempore of the Senate.

"(3) Four members representing North Carolina's urban areas appointed jointly by the Speaker of the House of Representatives and the President Pro Tempore of the Senate, including at least one member from Wake, Durham, or Orange County, one member from Forsyth or Guilford County, and one member from Mecklenburg County.

"36.3. The Speaker of the House of Representatives shall designate one Representative as cochair, and the President Pro Tempore of the Senate shall designate one Senator as cochair. Vacancies on the Commission shall be filled by the same appointing authority that made the initial appointment.

"36.4. The Commission shall study the following issues relating to urban growth and infrastructure:

"(1) Options for fostering regional planning for water and transportation infrastructure.

"(2) Strategies (including additional local land use regulatory tools) for encouraging the use of incentive-based planning by urban area local governments.

"(3) Strategies to help urban communities maximize the benefits of growth and cope with the challenges presented by rapid growth in population, school enrollment, vehicle miles traveled on urban roads and highways, and related demands for other public services while preserving a viable economic climate and building greater regional cooperation.

"(4) Any other matters the Commission considers necessary in furtherance of the purpose for which it is established.

"36.5. The Commission, while in the discharge of its official duties, may exercise all powers provided for under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4. The Commission may meet at any time upon the joint call of the cochairs. The Commission may meet in the Legislative Building or the Legislative Office Building.

"With approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional staff to assist the Commission in its work. The House of Representatives' and the Senate's Directors of Legislative Assistants shall assign clerical staff to the Commission, and the expenses relating to the clerical employees shall be borne by the Commission. The Commission may contract for professional, clerical, or consultant services as provided by G.S. 120-32.02. If the Commission hires a consultant, the consultant shall not be a State employee or a person currently under contract with the State to provide services.

"All State departments and agencies and local governments and their subdivisions shall furnish the Commission with any information in their possession or available to them.

"The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Commission in its work. The House of Representatives' and the Senate's Directors of Legislative Assistants shall assign clerical staff to the Commission, and the expenses relating to the clerical employees shall be borne by the Commission.

"36.6. The Commission shall report the results of its study and its recommendations to the 2009 General Assembly upon its convening."

Legal Periodicals. — For note, "Tax Increment Financing in North Carolina: The Myth of the Countermajoritarian Difficulty," see 83 N.C. L. Rev. 1526 (2005).

For article, "Do North Carolina Governments Need Home Rule," see 84 N.C. L. Rev. 1983 (2006).

CASE NOTES

Constitutionality. — See In re Annexation Ordinance No. 1219, 62 N.C. App. 588, 303 S.E.2d 380, cert. denied and appeal dismissed, 309 N.C. 820, 310 S.E.2d 351 (1983).

Enactment Held a "Local Act". — Under this Chapter, Session Laws 1967, c. 506, which permits the City of Durham to employ the "quick-take" condemnation procedure provided by Article 9 of Chapter 136 of the General Statutes, is a local act and a part of the charter of the City of Durham. City of Durham v. Manson, 285 N.C. 741, 208 S.E.2d 662 (1974).

Session Laws 1967, c. 506, relating to municipal eminent domain procedures, is a legislative act which applies specifically to Durham by name, and is, therefore, a "local act" as that term is defined in subdivision (5) of this section, and as such it is subject to the applicable provisions of this Chapter. City of Durham v. Manson, 21 N.C. App. 161, 204 S.E.2d 41, modified and aff'd, 285 N.C. 741, 208 S.E.2d 662 (1974).

Housing authority provided a governmental function and was entitled to rely on doctrine of governmental immunity as it related to a personal injury suit brought against it; G.S. 160A-485(a) did not control whether or not the housing authority had legal capacity to waive its immunity by buying insurance, but authority could have accepted liability to the extent of insurance purchased, and the case was therefore remanded since the appellate court was unable to discern whether the trial court's denial of the housing authority's motion to dismiss was premised upon the housing authority's insurance coverage. Evans v. Hous. Auth., 359 N.C. 50, 602 S.E.2d 668, 2004 N.C. LEXIS 1125 (2004).

Cited in In re University of N.C., 300 N.C. 563, 268 S.E.2d 472 (1980); Thrash v. City of Asheville, 95 N.C. App. 457, 383 S.E.2d 657 (1989); Garrity v. Morrisville Zoning Bd. of Adjustment, 115 N.C. App. 273, 444 S.E.2d 653 (1994); Disher v. Weaver, 308 F. Supp. 2d 614, 2004 U.S. Dist. LEXIS 3849 (M.D.N.C. 2004); Boyd v. Robeson County, — N.C. App. —, 615 S.E.2d 296, 2005 N.C. App. LEXIS 520 (2005).

§ 160A-2. Effect upon prior laws.

Nothing in this Chapter shall repeal or amend any city charter in effect as of January 1, 1972, or any portion thereof, unless this Chapter or a subsequent enactment of the General Assembly shall clearly show a legislative intent to repeal or supersede all local acts. The provisions of this Chapter, insofar as they are the same in substance as laws in effect as of December 31, 1971, are intended to continue such laws in effect and not to be new enactments. The enactment of this Chapter shall not require the readoption of any city ordinance enacted pursuant to laws that were in effect before January 1, 1972, and are restated or revised herein. The provisions of this Chapter shall not affect any act heretofore done, any liability incurred, any right accrued or vested, or any suit or prosecution begun or cause of action accrued as of January 1, 1972. (1971, c. 698, s. 1.)

CASE NOTES

Specific legislative intent of this Chapter was not to repeal local acts by implication, but to save them. City of Durham v. Manson, 285 N.C. 741, 208 S.E.2d 662 (1974).

It was the express intent of the legislature to retain local acts unless otherwise specifically indicated. City of Durham v. Manson, 21 N.C. App. 161, 204 S.E.2d 41, modified and aff'd, 285 N.C. 741, 208 S.E.2d 662 (1974).

This section manifests the legislative concern that certain prior laws should be preserved. City of Durham v. Manson, 21 N.C. App. 161, 204 S.E.2d 41, modified and aff'd, 285 N.C. 741, 208 S.E.2d 662 (1974).

This section is made more meaningful by reference to § 160A-1, wherein the definitions of "charter" and "local act" are contained. City of Durham v. Manson, 21 N.C. App. 161, 204 S.E.2d 41, modified and aff'd, 285 N.C. 741, 208 S.E.2d 662 (1974).

Chapter 506 of Session Laws 1967, which became a part of the charter of the City of Durham, was not repealed by this Chapter. City of Durham v. Manson, 285 N.C. 741, 208 S.E.2d 662 (1974).

Applied in Guilford County v. Boyan, 42 N.C. App. 627, 257 S.E.2d 463 (1979).

Cited in Town of Mt. Olive v. Price, 20 N.C. App. 302, 201 S.E.2d 362 (1973).

§ 160A-3. General laws supplementary to charters.

(a) When a procedure that purports to prescribe all acts necessary for the performance or execution of any power, duty, function, privilege, or immunity is provided by both a general law and a city charter, the two procedures may be used as alternatives, and a city may elect to follow either one.

(b) When a procedure for the performance or execution of any power, duty, function, privilege, or immunity is provided by both a general law and a city charter, but the charter procedure does not purport to contain all acts necessary to carry the power, duty, function, privilege, or immunity into execution, the charter procedure shall be supplemented by the general law procedure; but in case of conflict or inconsistency between the two procedures, the charter procedure shall control.

(c) When a power, duty, function, privilege, or immunity is conferred on cities by a general law, and a charter enacted earlier than the general law omits or expressly denies or limits the same power, duty, function, privilege or immunity, the general laws shall supersede the charter. (1971, c. 698, s. 1.)

Local Modification. — Town of Badin: 1989 (Reg. Sess., 1990), c. 894, s. 1; village of Bald Head Island: 1985, c. 156.

CASE NOTES

The provisions of a municipal charter are supplemented by the General Statutes of the State. Parsons v. Wright, 223 N.C. 520, 27 S.E.2d 534 (1943), decided prior to enactment of this section.

City Charter Superseded by State Statute. — Summary judgment was properly awarded to a city and its officials in an action by property owners challenging an annexation because, pursuant to G.S. 160A-3(c), the statutory provision establishing involuntary annexations superseded a city charter provision permitting only voluntary annexations. Brown v. City of Winston-Salem, 171 N.C. App. 266, 614 S.E.2d 599, 2005 N.C. App. LEXIS 1266 (2005).

Cited in Moores v. Greensboro Minimum Hous. Stds. Comm'n, — N.C. App. —, 679 S.E.2d 480, 2009 N.C. App. LEXIS 1171 (July 21, 2009);

Disher v. Weaver, 308 F. Supp. 2d 614, 2004 U.S. Dist. LEXIS 3849 (M.D.N.C. 2004).

§ 160A-4. Broad construction.

It is the policy of the General Assembly that the cities of this State should have adequate authority to execute the powers, duties, privileges, and immunities conferred upon them by law. To this end, the provisions of this Chapter and of city charters shall be broadly construed and grants of power shall be construed to include any additional and supplementary powers that are reasonably necessary or expedient to carry them into execution and effect: Provided, that the exercise of such additional or supplementary powers shall not be contrary to State or federal law or to the public policy of this State. (1971, c. 698, s. 1.)

Local Modification. — Town of Badin: 1989 (Reg. Sess., 1990), c. 894, s. 1.

CASE NOTES

Editor's Note. — *Many of the cases cited below were decided prior to enactment of this section.*

Legislative Mandate. — The North Carolina Supreme Court treats the language in this section as a legislative mandate to construe in a broad fashion the provisions and grants of power contained in this Chapter. Homebuilders Ass'n v. City of Charlotte, 336 N.C. 37, 442 S.E.2d 45 (1994).

Mandate of G.S. 160A-4 Has Replaced "Dillon's Rule." — Narrow rule of statutory construction entitled "Dillon's Rule," used when interpreting municipal powers, has been replaced by the mandate of G.S. 160A-4; and the language of Chapter 160A must be construed in favor of extending powers to a municipality where there is an ambiguity in the authorizing language, or the powers clearly authorized reasonably necessitate additional and supplementary powers to carry them into execution and effect. BellSouth Telecomms., Inc. v. City of Laurinburg, 168 N.C. App. 75, 606 S.E.2d 721, 2005 N.C. App. LEXIS 164, cert. denied, — N.C. —, 615 S.E.2d 660, cert. denied, 359 N.C. 629, — S.E.2d — (2005).

A municipality may not exercise any power not granted to it, and possesses no inherent authority to exercise powers either expressly or impliedly prohibited by statute. Porsh Bldrs., Inc. v. City of Winston-Salem, 302 N.C. 550, 276 S.E.2d 443 (1981).

Municipal Powers Must Be Expressly Granted or Implied from Express Grants. — A municipal corporation is a political subdivision of the State and can exercise only such powers as are granted in express words, or those necessary or fairly implied or incident to the powers expressly conferred, or those essential to the accomplishment of the declared objects and purposes of the corporation. Stephenson v. City of Raleigh, 232 N.C. 42, 59 S.E.2d 195 (1950).

A municipal corporation has only such powers as are granted to it by the General Assembly in its specific charter or by the general laws of the State applicable to all municipal corporations, and the powers granted in its charter will be construed together with those given under the General Statutes. Laughinghouse v. City of New Bern, 232 N.C. 596, 61 S.E.2d 802 (1950); Starbuck v. Town of Havelock, 252 N.C. 176, 113 S.E.2d 278 (1960).

A municipal corporation is a creature of the General Assembly and has no inherent power, but can exercise such powers as are expressly conferred by the General Assembly or such as are necessarily implied by those expressly given. State v. McGraw, 249 N.C. 205, 105 S.E.2d 659 (1958).

A municipal corporation has only such powers as are granted to it by the General Assembly in its specific charter or by the general laws of the State applicable to all municipal corporations, or such powers as are necessarily implied by those given. State v. Hord, 264 N.C. 149, 141 S.E.2d 241 (1965).

An incorporated city or town is an agency created by the State. It has no governmental power or authority except such as has been granted to it by the legislature, expressly or by necessary implication from the powers expressly conferred. State v. Furio, 267 N.C. 353, 148 S.E.2d 275 (1966).

Municipal corporations are created by legislative enactment and possess only those powers conferred in the express language of a statute and those necessarily implied by law therefrom. Porsh Bldrs., Inc. v. City of Winston-Salem, 302 N.C. 550, 276 S.E.2d 443 (1981).

What Municipal Powers Are Implied. — The implied powers of a municipality are those which are necessarily or fairly implied in or incident to the powers expressly granted or essential to the accomplishment of the purposes of the corporation. Green v. Kitchin, 229 N.C. 450, 50 S.E.2d 545 (1948), commented on in 27 N.C.L. Rev. 500 (1949).

A municipal corporation is authorized by implication to do an act if the doing of such act is necessarily or fairly implied in or incident to the powers expressly granted, or is essential to the accomplishment of the declared objects and purposes of the corporation. Harrelson v. City of Fayetteville, 271 N.C. 87, 155 S.E.2d 749 (1967).

Municipal corporations have no inherent police powers and can exercise only those conferred, which powers are subject to strict construction. Kass v. Hedgepeth, 226 N.C. 405, 38 S.E.2d 164 (1946).

An incorporated city or town has no inherent police powers. State v. Furio, 267 N.C. 353, 148 S.E.2d 275 (1966).

A city or town in this State has no inherent police power. It may exercise only such powers as are expressly conferred upon it by the General Assembly or as are necessarily implied from those expressly so conferred. Town of Conover v. Jolly, 277 N.C. 439, 177 S.E.2d 879 (1970).

No Power to Spend Tax Revenues Absent Authorization. — A municipality is a creature of the State, with the powers prescribed by the statute and those necessarily implied by law, and no other; therefore a city or town cannot make a rightful outlay of its tax revenues unless the outlay is explicitly or implicitly authorized by a statute conforming to the Constitution. Horner v. Chamber of Commerce, 231 N.C. 440, 57 S.E.2d 789 (1950), aff'd, 235 N.C. 77, 68 S.E.2d 660 (1952); Wilson v. City of High Point, 238 N.C. 14, 76 S.E.2d 546 (1953).

A municipal corporation has no authority to waive its immunity from tort liability in performance of its governmental functions. Stephenson v. City of Raleigh, 232 N.C. 42, 59 S.E.2d 195 (1950).

Municipal Authority to Charge User Fees. — Applying the broad rule of construction of this section, city possessed the authority to charge regulatory user fees as an additional and supplementary power that was reasonably necessary or expedient to carry a regulatory program into execution and effect. Homebuilders Ass'n v. City of Charlotte, 336 N.C. 37, 442 S.E.2d 45 (1994).

Absent Statutory Authority. — In the absence of statutory authority, a municipality has no authority to contract away or waive its governmental immunity in respect to torts committed in the exercise of its governmental function. Valevais v. City of New Bern, 10 N.C. App. 215, 178 S.E.2d 109 (1970).

Ordinances Having Effect Outside Territorial Limits of Corporation. — While the legislature may confer upon a municipal corporation the power to enact ordinances having effect in territory contiguous to the corporation, in the absence of the grant of such power a city or town may not, by its ordinance, prohibit acts outside its territorial limits or impose criminal liability therefor. State v. Furio, 267 N.C. 353, 148 S.E.2d 275 (1966).

Statutory delegations of power to mu-

nicipalities should be strictly construed, resolving any ambiguity against the corporation's authority to exercise the power. Porsh Bldrs., Inc. v. City of Winston-Salem, 302 N.C. 550, 276 S.E.2d 443 (1981).

And Any Doubts Must Be Resolved Against Municipality. — A municipality has no inherent police powers, but can exercise only those conferred by the State, and any reasonable doubt concerning such powers is resolved against it. State v. Dannenberg, 150 N.C. 799, 63 S.E. 946 (1909).

Discretion as to Accomplishment of Municipal Purposes. — A municipal corporation has only those powers expressly granted in its charter and by the general law, construing the acts together, and those powers reasonably implied in or incident to the granted powers which are necessary to effect the fair intent and purpose of its creation; however, it may exercise a sound discretion as to the means by which the purposes of its creation may be accomplished. Riddle v. Ledbetter, 216 N.C. 491, 5 S.E.2d 542 (1939).

A municipal corporation may exercise all the powers within the fair intent and purpose of its creation which are reasonably necessary to give effect to the powers expressly granted, and in doing this it may exercise discretion as to the means to the end. Keeter v. Town of Lake Lure, 264 N.C. 252, 141 S.E.2d 634 (1965).

Although the power to impose a privilege license tax must be construed broadly to include incidental powers, a privilege license tax, standing alone, is only a tax and does not carry with it any powers wholly unrelated to its imposition or administration. Fantasy World, Inc. v. Greensboro Bd. of Adjustment, 162 N.C. App. 603, 592 S.E.2d 205, 2004 N.C. App. LEXIS 267 (2004), cert. denied, 358 N.C. 543, 599 S.E.2d 43 (2004).

The courts will not inquire into the motives which prompt a municipality's legislative body to enact an ordinance which is valid on its face. Clark's Greenville, Inc. v. West, 268 N.C. 527, 151 S.E.2d 5 (1966).

Contracts with Firefighters Not Ultra Vires. — As the legislature expressly authorized municipal corporations to fix salaries or other compensation or to approve and adopt pay plans to compensate city employees, and thus, the city could legally form contracts for the services of firefighters and offer a plan for accumulated vacation leave as a benefit under the contracts, even though they may have been executed improperly, any contracts entered into by the city through its agents to compensate firefighters with accumulated vacation leave were not ultra vires the city. Pritchard v. Elizabeth City, 81 N.C. App. 543, 344 S.E.2d 821, cert. denied, 318 N.C. 417, 349 S.E.2d 598 (1986).

Contract with Town Manager Not Ultra Vires. — The execution of an employment contract providing severance pay to an at-will town manager was not ultra vires. Myers v. Town of Plymouth, 135 N.C. App. 707, 522 S.E.2d 122, 1999 N.C. App. LEXIS 1237 (1999).

City had the authority to allow the city tax collector to assess zoning compliance as part of the administration of the business privilege license tax and to deny a business privilege license to a sexually oriented business because the business sought to operate in violation of a zoning ordinance. Fantasy World, Inc. v. Greensboro Bd. of Adjustment, 162 N.C. App. 603, 592 S.E.2d 205, 2004 N.C. App. LEXIS 267 (2004), cert. denied, 358 N.C. 543, 599 S.E.2d 43 (2004).

Applied in City of Durham v. Herndon, 61 N.C. App. 275, 300 S.E.2d 460 (1983); River Birch Assocs. v. City of Raleigh, 326 N.C. 100, 388 S.E.2d 538 (1990).

Cited in Smith v. Keator, 285 N.C. 530, 206 S.E.2d 203 (1974); In re Wilkins, 294 N.C. 528, 242 S.E.2d 829 (1978); Town of West Jefferson v. Edwards, 74 N.C. App. 377, 329 S.E.2d 407 (1985); Grace Baptist Church v. City of Oxford, 320 N.C. 439, 358 S.E.2d 372 (1987); Quality Water Supply, Inc. v. City of Wilmington, 97 N.C. App. 400, 388 S.E.2d 608 (1990); Ricks v. Town of Selma, 99 N.C. App. 82, 392 S.E.2d 437 (1990); Bowers v. City of High Point, 339 N.C. 413, 451 S.E.2d 284 (1994); Maready v. City of Winston-Salem, 342 N.C. 708, 467 S.E.2d 615 (1996); Durham Land Owners Ass'n v. County of Durham, 177 N.C. App. 629, 630 S.E.2d 200, 2006 N.C. App. LEXIS 1187 (2006); Five C'S, Inc. v. County of Pasquotank, — N.C. App. —, 672 S.E.2d 737, 2009 N.C. App. LEXIS 152 (2009).

OPINIONS OF ATTORNEY GENERAL

Condemnation of Property to Improve Road. — A proposed escrow agreement between a town and various property owners to collect and dispose of funds in order to acquire right of way, by condemnation or otherwise, in order to widen and improve a road was not prohibited by this section or public policy. See opinion of Attorney General to William C. Coward, Coward, Hicks & Siler, P.A., 2000 N.C. AG LEXIS 28 (4/10/2000).

§ 160A-4.1. Electronic notice of new fees and fee increases; public comment period.

(a) If a city has a Web site maintained by one or more of its employees, the city shall provide notice of the imposition of or increase in fees or charges applicable solely to the construction of development subject to the provisions of Part 2 of Article 19 of this Chapter on the city's Web site at least seven days prior to the first meeting where the imposition of or increase in the fees or charges is on the agenda for consideration.

(b) During the consideration of the imposition of or increase in fees or charges as provided in subsection (a) of this section, the governing body of the city shall permit a period of public comment.

(c) This section shall not apply if the imposition of or increase in fees or charges is contained in a budget filed in accordance with the requirements of G.S. 159-12. (2009-436, s. 2.)

Editor's Note. — Session Laws 2009-436, s. 5, made this section effective September 1, 2009.

§ 160A-5. Statutory references deemed amended to conform to Chapter.

Whenever a reference is made in another portion of the General Statutes or any local act, or any city ordinance, resolution, or order, to a portion of Chapter 160 of the General Statutes that is repealed or superseded by this Chapter, the reference shall be deemed amended to refer to that portion of this Chapter which most nearly corresponds to the repealed or superseded portion of Chapter 160. (1971, c. 698, s. 1; 1973, c. 426, s. 2.)

CASE NOTES

Applied in City of Durham v. Manson, 285 N.C. 741, 208 S.E.2d 662 (1974).

ARTICLE 1A.

Municipal Board of Control.

§§ 160A-6 through 160A-10: Repealed by Session Laws 1981 (Regular Session, 1982), c. 1191, s. 63.

Editor's Note. — Session Laws 1981 (Reg. Sess., 1982), c. 1191, s. 64, provided that the repeal of this Article did not affect the validity of any corporate charter issued by the Municipal Board of Control prior to the effective date thereof. Section 65 of the act provided that the repeal became effective October 1, 1982, except that an order incorporating a city which was entered prior to October 1, 1982, but subject to a referendum to be held under G.S. 160A-9.3 between October 1, 1982, and January 1, 1983, would be valid notwithstanding the abolition of the Municipal Board of Control.

Article 2.

General Corporate Powers.

§ 160A-11. Corporate powers.

The inhabitants of each city heretofore or hereafter incorporated by act of the General Assembly or by the Municipal Board of Control shall be and remain a municipal corporation by the name specified in the city charter. Under that name they shall be vested with all of the property and rights in property belonging to the corporation; shall have perpetual succession; may sue and be sued; may contract and be contracted with; may acquire and hold any property, real and personal, devised, bequeathed, sold, or in any manner conveyed, dedicated to, or otherwise acquired by them, and from time to time may hold, invest, sell, or dispose of the same; may have a common seal and alter and renew the same at will; and shall have and may exercise in conformity with the city charter and the general laws of this State all municipal powers, functions, rights, privileges, and immunities of every name and nature whatsoever.

All documents required or permitted by law to be executed by municipal corporations will be legally valid and binding in this respect when a legible corporate stamp, which is a facsimile of its seal, is used in lieu of an imprinted or embossed corporate or common seal. (Code, ss. 704, 3117; 1901, c. 283; 1905, c. 526; Rev., s. 2916; 1907, c. 978; P.L. 1917, c. 223; C.S., s. 2623; Ex. Sess. 1921, c. 58; 1927, c. 14; 1933, c. 69; 1949, c. 938; 1955, c. 77; 1959, c. 391; 1961, c. 308; 1967, c. 100, s. 2; c. 1122, s. 1; 1969, c. 944; 1971, c. 698, s. 1; 1973, c. 170; c. 426, s. 7.)

Cross References. — As to authority of counties, cities and towns to enter into long-term contracts with private persons, firms or corporations for the disposal of solid waste, see G.S. 153A-299.1 through 153A-299.6. As to construction of grants of power to municipalities, see G.S. 160A-4.

Legal Periodicals. — For note on abrogation of contractual sovereign immunity, see 12 Wake Forest L. Rev. 1082 (1976).

CASE NOTES

Editor's Note. — *Many of the cases cited below were decided under former similar provisions.*

Control of Municipal Territory and Affairs. — When a municipal corporation is established it takes control of the territory and affairs over which it is given authority to the exclusion of other governmental agencies. Gunter v. Sanford, 186 N.C. 452, 120 S.E. 41 (1923); Parsons v. Wright, 223 N.C. 520, 27 S.E.2d 534 (1943).

Exclusive Control of Municipal Streets. — The object of incorporating a town or city is to invest the inhabitants of the municipality with the government of all matters that are of special municipal concern, and certainly the streets are as much of a special and local concern as anything connected with a town or city can be. It ought, therefore, to be presumed that they pass under the exclusive control of the municipality as soon as it comes into existence under the law. Gunter v. Sanford, 186 N.C. 452, 120 S.E. 41 (1923); Parsons v. Wright, 223 N.C. 520, 27 S.E.2d 534 (1943).

Power to Purchase Land at Tax Sale. — The title of the purchaser at a tax foreclosure sale may not be challenged by the listed owner upon the purchaser's motion for a writ of assistance; such purchaser may be a municipality where it does not appear of record that the purchase of the land was ultra vires, a municipality having the power to purchase land for certain purposes. Wake County v. Johnson, 206 N.C. 478, 174 S.E. 303 (1934).

Ordinance Within Power Granted Presumed Reasonable. — When an ordinance is within the grant of power to the municipality, the presumption is that it is reasonable. Gene's, Inc. v. City of Charlotte, 259 N.C. 118, 129 S.E.2d 889 (1963).

A town must be sued in its corporate name and not in the name of its officers. Young v. Barden, 90 N.C. 424 (1886).

Service Against City. — A summons

against a city may be served on the mayor and on the secretary of the board of aldermen. Loughran v. Hickory, 129 N.C. 281, 40 S.E. 46 (1901).

Venue of Suits Against Cities or Towns. — Cities and towns must be sued in the county in which they are located, and if suit is brought in another county, they have the right to have it removed. Jones v. Town of Statesville, 97 N.C. 86, 2 S.E. 346 (1887).

Action in Name of All Citizens Against City. — In an action against a municipal corporation to enjoin the collection of an illegal tax, it was not error to allow all citizens other than the original plaintiff to be made parties plaintiff. Cobb v. Elizabeth City, 75 N.C. 1 (1876).

Applied in North Carolina Consumers Power, Inc. v. Duke Power Co., 21 N.C. App. 237, 204 S.E.2d 399 (1974).

Cited in Carolina Action v. Pickard, 465 F. Supp. 576 (W.D.N.C. 1979); Davidson County v. City of High Point, 85 N.C. App. 26, 354 S.E.2d 280 (1987); Concrete Mach. Co. v. City of Hickory, 134 N.C. App. 91, 517 S.E.2d 155 (1999); Myers v. Town of Plymouth, 135 N.C. App. 707, 522 S.E.2d 122, 1999 N.C. App. LEXIS 1237 (1999); Liberty Mut. Ins. Co. v. Pennington, 141 N.C. App. 495, 541 S.E.2d 503, 2000 N.C. App. LEXIS 1441 (2000).

OPINIONS OF ATTORNEY GENERAL

Ownership and Operation of Private For-Profit Corporation. — The authority of a city to hold property granted by this section should not be interpreted to authorize a city to act as a shareholder of a private for-profit corporation organized under the provisions of Chapter 55, and to appoint city officials and employees as corporate directors or officers. See opinion of the Attorney General to H. Michael Boyd, Deputy City Attorney, City of Charlotte, 60 N.C.A.G. 114 (1992).

While there may be authority for a city to purchase all of the stock of a corporation which owns and operates a water and sewer system, there is no authority to operate and continue the existence of a private for-profit corporation which is outside of the traditional functions of a municipality and for which there is no judicial or legislative approval. See opinion of the Attorney General to H. Michael Boyd, Deputy City Attorney, City of Charlotte, 60 N.C.A.G. 114 (1992).

§ 160A-12. Exercise of corporate power.

All powers, functions, rights, privileges, and immunities of the corporation shall be exercised by the city council and carried into execution as provided by the charter or the general law. A power, function, right, privilege, or immunity that is conferred or imposed by charter or general law without directions or restrictions as to how it is to be exercised or performed shall be carried into execution as provided by ordinance or resolution of the city council. (Code, s. 703; Rev., s. 2917; C.S., s. 2624; 1971, c. 698, s. 1.)

CASE NOTES

Cited in Concrete Mach. Co. v. City of Hickory, 134 N.C. App. 91, 517 S.E.2d 155 (1999).

OPINIONS OF ATTORNEY GENERAL

Exercise of Corporate Powers by Board of Aldermen. — Where city had not adopted one of the plans of government prescribed in former Article 21 of Chapter 160, and its charter granted only those powers enumerated by the General Statutes, the corporate powers could only be exercised by the board of aldermen, unless otherwise provided by law. See opinion of Attorney General to Mr. Richard A. Williams, Maiden Town Attorney, 40 N.C.A.G. 450 (1969), issued under former statutory provisions.

Effect of Action by Individual Commissioner. — Individual commissioner's representation about payment of a damage claim neither created a duty on the town to pay the same, nor authorized it to pay, unless the board of commissioners, by resolution, authorized the individual to make such an offer, as the municipal power to contract was given to the board, and boards, nothing else appearing, must act through a quorum at a meeting rather than through an individual member on an ad hoc basis. See opinion of Attorney General to Mr.

John W. Twisdale, Clayton Town Attorney, 40 N.C.A.G. 522 (1970), issued under former G.S. 160-3.

§§ 160A-13 through 160A-15: Reserved for future codification purposes.

ARTICLE 3.

Contracts.

§ 160A-16. Contracts to be in writing; exception.

All contracts made by or on behalf of a city shall be in writing. A contract made in violation of this section shall be void and unenforceable unless it is expressly ratified by the council. (1917, c. 136, subch. 13, s. 8; C.S., s. 2831; 1971, c. 698, s. 1.)

Cross References. — As to report on guaranteed energy savings contracts, see G.S. 143-64.17G.

Legal Periodicals. — For article, "The Regulation of Contractual Change: A Guide to No Oral Modification Clauses for North Carolina Lawyers," see 81 N.C.L. Rev. 2239 (2003).

CASE NOTES

City Not Liable Absent Agreement for Treatment of Inebriate Injured While Being Assisted by Police. — A city was not liable to a hospital for the cost of treating a habitual inebriate who was injured when he fell while being assisted by city police officers, where there was no express agreement to pay for such services. Nor was there an implied promise to pay, pursuant to a statutory duty, since persons arrested by city police officers, if confined, were confined in the county jail. Under G.S. 153A-224(b), the cost of emergency medical services rendered to persons confined in local confinement facilities is imposed on the local governmental unit operating the facility. Craven County Hosp. Corp. v. Lenoir County, 75 N.C. App. 453, 331 S.E.2d 690, cert. denied, 314 N.C. 663, 336 S.E.2d 620 (1985).

Where no duty was imposed by statute upon city to pay for medical services rendered to persons in custody of its police officers, there was no relationship implied by law which would obligate the city to pay the costs of such treatment. Craven County Hosp. Corp. v. Lenoir County, 75 N.C. App. 453, 331 S.E.2d 690, cert. denied, 314 N.C. 663, 336 S.E.2d 620 (1985).

Sovereign immunity does not apply to breach of contract claims. Houpe v. City of Statesville, 128 N.C. App. 334, 497 S.E.2d 82 (1998), cert. denied, 348 N.C. 72, 505 S.E.2d 871 (1998).

A viable claim for breach of an employment contract must allege the existence of contractual terms regarding the duration or means of terminating employment. Houpe v. City of Statesville, 128 N.C. App. 334, 497 S.E.2d 82 (1998), cert. denied, 348 N.C. 72, 505 S.E.2d 871 (1998).

Cited in Carolina Water Serv., Inc. v. Town of Atlantic Beach, 121 N.C. App. 23, 464 S.E.2d 317 (1995); Concrete Mach. Co. v. City of Hickory, 134 N.C. App. 91, 517 S.E.2d 155 (1999).

§ 160A-17. Continuing contracts.

A city is authorized to enter into continuing contracts, some portion or all of which are to be performed in ensuing fiscal years. Sufficient funds shall be appropriated to meet any amount to be paid under the contract in the fiscal year in which it is made, and in each ensuing fiscal year, the council shall appropriate sufficient funds to meet the amounts to be paid during the fiscal year under continuing contracts previously entered into. (1971, c. 698, s. 1.)

§ 160A-17.1. (Effective until December 31, 2010) Grants and loans from other governments.

(a) Federal and State. — The governing body of any city or county is hereby authorized to make contracts for and to accept grants-in-aid and loans from the federal and State governments and their agencies for constructing, expanding, maintaining, and operating any project or facility, or performing any function, which such city or county may be authorized by general law or local act to provide or perform.

In order to exercise the authority granted by this section, the governing body of any city or county may:

(1) Enter into and carry out contracts with the State or federal government or any agency or institution thereof under which such government, agency, or institution grants financial or other assistance to the city or county;
(2) Accept such assistance or funds as may be granted or loaned by the State or federal government with or without such a contract;
(3) Agree to and comply with any lawful and reasonable conditions which are imposed upon such grants or loans;
(3a) Agree to and comply with minimum minority business enterprise participation requirements established by the federal government and its agencies in projects financed by federal grants-in-aid or loans, by including such minimum requirements in the specifications for contracts to perform all or part of such projects and awarding bids pursuant to G.S. 143-129 and 143-131, if applicable, to the lowest responsible bidder or bidders meeting these and any other specifications.
(4) Make expenditures from any funds so granted.

(b) Local. — The governing body of a city that is subject to a lien by the federal government and is not eligible to receive a grant from the federal government until the lien is removed may accept a loan from the county in which the city is located in order to pay its debt to the federal government and have the lien removed. The term of the loan may not exceed three years. This subsection applies only to a city located in a county whose population does not exceed 20,000 according to the most recent annual population estimates certified by the State Budget Officer. (1971, c. 896, s. 10; c. 937, ss. 1, 1.5; 1973, c. 426, s. 8; 1981, c. 827; 2007-91, s. 1.)

Section Set Out Twice. — The section above is effective until December 31, 2010. For the section as in effect December 31, 2010, see the following section, also numbered G.S. 160A-17.1.

Effect of Amendments. — Session Laws 2007-91, s. 1, effective June 20, 2007, and expiring on December 31, 2010, inserted "and loans" in the section heading; inserted the subsection (a) designation and the subsection catchline in subsection (a); and added subsection (b).

OPINIONS OF ATTORNEY GENERAL

Municipality has authority to make relocation assistance payments which are required by the federal grants for the code enforcement program. See opinion of Attorney General to Mr. Roddey M. Ligon, Jr., 41 N.C.A.G. 896 (1972).

Confiscated Drug Related Property May Be Used by Local Law Enforcement. — If federal authorities confiscate drug related property and thereafter return a part of it to local authorities for law enforcement purposes, the N.C. Constitution and laws do not require these funds to go to the local school board as forfeited property and they may be used by local law enforcement. See opinion of the Attorney General to Mr. Aubrey S. Tomlinson, Jr., Attorney for Franklin County, 58 N.C.A.G. 51 (1988).

Minority Participation Provisions. — The minority participation provisions in G.S. 143-128, 136-28.4 and this section and Session Laws 1989, c. 8, s. 3(b) (Senate Bill 38) appear to be facially constitutional under the principles established by the United States Supreme Court in City of Richmond v. J.A. Croson Company, — U.S. —, 109 S. Ct. 706 (1989), because none of the provisions in question mandate a racial preference which would result in a deprivation of personal rights guaranteed to all persons by the Equal Protection Clause of the Fourteenth Amendment. See opinion of the Attorney General to Rep. Thomas C. Hardaway, Co-Chairman, Sen. Ralph Hunt, Co-Chairman, Legislative Research Commission Committee on Minority Business Contracts and Small Business Assistance, 60 N.C.A.G. 1 (1990).

Project Subject to Minority Business Participation Requirements. — Under this section, the governing body of a city is specifically authorized to accept a state grant for constructing "any project"; accordingly, it is appropriate to interpret provisions of former G.S. 143-128 pertaining to minority business participation requirements, as applying to the construction of waste water collection facilities which were subject to a grant from the Department of Environment and Natural Resources. See opinion of Attorney General to Mr. John T. Carter, Jr., Jacksonville City Attorney, 2002 N.C.A.G. 25 (7/18/02).

§ 160A-17.1. (Effective December 31, 2010) Grants from other governments.

(a) Federal and State. — The governing body of any city or county is hereby authorized to make contracts for and to accept grants-in-aid and loans from the federal and State governments and their agencies for constructing, expanding, maintaining, and operating any project or facility, or performing any function, which such city or county may be authorized by general law or local act to provide or perform.

In order to exercise the authority granted by this section, the governing body of any city or county may:

(1) Enter into and carry out contracts with the State or federal government or any agency or institution thereof under which such government, agency, or institution grants financial or other assistance to the city or county;

(2) Accept such assistance or funds as may be granted or loaned by the State or federal government with or without such a contract;

(3) Agree to and comply with any lawful and reasonable conditions which are imposed upon such grants or loans;

(3a) Agree to and comply with minimum minority business enterprise participation requirements established by the federal government and its agencies in projects financed by federal grants-in-aid or loans, by including such minimum requirements in the specifications for contracts to perform all or part of such projects and awarding bids pursuant to G.S. 143-129 and 143-131, if applicable, to the lowest responsible bidder or bidders meeting these and any other specifications.

(4) Make expenditures from any funds so granted.

(b) Expired effective December 31, 2010. (1971, c. 896, s. 10; c. 937, ss. 1, 1.5; 1973, c. 426, s. 8; 1981, c. 827.)

Section Set Out Twice. — The section above is effective December 31, 2010. For the section as in effect until December 31, 2010, see the preceding section, also numbered G.S. 160A-17.1.

§ 160A-18. Certain deeds validated.

(a) All deeds made, executed, and delivered by any city before July 1, 1970, for a good and valuable consideration are hereby in all respects validated, ratified, and confirmed notwithstanding any lack of authority to make the deed or any irregularities in the procedures by which conveyance of the land or premises described therein was authorized by the city council.

(b) All conveyances and sales of any interest in real property by private sale, including conveyances in fee and releases of vested or contingent future interests, made by the governing body of any city, school district, or school administrative unit before July 1, 1970, are hereby validated, ratified, and confirmed notwithstanding the fact that such conveyances or releases were made by private sale and not after notice and public outcry.

(b1) All conveyances of any interest in real property by private sale, including conveyance in fee, made by the governing body of any county before January 1, 1977, are hereby validated, ratified, and confirmed notwithstanding the fact that such conveyances were made by private sale, without advertisement, and not after notice and public outcry.

(c) Nothing in this section shall affect any action or proceeding begun before January 1, 1977. (Ex. Sess. 1924, c. 95; 1951, c. 44; 1959, c. 487; 1971, c. 698, s. 1; 1977, c. 1103.)

§ 160A-19. Leases.

A city is authorized to lease as lessee, with or without option to purchase, any real or personal property for any authorized public purpose. A lease of personal property with an option to purchase is subject to Article 8 of Chapter 143 of the General Statutes. (1973, c. 426, s. 9.)

§ 160A-20. Security interests.

(a) Purchase. — A unit of local government may purchase, or finance or refinance the purchase of, real or personal property by installment contracts that create in some or all of the property purchased a security interest to secure payment of the purchase price to the seller or to an individual or entity advancing moneys or supplying financing for the purchase transaction.

(b) Improvements. — A unit of local government may finance or refinance the construction or repair of fixtures or improvements on real property by contracts that create in some or all of the fixtures or improvements, or in all or some portion of the property on which the fixtures or improvements are located, or in both, a security interest to secure repayment of moneys advanced or made available for the construction or repair.

(c) Accounts. — A unit of local government may use escrow accounts in connection with the advance funding of transactions authorized by this section, whereby the proceeds of the advance funding are invested pending disbursement. A unit of local government may also use other accounts, such as debt service payment accounts and debt service reserve accounts, to facilitate transactions authorized by this section. To secure transactions authorized by this section, a unit of local government may also create security interests in these accounts.

(d) Nonsubstitution. — No contract entered into under this section may contain a nonsubstitution clause that restricts the right of a unit of local government to:

(1) Continue to provide a service or activity; or

(2) Replace or provide a substitute for any fixture, improvement, project, or property financed, refinanced, or purchased pursuant to the contract.

(e) Oversight. — A contract entered into under this section is subject to approval by the Local Government Commission under Article 8 of Chapter 159 of the General Statutes if it:

(1) Meets the standards set out in G.S. 159-148(a)(1), 159-148(a)(2), and 159-148(a)(3), or involves the construction or repair of fixtures or improvements on real property; and

(2) Is not exempted from the provisions of that Article by one of the exemptions contained in G.S. 159-148(b).

(e1) Public Hospitals. — A nonprofit entity operating or leasing a public hospital may enter into a contract pursuant to this section only if the nonprofit entity will have an ownership interest in the property being financed or refinanced, including a leasehold interest. The security interest granted in the property shall be only to the extent of the nonprofit entity's property interest. In addition, any contract entered into by a nonprofit entity operating or leasing a public hospital pursuant to this section is subject to the approval of the city, county, hospital district, or hospital authority that owns the hospital. Approval of the city, county, hospital district, or hospital authority may be withheld only under one or more of the following circumstances:

(1) The contract would cause the city, county, hospital district, or hospital authority to breach or violate any covenant in an existing financing instrument entered into by the nonprofit entity.

(2) The contract would restrict the ability of the city, county, hospital district, or hospital authority to incur anticipated bank-eligible indebtedness under federal tax laws.

(3) The entering into of the contract would have a material, adverse impact on the credit ratings of the city, county, hospital district, or hospital authority or would otherwise materially interfere with an anticipated financing by the nonprofit entity.

(f) Limit of Security. — No deficiency judgment may be rendered against any unit of local government in any action for breach of a contractual obligation authorized by this section. The taxing power of a unit of local government is not and may not be pledged directly or indirectly to secure any moneys due under a contract authorized by this section.

(g) Public Hearing. — Before entering into a contract under this section involving real property, a unit of local government shall hold a public hearing on the contract. A notice of the public hearing shall be published once at least 10 days before the date fixed for the hearing.

(h) Local Government Defined. — As used in this section, the term "unit of local government" means any of the following:

(1) A county.

(2) A city.

(3) A water and sewer authority created under Article 1 of Chapter 162A of the General Statutes.

(3a) A metropolitan sewerage district created under Article 5 of Chapter 162A of the General Statutes.

(3b) A sanitary district created under Part 2 of Article 2 of Chapter 130A of the General Statutes.

(3c) A county water and sewer district created under Article 6 of Chapter 162A of the General Statutes.

(4) An airport authority whose situs is entirely within a county that has (i) a population of over 120,000 according to the most recent federal decennial census and (ii) an area of less than 200 square miles.

(5) An airport authority in a county in which there are two incorporated municipalities with a population of more than 65,000 according to the most recent federal decennial census.

(5a) An airport board or commission authorized by agreement between two cities pursuant to G.S. 63-56, one of which is located partially but not wholly in the county in which the jointly owned airport is located, and where the board or commission provided water and wastewater services off the airport premises before January 1, 1995, except that the authority granted by this subdivision may be exercised by such a board or commission with respect to water and wastewater systems or improvements only.

(5b) A local airport authority that was created pursuant to a local act of the General Assembly.
(6) A local school administrative unit whose board of education is authorized to levy a school tax.
(6a) Any other local school administrative unit, but only for the purpose of financing energy conservation measures acquired pursuant to Part 2 of Article 3B of Chapter 143 of the General Statutes.
(6b) A community college, but only for the purpose of financing energy conservation measures acquired pursuant to Part 2 of Article 3B of Chapter 143 of the General Statutes.
(7) An area mental health, developmental disabilities, and substance abuse authority, acting in accordance with G.S. 122C-147.
(8) A consolidated city-county, as defined by G.S. 160B-2(1).
(9) Repealed by Session Laws 2001-414, s. 52, effective September 14, 2001.
(10) A regional natural gas district, as defined by Article 28 of this Chapter.
(11) A regional public transportation authority or a regional transportation authority created pursuant to Article 26 or Article 27 of this Chapter.
(12) A nonprofit corporation or association operating or leasing a public hospital as defined in G.S. 159-39.
(13) A public health authority created under Part 1B of Article 2 of Chapter 130A of the General Statutes.
(14) A special district created under Article 43 of Chapter 105 of the General Statutes. (1979, c. 743; 1987 (Reg. Sess., 1988), c. 981, s. 1; 1989, c. 708; 1991, c. 741, s. 1; 1993 (Reg. Sess., 1994), c. 592, s. 2; 1995, c. 461, s. 6; 1995 (Reg. Sess., 1996), c. 644, s. 2; 1997-380, s. 3; 1997-426, s. 7; 1997-426, s. 7.1; 1998-70, s. 1; 1998-117, s. 1; 1999-386, ss. 1, 2; 2001-414, s. 52; 2002-161, s. 10; 2003-259, s. 1; 2003-388, s. 3; 2007-226, s. 1; 2007-229, s. 3; 2009-527, s. 2(g).)

Editor's Note. — Session Laws 1989, c. 708, which amended this section, in ss. 2 and 3 provides:

"Sec. 2. (a) Any contract made or entered into, prior to the date of ratification of this act, by a city, a county, or a water and sewer authority created under Article 1 of Chapter 162A of the General Statutes which would have been valid under G.S. 160A-20, subsections (a), (b), (c), and (f), as rewritten by this act, is hereby validated, ratified, and confirmed. Furthermore, such a contract may not be held invalid because it contains a nonsubstitution clause, or because no public hearing was advertised and held on the contract, or both.

"(b) Any contract made or entered into, prior to the date of ratification of this act, by a city, a county, or a water and sewer authority created under Article 1 of Chapter 162A of the General Statutes which would have been valid under subsection (a) of this Section 2 or under G.S. 160A-20 as it existed prior to the ratification of this act or as rewritten by this act, except that the Local Government Commission did not approve the contract, is hereby validated, ratified, and confirmed.

"Sec. 3. Nothing in this act shall be interpreted to limit or restrict the authority of cities, counties, or water and sewer authorities created under Article 1 of Chapter 162A of the General Statutes to purchase, improve, or finance the purchase or improvement of real or personal property pursuant to any other applicable law, whether general, special, or local."

Session Laws 1997-426, s. 7.1, provided that if Ratified Senate Bill 389, 1997 Regular Session, became law, then subdivision (h)(9) was recodified as subdivision (h)(10) of this section. Senate Bill 389 became S.L.1997-380, which became law on August 7, 1997.

Session Laws 1997-426, s. 10(a)-(c), provide that, insofar as the provisions of that act are not consistent with the provisions of any other law, public or private, the provisions of that act shall be controlling; that references in that act to specific sections or Chapters of the General Statutes are intended to be references to such sections or Chapters as they may be amended from time to time by the General Assembly; and that that act, being necessary for the health and welfare of the people of the State, shall be liberally construed to effect the purposes thereof.

Session Laws 1997-426, s. 10(d), is a severability clause.

Session Laws 1999-377, s. 4, effective August 4, 1999, provides that any hospital continuing to operate under Article 2 of Chapter 131 of the General Statutes pursuant to Section 3 of Chapter 775 of the 1983 Session Laws shall be considered to be a "public hospital" within the meaning of G.S. 159-39 and to be a "unit of local government" within the meaning of G.S. 160A-20.

Session Laws 2002-161, s. 12, provides that nothing in the act limits the use of any method of contracting authorized by local law or other applicable laws.

Session Laws 2003-388, provides in its preamble:

"Whereas, the State Treasurer's Office formed a Public Finance Advisory Committee comprised of representative city and county governments, as well as the public finance bar and financial services sectors, to review and propose changes to the General Statutes dealing with public finance in an effort to strengthen, modernize, and provide for the most efficient method of issuing of public debt by local governments and other political subdivisions of the State; and

"Whereas, the Public Finance Advisory Committee has developed, and the State Treasurer's Office has reviewed, a set of recommendations to the General Assembly for specific changes to relevant General Statutes around which there is consensus that the proposed changes are beneficial to local governments in their issuance of public debt; and

"Whereas, the Local Government Commission remains the statutorily designated entity to which all proposed issuances must be submitted for approval, and these recommendations in no way lower or lessen the level of due diligence performed in determining the appropriateness of a specific issuance; and

"Whereas, for these reasons, this legislation is submitted for consideration by the General Assembly on behalf of the State Treasurer, the staff of the Local Government Commission, and the Public Finance Advisory Committee; Now, therefore,"

Effect of Amendments. — Session Laws 2009-527, s. 2(g), effective August 27, 2009, added subdivision (h)(14).

Legal Periodicals. — For note, "Constitutional Expansion of Local Government Financing Alternatives: Wayne County Citizens Association v. Wayne County Board of Commissioners," see 70 N.C.L. Rev. 1947 (1992).

CASE NOTES

This section does not contravene N.C. Const., Art. V, § 4, which authorizes the General Assembly to regulate local government finance. Wayne County Citizens v. Wayne County Bd. of Comm'rs, 328 N.C. 24, 399 S.E.2d 311 (1991).

County's installment purchase contract for construction of a new courthouse and jail was authorized by this section. Wayne County Citizens v. Wayne County Bd. of Comm'rs, 328 N.C. 24, 399 S.E.2d 311 (1991).

§ 160A-20.1. Contracts with private entities.

A city may contract with and appropriate money to any person, association, or corporation, in order to carry out any public purpose that the city is authorized by law to engage in. (1985, c. 271, s. 1.)

ARTICLE 4.

Corporate Limits.

Part 1. General Provisions.

§ 160A-21. Existing boundaries.

The boundaries of each city shall be those specified in its charter with any alterations that are made from time to time in the manner provided by law or by local act of the General Assembly. (1971, c. 698, s. 1.)

Legal Periodicals. — For 1984 survey, "Competitive Annexation Among Municipalities: North Carolina Adopts the Prior Jurisdiction Rule," see 63 N.C.L. Rev. 1260 (1985).

CASE NOTES

Constitutionality of Annexation by Local Act Where Essential Service Not Provided. — Annexation to a municipality by a local act of the General Assembly is not invalid constitutionally where the municipality fails to provide one of the many essential services to the newly acquired territory. Abbott v. Town of Highlands, 52 N.C. App. 69, 277 S.E.2d 820, cert. denied and appeal dismissed, 303 N.C. 710, 283 S.E.2d 136 (1981).

Contiguity and cohesiveness were not constitutionally required in an annexation proceeding under this section. Abbott v. Town of Highlands, 52 N.C. App. 69, 277 S.E.2d 820, cert. denied and appeal dismissed, 303 N.C. 710, 283 S.E.2d 136 (1981).

Legislature Has Power to Regulate Annexation. — Annexation by a municipal corporation is a political question which is within the power of the state legislature to regulate. Abbott v. Town of Highlands, 52 N.C. App. 69, 277 S.E.2d 820, cert. denied and appeal dismissed, 303 N.C. 710, 283 S.E.2d 136 (1981).

But Such Power Is Not Unlimited. — The power of the legislature to expand the boundaries of cities, towns, or other local units, though great, is not unlimited. Abbott v. Town of Highlands, 52 N.C. App. 69, 277 S.E.2d 820, cert. denied and appeal dismissed, 303 N.C. 710, 283 S.E.2d 136 (1981).

Scope of Legislative Discretion. — Enlargement of municipal boundaries by the annexation of new territory, and the consequent extension of corporate jurisdiction, including that of levying taxes, are legitimate subjects of legislation. In the absence of constitutional restriction, the extent to which such legislation shall be enacted, both with respect to the terms and circumstances under which the annexation may be had, and the manner in which it may be made, rests entirely in the discretion of the legislature. Abbott v. Town of Highlands, 52 N.C. App. 69, 277 S.E.2d 820, cert. denied and appeal dismissed, 303 N.C. 710, 283 S.E.2d 136 (1981).

Judicial Review of Local Annexation Act. — A local annexation act is not insulated from judicial review when it is an instrument for circumventing a constitutionally protected right. Abbott v. Town of Highlands, 52 N.C. App. 69, 277 S.E.2d 820, cert. denied and appeal dismissed, 303 N.C. 710, 283 S.E.2d 136 (1981).

Cited in Jones v. Jeanette, 34 N.C. App. 526, 239 S.E.2d 293 (1977); Piedmont Ford Truck Sales, Inc. v. City of Greensboro, 90 N.C. App. 692, 370 S.E.2d 262 (1988); Pinehurst Enters., Inc. v. Town of S. Pines, 690 F. Supp. 444 (M.D.N.C. 1988).

§ 160A-22. Map of corporate limits.

The current city boundaries shall at all times be drawn on a map, or set out in a written description, or shown by a combination of these techniques. This delineation shall be retained permanently in the office of the city clerk. Alterations in these established boundaries shall be indicated by appropriate entries upon or additions to the map or description made by or under the direction of the officer charged with that duty by the city charter or by the council. Copies of the map or description reproduced by any method of reproduction that gives legible and permanent copies, when certified by the city clerk, shall be admissible in evidence in all courts and shall have the same force and effect as would the original map or description. The council may provide for revisions in any map or other description of the city boundaries. A revised map or description shall supersede for all purposes the earlier map or description that it is designated to replace. (1971, c. 698, s. 1; 1973, c. 426, s. 10.)

CASE NOTES

Cited in Potter v. City of Hamlet, 141 N.C. App. 714, 541 S.E.2d 233, 2001 N.C. App. LEXIS 18 (2001).

§ 160A-23. District map; reapportionment.

(a) If the city is divided into electoral districts for the purpose of electing the members of the council, the map or description required by G.S. 160A-22 shall also show the boundaries of the several districts.

(b) The council shall have authority to revise electoral district boundaries from time to time. If district boundaries are set out in the city charter and the charter does not provide a method for revising them, the council may revise them only for the purpose of (i) accounting for territory annexed to or excluded from the city, and (ii) correcting population imbalances among the districts shown by a new federal census or caused by exclusions or annexations. When district boundaries have been established in conformity with the federal Constitution, the council shall not be required to revise them again until a new federal census of population is taken or territory is annexed to or excluded from the city, whichever event first occurs. In establishing district boundaries, the council may use data derived from the most recent federal census and shall not be required to use any other population estimates. (1969, c. 629; 1971, c. 698, s. 1.)

Legal Periodicals. — For article, "Political Gerrymandering After Davis v. Bandemer," see 9 Campbell L. Rev. 207 (1987).

For article, "Racial Gerrymandering and the Voting Rights Act in North Carolina," see 9 Campbell L. Rev. 255 (1987).

§ 160A-23.1. Special rules for redistricting after a federal decennial census.

(a) As soon as possible after receipt of federal decennial census information, the council of any city which elects the members of its governing board on a district basis, or where candidates for such office must reside in a district in order to run, shall evaluate the existing district boundaries to determine whether it would be lawful to hold the next election without revising districts to correct population imbalances. If such revision is necessary, the council shall consider whether it will be possible to adopt the changes (and obtain approval from the United States Department of Justice, if necessary) before the third day before opening of the filing period for the municipal election. The council shall take into consideration the time that will be required to afford ample opportunities for public input. If the council determines that it most likely will not be possible to adopt the changes (and obtain federal approval, if necessary) before the third business day before opening of the filing period, and determines further that the population imbalances are so significant that it would not be lawful to hold the next election using the current electoral districts, it may adopt a resolution delaying the election so that it will be held on the timetable provided by subsection (d) of this section. Before adopting such a resolution, the council shall hold a public hearing on it. The notice of public hearing shall summarize the proposed resolution and shall be published at least once in a newspaper of general circulation, not less than seven days before the date fixed for the hearing. Notwithstanding adoption of such a resolution, if the council proceeds to adopt the changes, (and federal approval is obtained, if necessary) by the end of the third business day before the opening of the filing period, the election shall be held on the regular schedule under the revised electoral districts. Any resolution adopted under this subsection, and any changes in electoral district boundaries made under this section shall be submitted to the United States Department of Justice (if the city is covered under Section 5 of the Voting Rights Act of 1965), the State Board of Elections, and to the board conducting the elections for that city.

(b) In adopting any revisal under this section, if the council determines that in order for the plan to conform to the Voting Rights Act of 1965, the number of district seats needs to be increased or decreased, it may do so by following the procedures set forth in Part 4 of Article 5 of Chapter 160A of the General

Statutes, except that the ordinance under G.S. 160A-102 may be adopted at the same meeting as the public hearing, and any referendum on the change under G.S. 160A-103 shall not apply to the municipal election in the two years following a federal decennial census.

(c) If the resolution provided for in subsection (a) of this section is not adopted and:

(1) Proposed changes to the electoral districts are not adopted, or

(2) Such changes are adopted, but approval under the Voting Rights Act of 1965, as amended, is required, and notice of such approval is not received,

by the end of the third business day before the opening of the filing period, the election shall be held on the regular schedule using the current electoral districts.

(d) If the council adopts the resolution provided for in subsection (a) of this section and does not adopt the changes, or does adopt the changes, but approval under the Voting Rights Act of 1965, as amended, is required, and notice of such approval is not received, by the end of the third day before the opening of the filing period, the municipal election shall be rescheduled as provided in this subsection and current officeholders shall hold over until their successors are elected and qualified. For cities using the:

(1) Partisan primary and election method under G.S. 163-291, the primary shall be held on the primary election date for county officers in the second year following a federal decennial census, the second primary, if necessary, shall be held on the second primary election date for county officers in that year, and the general election shall be held on the general election date for county officers in that year.

(2) Nonpartisan primary and election method under G.S. 163-294, the primary shall be held on the primary election date for county officers in the second year following a federal decennial census, and the election shall be held on the date for the second primary for county officers in that year.

(3) Nonpartisan plurality election method under G.S. 163-292, the election shall be held on the primary election date for county officers in the second year following a federal decennial census.

(4) Election and runoff method under G.S. 163-293, the election shall be held on the primary election date for county officers in the second year following a federal decennial census, and the runoffs, if necessary, shall be held on the date for the second primary for county officers in that year.

The organizational meeting of the new council may be held at any time after the results of the election have been officially determined and published, but not later than the time and date of the first regular meeting of the council in November of the second year following a federal decennial census, except in the case of partisan municipal elections, when the organizational meeting shall be held not later than the time and date of the first regular meeting of the council in December of the second year following a federal decennial census.

(e) This section does not apply to any municipality that, under its charter, is not scheduled to hold an election in the year following a federal decennial census. (1989 (Reg. Sess., 1990), c. 1012, s. 2; 1999-227, s. 4; 2000-140, s. 34; 2002-159, s. 52; 2009-414, s. 1.)

Editor's Note. — Session Laws 1999-227, s. 3, contains findings of the General Assembly regarding, in part, the use of census data for congressional redistricting.

Effect of Amendments. — Session Laws 2009-414, s. 1, effective August 5, 2009, in the section heading, substituted "a federal decennial census" for "2000 census"; in subsection (a), substituted "decennial census information" for "census information in 2001"; in subsection (b), substituted "the two years following a federal decennial census" for "2001 or 2002"; in subsection (d), substituted "the second year following a federal decennial census" or "that year" for "2002" throughout; and added subsection (e).

ARTICLE 4A.

Extension of Corporate Limits.

Local Modification. — (As to this Article) Municipalities in Craven County: 1985, c. 92, s. 2; town of Butner: 2007-269, s. 1.1 (restrictions on annexation); town of Wallburg: 2004-37, s. 1 (shall not extend boundaries into Forsyth County); village of Pinehurst: 1985, c. 379, s. 4.

Part 1. Extension by Petition.

§§ 160A-24 through 160A-28: Repealed by Session Laws 1983, c. 636, s. 26.

Local Modification. — (As to Article 4A) Special Airport District for Burke and Caldwell: 2001-306, s. 3.1.

Editor's Note. — Session Laws 1983, c. 636, which repealed these sections, in s. 37.1, as amended by Session Laws 1983, c. 768, s. 25, provided: "The General Assembly intends by this act to repeal all acts and provisions of acts that modify the application to particular cities and towns of Parts 2 and 3 of Article 4A of Chapter 160A of the General Statutes or that exempt particular cities or towns from the application of either or both of those two Parts. Therefore, all such acts and provisions of acts, even if not specifically listed and repealed in Sections 26 through 35.4 of this act, are repealed. Neither this section nor Sections 26 through 35.4 of this act shall affect any annexation in progress on the dates of ratification of this act under any of the repealed or amended sections."

Section 38 of Session Laws 1983, c. 636 provided: "This act shall be effective with respect to all annexations where resolutions of intent are adopted on or after the date of ratification of this act, except that Sections 36 and 37 shall become effective with respect to all annexations where resolutions of intent are adopted on or after July 1, 1984, Sections 25.1 through 35.5 and Section 37.1 are effective upon ratification and Section 25 shall become effective as provided in that section. No annexation where a resolution of intent was adopted prior to the date of ratification of this act shall be affected by this act except as provided in Section 25."

The act was ratified June 29, 1983.

§ 160A-29. Map of annexed area, copy of ordinance and election results recorded in the office of register of deeds.

Whenever the limits of any municipal corporation are enlarged, in accordance with the provisions of this Article, it shall be the duty of the mayor of the city or town to cause an accurate map of such annexed territory, together with a copy of the ordinance duly certified, and the official results of the election, if conducted, to be recorded in the office of the register of deeds of the county or counties in which such territory is situated and in the office of the Secretary of State. The documents required to be filed with the Secretary of State under this section shall be filed not later than 30 days following the effective date of the annexation ordinance. All documents shall have an identifying number affixed thereto and shall conform in size in accordance with rules prescribed by the Secretary. Failure to file within 30 days shall not affect the validity of the annexation. Any annexation shall be reported as part of the Boundary and Annexation Survey of the United States Bureau of the Census. (1947, c. 725, s.

6; 1973, c. 426, s. 74; 1987, c. 715, s. 6; c. 879, s. 3; 1989, c. 440, s. 7; 1991, c. 586, s. 1.)

Local Modification. — (As to Article 4A) Bladen: 1991 (Reg. Sess., 1992), c. 807, ss. 2, 3; Cabarrus and Orange and municipalities located therein: 1987, c. 233, s. 2; 1991, c. 685, s. 7; New Hanover: 1997-415; (As to Article 4A) city of Durham: 1993, c. 342, s. 1; (As to Article 4A) city of Reidsville: 1997-360; city of Washington: 1993 (Reg. Sess., 1994), c. 713, s. 1; (as to Part 1) town of Dobbins Heights: 1983, c. 658; (As to Article 4A) town of Holden Beach: 1991, c. 638, s. 1; (As to Article 4A) town of Lewisville: 1991, c. 116, s. 1; (As to Article 4A) town of Middlesex: 1993, c. 480; town of Oak Ridge: 1998-113; (As to Article 4A) town of Swepsonville: 1997-448, s. 2.

Cross References. — As to effective date of annexation ordinances adopted under Article 4A of Chapter 160A, see G.S. 160A-58.9A.

Editor's Note. — Session Laws 2008-181, ss. 46.1 through 46.4, established the Joint Legislative Study Commission, on Municipal Annexation. The act provided for Commission membership, vacancies, powers and duties, meetings, staff, expenses, and issues that may be examined by the Commission as part of the study. The act also provided that the Commission would terminate upon the earlier of the filing of its final report or the convening of the 2009 General Assembly.

CASE NOTES

As to the constitutionality of this Article, see Forsyth Citizens Opposing Annexation v. City of Winston-Salem, 67 N.C. App. 164, 312 S.E.2d 517, cert. denied and appeal dismissed, 310 N.C. 743, 315 S.E.2d 701, appeal dismissed, 469 U.S. 802, 105 S. Ct. 57, 83 L. Ed. 2d 8 (1984).

Right to Annexation Conditioned on Compliance with Duty to Create Record. — For an annexation ordinance to be valid, the record must show prima facie complete and substantial compliance with Article 4A of G.S. 160A as a condition precedent to the municipality's right to annex the territory. Matheson v. City of Asheville, 102 N.C. App. 156, 402 S.E.2d 140 (1991).

If Record Is Complete, Burden of Showing Irregularity Shifts to Those Opposing Annexation. — Once a municipality has made its prima facie showing of compliance with this Article, the burden shifts to those opposing annexation to prove either a procedural irregularity in the annexation process materially prejudicing the rights of those opposing annexation or a failure on the part of the municipality to comply with statutory prerequisites to annexation as a matter of fact. Matheson v. City of Asheville, 102 N.C. App. 156, 402 S.E.2d 140 (1991).

§ 160A-30. Surveys of proposed new areas.

The governing bodies of the cities and towns after five days' written notice to the owner of record or persons in possession of the premises are hereby authorized to enter upon any lands to make surveys or examinations as may be necessary in carrying out the mapping requirements of proposed annexations under any provision of Article 4A of Chapter 160A; provided, the city or town authorizing such entry shall make reimbursement for any damage resulting from such activity. (1947, c. 725, s. 7; 1973, c. 426, s. 74; 1975, c. 312.)

Legal Periodicals. — For survey of 1980 constitutional law, see 59 N.C.L. Rev. 1093 (1981).

§ 160A-31. Annexation by petition.

(a) The governing board of any municipality may annex by ordinance any area contiguous to its boundaries upon presentation to the governing board of a petition signed by the owners of all the real property located within such area. The petition shall be signed by each owner of real property in the area and shall contain the address of each such owner.

(b) The petition shall be prepared in substantially the following form:

DATE:

To the ________________ (name of governing board) of the (City or Town) of ________________

1. We the undersigned owners of real property respectfully request that the area described in paragraph 2 below be annexed to the (City or Town) of ________________

2. The area to be annexed is contiguous to the (City or Town) of ____________ and the boundaries of such territory are as follows:

____

(c) Upon receipt of the petition, the municipal governing board shall cause the clerk of the municipality to investigate the sufficiency thereof and to certify the result of his investigation. Upon receipt of the certification, the municipal governing board shall fix a date for a public hearing on the question of annexation, and shall cause notice of the public hearing to be published once in a newspaper having general circulation in the municipality at least 10 days prior to the date of the public hearing; provided, if there be no such paper, the governing board shall have notices posted in three or more public places within the area to be annexed and three or more public places within the municipality.

(d) At the public hearing all persons owning property in the area to be annexed who allege an error in the petition shall be given an opportunity to be heard, as well as residents of the municipality who question the necessity for annexation. The governing board shall then determine whether the petition meets the requirements of this section. Upon a finding that the petition meets the requirements of this section, the governing board shall have authority to pass an ordinance annexing the territory described in the petition. The governing board shall have authority to make the annexing ordinance effective immediately or on any specified date within six months from the date of passage of the ordinance.

(e) From and after the effective date of the annexation ordinance, the territory and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in such municipality and shall be entitled to the same privileges and benefits as other parts of such municipality. Real and personal property in the newly annexed territory on the January 1 immediately preceding the beginning of the fiscal year in which the annexation becomes effective is subject to municipal taxes as provided in G.S. 160A-58.10. If the effective date of annexation falls between June 1 and June 30, and the effective date of the privilege license tax ordinance of the annexing municipality is June 1, then businesses in the area to be annexed shall be liable for taxes imposed in such ordinance from and after the effective date of annexation.

(f) For purposes of this section, an area shall be deemed "contiguous" if, at the time the petition is submitted, such area either abuts directly on the municipal boundary or is separated from the municipal boundary by a street or street right-of-way, a creek or river, or the right-of-way of a railroad or other public service corporation, lands owned by the municipality or some other political subdivision, or lands owned by the State of North Carolina. In describing the area to be annexed in the annexation ordinance, the municipal governing board may include within the description any territory described in this subsection which separates the municipal boundary from the area petitioning for annexation.

(g) The governing board may initiate annexation of contiguous property owned by the municipality by adopting a resolution stating its intent to annex the property, in lieu of filing a petition. The resolution shall contain an adequate description of the property, state that the property is contiguous to the municipal boundaries and fix a date for a public hearing on the question of annexation. Notice of the public hearing shall be published as provided in subsection (c) of this section. The governing board may hold the public hearing and adopt the annexation ordinance as provided in subsection (d) of this section.

(h) A city council which receives a petition for annexation under this section may by ordinance require that the petitioners file a signed statement declaring whether or not vested rights with respect to the properties subject to the petition have been established under G.S. 160A-385.1 or G.S. 153A-344.1. If the statement declares that such rights have been established, the city may require petitioners to provide proof of such rights. A statement which declares that no vested rights have been established under G.S. 160A-385.1 or G.S. 153A-344.1 shall be binding on the landowner and any such vested right shall be terminated. (1947, c. 725, s. 8; 1959, c. 713; 1973, c. 426, s. 74; 1975, c. 576, s. 2; 1977, c. 517, s. 4; 1987, c. 562, s. 1; 1989 (Reg. Sess., 1990), c. 996, s. 3.)

Local Modification. — City of Asheville: 2005-139, s. 2 (Applicable to petitions for annexation received on or after June 30, 2005); city of Concord: 2004-102, s. 1; city of Durham: 1987, c. 606; 1993, c. 342, s. 1; city of Fayetteville: 1969, c. 715; city of Greensboro: 1959, c. 1137, s. 18; city of Mount Holly: 2000-24, s. 1; city of Reidsville: 1997-343; town of Atlantic Beach: 1959, c. 395; town of Huntersville: 1999-19, s. 1; 1999-337, s. 45; town of Morrisville: 1989, c. 389, s. 1.

Legal Periodicals. — For survey of 1981 administrative law, see 60 N.C.L. Rev. 1165 (1982).

For 1984 survey, "Competitive Annexation Among Municipalities: North Carolina Adopts the Prior Jurisdiction Rule," see 63 N.C.L. Rev. 1260 (1985).

For casenote, "Carolina Power & Light v. City of Asheville Municipal Annexation in North Carolina: The Pros, the Cons and the Judiciary," see 27 N.C. Cent. L.J. 224 (2005).

CASE NOTES

Deliberate preference for voluntary annexation is incorporated into the law. Town of Hazelwood v. Town of Waynesville, 320 N.C. 89, 357 S.E.2d 686, cert. denied, 320 N.C. 639, 360 S.E.2d 106 (1987).

Sections 160A-37(e), 160A-49(e), and this section are in pari materia. Conover v. Newton, 297 N.C. 506, 256 S.E.2d 216 (1979).

No Authorization to Annex Only Part of Area Described. — If the General Assembly had intended to authorize cities proceeding pursuant to a petition for voluntary annexation to annex merely a part of the area described in the petition, it would have so provided, as it has explicitly done in G.S. 160A-37(e) and 160A-49(e). The absence of such statutory authorization, in light of the explicit provisions for it in the involuntary annexation statutes, is cogent evidence that the General Assembly intended a petition for voluntary annexation to stand or fall as a unity. Conover v. Newton, 297 N.C. 506, 256 S.E.2d 216 (1979).

Subsection (f) — "Contiguous". — North Carolina annexation statutes do not permit municipality to annex by voluntary means tract of land that is contiguous with its municipal boundaries only by virtue of second tract of land that is being annexed simultaneously. City of Kannapolis v. City of Concord, 326 N.C. 512, 391 S.E.2d 493 (1990).

Standing to Contest Annexation. — Because this section describes a voluntary annexation undertaken at the request of land owners and does not authorize suit by neighboring municipalities, plaintiff town did not have standing to contest the annexation scheme of defendant neighboring town; only if another town owned property in the annexed area, or if both towns were simultaneously attempting to annex controverted property, could there be a justiciable controversy, giving one town standing to contest the annexation by the other, and, even then, G.S. 160A-360 provides a way to resolve such a conflict. Town of Ayden v. Town of Winterville, 143 N.C. App. 136, 544 S.E.2d 821, 2001 N.C. App. LEXIS 223 (2001).

Annexation of Undeveloped Lands Only on Petition. — Large tracts of agricultural or vacant lands, where no evidence of urban development can be shown, should not be annexed in any event, except upon petition of the landowners. Lithium Corp. of Am. v. Town of Bessemer City, 261 N.C. 532, 135 S.E.2d 574 (1964).

Property owners who have signed a voluntary annexation petition have the right to withdraw from the petition at any time up until the governing municipal body has taken action upon the petition by annexing the area described in the petition. Conover v. Newton, 297 N.C. 506, 256 S.E.2d 216 (1979).

Resolution of intent is "first mandatory public procedural step" for purposes of the prior jurisdiction rule. Town of Hazelwood v.

Town of Waynesville, 320 N.C. 89, 357 S.E.2d 686, cert. denied, 320 N.C. 639, 360 S.E.2d 106 (1987).

The adoption of a resolution of intent is the critical date for determining whether a municipality utilizing involuntary annexation procedures has prior jurisdiction over the same territory being considered for voluntary annexation by a different municipality. Town of Hazelwood v. Town of Waynesville, 320 N.C. 89, 357 S.E.2d 686, cert. denied, 320 N.C. 639, 360 S.E.2d 106 (1987).

Property Not Contiguous. — Where city sought to annex private property and municipal property, and where municipal property was not contiguous with city but was contiguous to private property, city could not annex municipal property on the theory that the area as a whole was contiguous; the private property and municipal property were annexed by different procedures with independent requirements and could not be considered one whole area for the purpose of satisfying the contiguity requirement. City of Kannapolis v. City of Concord, 95 N.C. App. 591, 383 S.E.2d 402, rev'd on other grounds, 326 N.C. 512, 391 S.E.2d 493 (1990).

At the time town purported to annex defendant counties' property, the property was not contiguous and the attempted annexation was invalid. Town of Valdese v. Burke, Inc., 125 N.C. App. 688, 482 S.E.2d 24 (1997).

Effect of Withdrawal. — Where six owners of real property located within the area described in a voluntary annexation petition validly withdrew their signatures from the petition before the annexation ordinance was passed, the city governing body was without jurisdiction to take any further action on the petition as submitted, and the entire ordinance purporting to annex all the area described in the petition was void. Conover v. Newton, 297 N.C. 506, 256 S.E.2d 216 (1979).

Condemnor-County May Enjoin Municipal Annexation Proceeding. — When a county initiates condemnation of property for a sanitary landfill, and the property is being considered for voluntary annexation into a municipality, the county may proceed with the condemnation action. The county is entitled to an injunction enjoining the annexation proceeding, and the property owners and the municipality may raise the proposed annexation in the answer to the condemnation complaint, for appropriate consideration by the court. Yandle v. Mecklenburg County, 85 N.C. App. 382, 355 S.E.2d 216 (1987).

Annexation Held Proper. — City's division of an annexation area into sub-areas did not result in the improper annexation of an "island" not contiguous with the city limits as of the date of the original resolution of intent, although the boundaries of the sub-area, if considered in isolation, rather than as a sub-part of the area originally identified and eventually annexed, were not contiguous with the city limits on the date of the initial resolution. U.S. Cold Storage, Inc. v. City of Lumberton, 170 N.C. App. 411, 612 S.E.2d 415, 2005 N.C. App. LEXIS 1014 (2005).

Applied in Texfi Indus., Inc. v. City of Fayetteville, 301 N.C. 1, 269 S.E.2d 142 (1980).

Cited in Thompson v. Whitley, 344 F. Supp. 480 (E.D.N.C. 1972); Abbott v. Town of Highlands, 52 N.C. App. 69, 277 S.E.2d 820 (1981); Town of Hazelwood v. Town of Waynesville, 83 N.C. App. 670, 351 S.E.2d 558 (1987); South Shell Inv. v. Town of Wrightsville Beach, 703 F. Supp. 1192 (E.D.N.C. 1988).

§ 160A-31.1. Assumption of debt.

(a) If the city has annexed under this Part any area which is served by a rural fire department and which is in:

(1) An insurance district defined under G.S. 153A-233;
(2) A rural fire protection district under Article 3A of Chapter 69 of the General Statutes; or
(3) A fire service district under Article 16 of Chapter 153A of the General Statutes,

then beginning with the effective date of annexation the city shall pay annually a proportionate share of any payments due on any debt (including principal and interest) relating to facilities or equipment of the rural fire department, if the debt was existing at the time of submission of the petition for annexation to the city under this Part. The rural fire department shall make available to the city not later than 30 days following a written request from the city, information concerning such debt. The rural fire department forfeits its rights under this section if it fails to make a good faith response within 45 days following receipt of the written request for information from the city, provided that the city's written request so states by specific reference to this section.

(b) The annual payments from the city to the rural fire department on such shared debt service shall be calculated as follows:

(1) The rural fire department shall certify to the city each year the amount that will be expended for debt service subject to be shared by the city as provided by subsection (a) of this section; and

(2) The amount determined under subdivision (1) of this subsection shall be multiplied by the percentage determined by dividing the assessed valuation of the area of the district annexed by the assessed valuation of the entire district, each such valuation to be fixed as of the date the annexation ordinance becomes effective.

(c) This section does not apply in any year as to any annexed area(s) for which the payment calculated under this section as to all annexation ordinances adopted under this Part by a city during a particular calendar year does not exceed one hundred dollars ($100.00).

(d) The city and rural fire department shall jointly present a payment schedule to the Local Government Commission for approval and no payment may be made until such schedule is approved. The Local Government Commission shall approve a payment schedule agreed upon between the city and the rural fire department in cases where the assessed valuation of the district may not readily be determined, if there is a reasonable basis for the agreement. (1989, c. 598, s. 2.)

§ 160A-32: Repealed by Session Laws 1983, c. 636, s. 26.1.

Editor's Note. — Session Laws 1983, c. 636, which repealed this section, in s. 37.1, as amended by Session Laws 1983, c. 768, s. 25, provided: "The General Assembly intends by this act to repeal all acts and provisions of acts that modify the application to particular cities and towns of Parts 2 and 3 of Article 4A of Chapter 160A of the General Statutes or that exempt particular cities or towns from the application of either or both of those two Parts. Therefore, all such acts and provisions of acts, even if not specifically listed and repealed in Sections 26 through 35.4 of this act, are repealed. Neither this section nor Sections 26 through 35.4 of this act shall affect any annexation in progress on the dates of ratification of this act under any of the repealed or amended sections."

Section 38 of Session Laws 1983, c. 636 provided: "This act shall be effective with respect to all annexations where resolutions of intent are adopted on or after the date of ratification of this act, except that Sections 36 and 37 shall become effective with respect to all annexations where resolutions of intent are adopted on or after July 1, 1984, Sections 25.1 through 35.5 and Section 37.1 are effective upon ratification and Section 25 shall become effective as provided in that section. No annexation where a resolution of intent was adopted prior to the date of ratification of this act shall be affected by this act except as provided in Section 25."

The act was ratified June 29, 1983.

Part 2. Annexation by Cities of Less Than 5,000.

§ 160A-33. Declaration of policy.

It is hereby declared as a matter of State policy:

(1) That sound urban development is essential to the continued economic development of North Carolina;

(2) That municipalities are created to provide the governmental services essential for sound urban development and for the protection of health, safety and welfare in areas being intensively used for residential, commercial, industrial, institutional and government purposes or in areas undergoing such development;

(3) That municipal boundaries should be extended, in accordance with legislative standards applicable throughout the State, to include such

areas and to provide the high quality of governmental services needed therein for the public health, safety and welfare; and

(4) That new urban development in and around municipalities having a population of less than 5,000 persons tends to be concentrated close to the municipal boundary rather than being scattered and dispersed as in the vicinity of larger municipalities, so that the legislative standards governing annexation by smaller municipalities can be simpler than those for larger municipalities and still attain the objectives set forth in this section;

(5) That areas annexed to municipalities in accordance with such uniform legislative standards should receive the services provided by the annexing municipality in accordance with G.S. 160A-35(3). (1959, c. 1010, s. 1; 1973, c. 426, s. 74; 1983, c. 636, s. 8.)

Local Modification. — (As to Parts 2 and 3 of Article 4A) Cabarrus: 2000-7, s. 1, 2003-317, s. 2 (effective until June 30, 2010); 2003-326, s. 1 (expires June 30, 2006); (As to Part 2) Durham: 1985, c. 435, s. 2; 1989 (Reg. Sess., 1990), c. 841, s. 4; 2000-93, s. 1; (As to Parts 2 and 3) Harnett: 1998-143, s. 4; Rockingham: 1993, c. 418, s. 1; (As to Part 2) Wake: 1985, c. 435, s. 2; 2000-93, s. 1; (As to Part 2) city of Brevard: 1991 (Reg. Sess., 1992), c. 964, s. 2; city of Durham: 1987, c. 606; city of Eden: 1993, c. 418, s. 1; city of Hendersonville: 1997-188; (As to Parts 2 and 3 of Article 4A, for five years after incorporation) town of Butner: 2007-269, s. 1.1; town of Dobbins Heights: 1983, c. 658; (As to Parts 2 and 3 of Article 4A) town of Hemby Bridge: 1998-143, s. 4; (As to Parts 2 and 3 of Article 4A) town of Laurel Park: 1997-188; 2000-8, s. 1; town of Old Fort: 1993, c. 309, s. 1; (As to Part 2) town of River Bend: 2007-334, s. 3; (As to Part 2) town of Stanley: 1993 (Reg. Sess., 1994), c. 713, s. 2; town of Wallace: 1989, c. 619, s. 2; village of Sugar Mountain: 1985, c. 395; community of Rock Barn: 1989, c. 27.

Cross References. — As to effective date of annexation ordinances adopted under Article 4A of Chapter 160A, see G.S. 160A-58.9A.

Editor's Note. — Sections 160A-33 through 160A-44 were originally codified as G.S. 160-453.1 through 160-453.12. They were transferred to their present position by Session Laws 1973, c. 426, s. 74.

Session Laws 1983, c. 636, which amended this section, in s. 37.1, as amended by Session Laws 1983, c. 768, s. 25, provided: "The General Assembly intends by this act to repeal all acts and provisions of acts that modify the application to particular cities and towns of Parts 2 and 3 of Article 4A of Chapter 160A of the General Statutes or that exempt particular cities or towns from the application of either or both of those two Parts. Therefore, all such acts and provisions of acts, even if not specifically listed and repealed in Sections 26 through 35.4 of this act, are repealed. Neither this section nor Sections 26 through 35.4 of this act shall affect any annexation in progress on the dates of ratification of this act under any of the repealed or amended sections."

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The act was ratified June 29, 1983.

Legal Periodicals. — For survey of 1980 administrative law, see 59 N.C.L. Rev. 1026 (1981).

For survey of 1980 constitutional law, see 59 N.C.L. Rev. 1093 (1981).

For survey of 1981 administrative law, see 60 N.C.L. Rev. 1165 (1982).

For 1984 survey, "Competitive Annexation Among Municipalities: North Carolina Adopts the Prior Jurisdiction Rule," see 63 N.C.L. Rev. 1260 (1985).

For survey, "Municipal Annexation in North Carolina: A Look at the Past Decade," see 14 Campbell L. Rev. 135 (1992).

For comment, "'Caught Between a Rock and a Hard Place': Fringe Landowners 'Can't Get No Satisfaction.' Is It Time to Re-Think Annexation Policy in North Carolina?," see 24 Campbell L. Rev. 317 (2002).

For note, "Consent Not Required: Municipal Annexation in North Carolina," see 83 N.C. L. Rev. 1634 (2005).

For article, "Bargain Basement Annexation: How Municipalities Subvert the Intent of North Carolina Annexation Laws," see 29 N.C. Cent. L.J. 77 (2006).

CASE NOTES

This Part does not constitute an unconstitutional delegation of legislative power in violation of N.C. Const., Art. VIII. Williams v. Town of Grifton, 19 N.C. App. 462, 199 S.E.2d 288 (1973).

The legislature may, without violating the state or federal Constitutions, delegate to a municipality the authority to implement a plan of annexation. Williams v. Town of Grifton, 19 N.C. App. 462, 199 S.E.2d 288 (1973).

The guidelines established by this Part are as stringent as those in G.S. 160A-45 et seq., and the discretion conferred upon the municipalities of population less than 5,000 is no greater than that conferred upon municipalities of population of 5,000 or greater. Therefore, the contention that the annexation statute is unconstitutional is untenable. Williams v. Town of Grifton, 19 N.C. App. 462, 199 S.E.2d 288 (1973).

Rational Basis for Statutory Scheme. — Given the State policy, it is not difficult to conceive of a rational basis supportive of the patchwork statutory scheme governing annexation in North Carolina. Thompson v. Whitley, 344 F. Supp. 480 (E.D.N.C. 1972).

Application to Property of Condominium Owners. — Condominium unit owners need municipal services like water, sewage disposal, and police and fire protection just as do homeowners in any new development. It would lead to anomalous results and violate legislative intent to construe the statute as applying to the property of homeowners but not to the property of condominium unit owners. Tar Landing Villas Owners' Ass'n v. Town of Atlantic Beach, 64 N.C. App. 239, 307 S.E.2d 181 (1983), cert. denied, 310 N.C. 156, 311 S.E.2d 296 (1984).

Annexation of territory by a municipality is a legislative and not a judicial act; hence, in the absence of statutory directive, the court, on appeal from an annexation ordinance, cannot divide the territory, annex a part thereof and refuse to annex the remainder. Huntley v. Potter, 255 N.C. 619, 122 S.E.2d 681 (1961).

Proceeding Is Summary. — A proceeding by a municipality to annex territory pursuant to this Part is summary in nature. Southern Ry. v. Hook, 261 N.C. 517, 135 S.E.2d 562 (1964).

And the material statutory requirements must be complied with. Southern Ry. v. Hook, 261 N.C. 517, 135 S.E.2d 562 (1964).

Summary Judgment Inappropriate for Fact Questions. — The trial court erred in granting summary judgment as to whether defendant-town had fulfilled its duty to maintain a street it annexed where the record was undeveloped as to the current state of repair of the street and the customary maintenance provided by defendant on similar streets. Buckland v. Town of Haw River, 141 N.C. App. 460, 541 S.E.2d 497, 2000 N.C. App. LEXIS 1307 (2000).

Burden of Showing Noncompliance. — In an annexation proceeding under this Part, the record of the proceedings must show prima facie complete and substantial compliance with the applicable provisions of the statutes; the burden is upon petitioners requesting review of annexation proceedings to show, by competent evidence, failure on the part of the municipality to comply with the statutory requirements as a matter of fact, or irregularity in the proceedings which materially prejudiced the substantive rights of petitioners. Conover v. Newton, 297 N.C. 506, 256 S.E.2d 216 (1979).

Voluntary Procedure Is Simpler and Quicker Than Involuntary Procedure. — The voluntary procedure initiated by landowners and future municipal taxpayers has understandably been made simpler and quicker than involuntary annexation procedures. Town of Hudson v. City of Lenoir, 279 N.C. 156, 181 S.E.2d 443 (1971).

And Injects Element of Choice. — The variations in procedural requirements with respect to voluntary and involuntary annexation make it possible for property owners in the affected area to inject an element of choice as to which municipality will govern them. Town of Hudson v. City of Lenoir, 279 N.C. 156, 181 S.E.2d 443 (1971).

Contiguity is an essential component of the traditional concept of a municipal corporation, which is envisioned as a governmental unit capable of providing essential governmental services to residents within compact borders on a scale adequate to insure "the protection of health, safety, and welfare in areas being intensively used for residential, commercial, industrial, and government purposes or in areas undergoing such development." Imposition of the contiguity requirement is one means of ensuring that the annexation process remains consistent with principles of sound urban development. Hawks v. Town of Valdese, 299 N.C. 1, 261 S.E.2d 90 (1980).

Section 160A-37 provides two different procedural methods for beginning the involuntary annexation process under G.S. 160A-33 to 160A-42, and former G.S. 160A-43 and 160A-44. A municipality may either pass a resolution of consideration one year prior to adopting its resolution of intent, or it may immediately adopt the resolution of intent and postpone the effective date of annexation for at least a year after the ordinance is passed. Town of Hazelwood v. Town of Waynesville, 83 N.C. App. 670, 351 S.E.2d 558, rev'd on other grounds, 320 N.C. 89, 357 S.E.2d 686 (1987).

Prior Jurisdiction Doctrine. — Adherence to the prior jurisdiction doctrine is not only consistent with the majority rule, but is in keeping with the spirit and intent of the annexation statutes. City of Burlington v. Town of Elon College, 310 N.C. 723, 314 S.E.2d 534 (1984).

Where one municipality institutes valid annexation proceedings first, that municipality should be given priority under the prior jurisdiction rule, and subsequent annexation proceedings, of whatever nature, are of no force and effect. City of Burlington v. Town of Elon College, 310 N.C. 723, 314 S.E.2d 534 (1984).

Preference of Landowners Is of No Consequence. — For purposes of the prior jurisdiction rule, annexation proceedings, regardless of their nature, are "equivalent proceedings," and it is of no consequence which town or city the landowners prefer. In fact, it appears to be the very essence of the involuntary annexation procedures that the affected landowners have no choice, as long as the annexing body complies with the applicable statutes. City of Burlington v. Town of Elon College, 310 N.C. 723, 314 S.E.2d 534 (1984).

Objectives Held Sufficient to Justify Annexation. — Three avowed objectives stated by a town's governing board, namely, (1) essentially all of the town's desirable building sites were exhausted, (2) the tax base was unable to provide the kind of services people needed, and (3) many interested people were unable to participate in town government were sufficient to qualify annexation under this Part. Williams v. Town of Grifton, 19 N.C. App. 462, 199 S.E.2d 288 (1973).

Annexation Proper. — Trial court properly found that a village provided independent administrative, engineering, auditing, legal, and planning services to its residents, and that the village was exploring options for obtaining additional police patrol services, and had committed itself to providing its current and future levels of such services to its residents in a non-discriminatory manner; the trial court found that the village was going to provide some additional services to the area to be annexed, notwithstanding land owners' claim they would receive no additional services whatsoever, and the trial court's order affirming the annexation was proper. Nolan v. Village of Marvin, 172 N.C. App. 84, 615 S.E.2d 898, 2005 N.C. App. LEXIS 1432 (2005).

Village essentially complied with the requirements of G.S. 160A-33 because the village's annexation of property was consistent with the public policy of sound urban development articulated in G.S. 160A-33. Norwood v. Village of Sugar Mt., — N.C. App. —, 667 S.E.2d 524, 2008 N.C. App. LEXIS 1819 (2008).

Annexation Ordinance Unenforceable. — Appellate court's decision that upheld the trial court's judgment upholding the annexation ordinance was reversed, as the village's annexation ordinance did not provide for meaningful extension of municipal services to the lots subject to annexation, which meant that the village had not substantially complied with the statutory procedures for annexation and that the property owners would suffer material injury, in the form of municipal taxes, if annexation proceeded. Nolan v. Village of Marvin, 360 N.C. 256, 624 S.E.2d 305, 2006 N.C. LEXIS 3 (2006).

Municipality Need Not Acquire Private Water and Sewer Systems. — An annexation ordinance may not be attacked on the ground that the municipality has no plans to purchase or finance the purchase of private water and sewer systems existing in the annexed territory, since the mere existence of such private systems within the territory to be annexed does not compel the city to purchase or acquire ownership of them. Huntley v. Potter, 255 N.C. 619, 122 S.E.2d 681 (1961).

Nor Does Mere Extension of Limits or Voluntary Maintenance Appropriate Such Systems. — Where a municipality annexes territory served by private water or sewer lines, the owners of such lines may not recover the value thereof from the municipality in the absence of provisions for payment by contract or ordinance, unless the municipality appropriates such private lines and controls them as proprietor; the mere extension of the city limits to include such lines or the voluntary maintenance of such lines by the city does not amount to an appropriation of such lines by the municipality. Huntley v. Potter, 255 N.C. 619, 122 S.E.2d 681 (1961).

Applied in Lithium Corp. of Am. v. Town of Bessemer City, 261 N.C. 532, 135 S.E.2d 574 (1964); Safrit v. Costlow, 270 N.C. 680, 155 S.E.2d 252 (1967); Adams-Millis Corp. v. Town of Kernersville, 6 N.C. App. 78, 169 S.E.2d 496 (1969); Rexham Corp. v. Town of Pineville, 26 N.C. App. 349, 216 S.E.2d 445 (1975); In re Annexation Ordinance, 44 N.C. App. 274, 261 S.E.2d 39 (1979).

Cited in Dunn v. City of Charlotte, 284 N.C. 542, 201 S.E.2d 873 (1974); Texfi Indus., Inc. v. City of Fayetteville, 301 N.C. 1, 269 S.E.2d 142 (1980); Abbott v. Town of Highlands, 52 N.C. App. 69, 277 S.E.2d 820 (1981); Town of Hazelwood v. Town of Waynesville, 320 N.C. 89, 357 S.E.2d 686 (1987); Ingles Markets, Inc. v. Town of Black Mt., 98 N.C. App. 372, 390 S.E.2d 688 (1990); Ricks v. Town of Selma, 99 N.C. App. 82, 392 S.E.2d 437 (1990); Town of Spencer v. Town of E. Spencer, 351 N.C. 124, 522 S.E.2d 297 (1999); Nolan v. Town of Weddington, 182 N.C. App. 486, 642 S.E.2d 261, 2007 N.C. App. LEXIS 690 (2007).

§ 160A-34. Authority to annex.

The governing board of any municipality having a population of less than 5,000 persons according to the last federal decennial census may extend the corporate limits of such municipality under the procedure set forth in this Part, except that this Part does not apply to any municipality in Craven County having a population of less than 500 persons according to the last federal decennial census unless that municipality provides at least six of the seven categories of municipal services listed in G.S. 136-41.2(c). (1959, c. 1010, s. 2; 1973, c. 426, s. 74; 1985, c. 92, s. 1.)

Funds for Local Government Water and Sewer Improvement Grants. — Session Laws 2007-323, s. 13.13A, provides for the use of certain funds appropriated to the Rural Economic Development Center, Inc. for the 2007-2008 fiscal year for wastewater-related and public water system-related projects. See note at G.S. 160A-311.

Legal Periodicals. — For 1984 survey, "Competitive Annexation Among Municipalities: North Carolina Adopts the Prior Jurisdiction Rule," see 63 N.C.L. Rev. 1260 (1985).

For casenote, "Carolina Power & Light v. City of Asheville Municipal Annexation in North Carolina: The Pros, the Cons and the Judiciary," see 27 N.C. Cent. L.J. 224 (2005).

CASE NOTES

Annexation of territory to a municipal corporation is a legislative function which may not be delegated to a court. Huntley v. Potter, 255 N.C. 619, 122 S.E.2d 681 (1961).

Municipality's Discretion Limited to Method of Annexation. — The only discretion given to the governing boards of municipalities is the permission and discretionary right to use the new method of annexation set out in this Article, provided such boards conform to the procedure and meet the requirements set out in this Part as a condition precedent to the right to annex. Huntley v. Potter, 255 N.C. 619, 122 S.E.2d 681 (1961).

Burden of Showing Failure to Meet Statutory Requirements. — Where the record of annexation proceedings under this section on its face showed substantial compliance with every essential element of the applicable statutes, the burden was upon petitioners, who appealed from the annexation ordinance, to show by competent evidence that the city in fact failed to meet the statutory requirements or that there was irregularity in the proceedings which materially prejudiced their substantive rights. Dunn v. City of Charlotte, 284 N.C. 542, 201 S.E.2d 873 (1974).

§ 160A-35. Prerequisites to annexation; ability to serve; report and plans.

A municipality exercising authority under this Part shall make plans for the extension of services to the area proposed to be annexed and shall, prior to the public hearing provided for in G.S. 160A-37, prepare a report setting forth such plans to provide services to such area. The report shall include:

(1) A map or maps of the municipality and adjacent territory to show the following information:
  a. The present and proposed boundaries of the municipality.
  b. The proposed extensions of water mains and sewer outfalls to serve the annexed area, if such utilities are operated by the municipality. The water and sewer map must bear the seal of a registered professional engineer or a licensed surveyor.

(2) A statement showing that the area to be annexed meets the requirements of G.S. 160A-36.

(3) A statement setting forth the plans of the municipality for extending to the area to be annexed each major municipal service performed within the municipality at the time of annexation. Specifically, such plans shall:
  a. Provide for extending police protection, fire protection, solid waste collection and street maintenance services to the area to be

annexed on the date of annexation on substantially the same basis and in the same manner as such services are provided within the rest of the municipality prior to annexation. A contract with a rural fire department to provide fire protection shall be an acceptable method of providing fire protection. If a water distribution system is not available in the area to be annexed, the plans must call for reasonably effective fire protection services until such time as waterlines are made available in such area under existing municipal policies for the extension of waterlines. A contract with a private firm to provide solid waste collection services shall be an acceptable method of providing solid waste collection services.

b. Provide for extension of water mains and sewer lines into the area to be annexed so that property owners in the area to be annexed will be able to secure public water and sewer services according to the policies in effect in such municipality for extending water and sewer lines to individual lots or subdivisions. If the municipality must, at its own expense, extend water and/or sewer mains into the area to be annexed before property owners in the area can, according to municipal policies, make such connection to such lines, then the plans must call for contracts to be let and construction to begin on such lines within one year following the effective date of annexation. In areas where the installation of sewer is not economically feasible due to the unique topography of the area, the municipality may agree to provide septic system maintenance and repair service until such time as sewer service is provided to properties similarly situated.

c. Set forth the method under which the municipality plans to finance extension of services into the area to be annexed.

(4) A statement of the impact of the annexation on any rural fire department providing service in the area to be annexed and a statement of the impact of the annexation on fire protection and fire insurance rates in the area to be annexed, if the area where service is provided is in an insurance district designated under G.S. 153A-233, a rural fire protection district under Article 3A of Chapter 69 of the General Statutes, or a fire service district under Article 16 of Chapter 153A of the General Statutes. The rural fire department shall make available to the city not later than 30 days following a written request from the city all information in its possession or control, including but not limited to operational, financial and budgetary information, necessary for preparation of a statement of impact. The rural fire department forfeits its rights under G.S. 160A-37.1 and G.S. 160A-37.2 if it fails to make a good faith response within 45 days following receipt of the written request for information from the city, provided that the city's written request so states by specific reference to this section.

(5) A statement showing how the proposed annexation will affect the city's finances and services, including city revenue change estimates. This statement shall be delivered to the clerk of the board of county commissioners at least 30 days before the date of the public informational meeting on any annexation under this Part. (1959, c. 1010, s. 3; 1973, c. 426, s. 74; 1983, c. 636, ss. 7.1, 16, 18; 1985, c. 610, ss. 1, 5, 7; 1989, c. 598, s. 5; 1991, c. 25, s. 1; c. 761, s. 30; 1998-150, s. 4.)

Local Modification. — Town of Beaufort: 1963, c. 1189.

Editor's Note. — Session Laws 1983, c. 636, which amended this section, in s. 37.1, as amended by Session Laws 1983, c. 768, s. 25, provided: "The General Assembly intends by this act to repeal all acts and provisions of acts that modify the application to particular cities and towns of Parts 2 and 3 of Article 4A of Chapter 160A of the General Statutes or that exempt particular cities or towns from the application of either or both of those two Parts. Therefore, all such acts and provisions of acts, even if not specifically listed and repealed in Sections 26 through 35.4 of this act, are repealed. Neither this section nor Sections 26 through 35.4 of this act shall affect any annexation in progress on the dates of ratification of this act under any of the repealed or amended sections."

Section 38 of Session Laws 1983, c. 636 provided: "This act shall be effective with respect to all annexations where resolutions of intent are adopted on or after the date of ratification of this act, except that Sections 36 and 37 shall become effective with respect to all annexations where resolutions of intent are adopted on or after July 1, 1984, Sections 25.1 through 35.5 and Section 37.1 are effective upon ratification and Section 25 shall become effective as provided in that section. No annexation where a resolution of intent was adopted prior to the date of ratification of this act shall be affected by this act except as provided in Section 25."

The act was ratified June 29, 1983.

Session Laws 1991, c. 25, s. 1, effective April 1, 1991, and applicable to resolutions of intent adopted on or after March 1, 1992, designated the existing language as subsection (a), and added a new subsection (b). However, Session Laws 1991, c. 761, s. 30, effective July 16, 1991, recodified subsection (b) as enacted by Session Laws 1991, c. 25, s. 1, as G.S. 160A-35.1 and redesignated subsection (a) of G.S. 160A-35 as G.S. 160A-35.

Legal Periodicals. — For 1984 survey, "Competitive Annexation Among Municipalities: North Carolina Adopts the Prior Jurisdiction Rule," see 63 N.C.L. Rev. 1260 (1985).

See Legislative Survey, 21 Campbell L. Rev. 323 (1999).

For comment, "'Caught Between a Rock and a Hard Place:' Fringe Landowners 'Can't Get No Satisfaction.' Is it Time to Rethink Annexation Policy in North Carolina?," see 24 Campbell L. Rev. 317 (2002).

For casenote, "Carolina Power & Light v. City of Asheville Municipal Annexation in North Carolina: The Pros, the Cons and the Judiciary," see 27 N.C. Cent. L.J. 224 (2005).

For article, "Bargain Basement Annexation: How Municipalities Subvert the Intent of North Carolina Annexation Laws," see 29 N.C. Cent. L.J. 77 (2006).

CASE NOTES

Local Modification Held Unconstitutional. — Chapter 1189, Session Laws 1963, amending subdivision (3)b of this section solely as it applied to the Town of Beaufort and providing that a municipality shall not be required to extend sewage outfalls into an area annexed by it in the event that the municipal sewerage system shall have been declared a source of unlawful pollution, was a local act relating to health and sanitation within the meaning of N.C. Const., Art. II, § 24, and was unconstitutional and void. Gaskill v. Costlow, 270 N.C. 686, 155 S.E.2d 148 (1967); Safrit v. Costlow, 270 N.C. 680, 155 S.E.2d 252 (1967).

Standard of Review Under This Section. — The trial court's order affirming a town annexation ordinance had to be vacated where the court applied the material prejudice standard of review to the adequacy of maps contained in the town report as well as to the questions of solid waste collection and the financing of services instead of determining whether or not the town complied with this section in formulating and carrying out its annexation plan; procedural irregularities under G.S. 160A-37 are to be evaluated under a "material prejudice" standard, while violations of either this section or G.S. 160A-36 are to be viewed in light of compliance or lack thereof and, if necessary, result in appropriate amendment. Sonopress, Inc. v. Town of Weaverville, 139 N.C. App. 378, 533 S.E.2d 537, 2000 N.C. App. LEXIS 948 (2000).

Municipality, as a condition precedent to the right to annex, must file a report showing on its face strict compliance with statutory requirements, and upon review in superior court has the burden of sustaining the regularity, adequacy, veracity and validity of the report and annexation ordinance by competent evidence. Huntley v. Potter, 255 N.C. 619, 122 S.E.2d 681 (1961).

The legislature has empowered municipal governing boards to amend the report required by this section, in order to make changes in the plans for serving the area proposed to be annexed, so long as such changes meet the requirements of this section. Gregory v. Town of Plymouth, 60 N.C. App. 431, 299 S.E.2d 232, cert. denied, 308 N.C. 544, 304 S.E.2d 237 (1983).

Plans Held in Compliance with Subdivision (3)a. — Plans which contained (1) information with respect to the current level of services within town, (2) a commitment to provide substantially the same level of services in the annexation area, and (3) information as to how the extension of services would be financed set forth sufficient information to allow the public and the courts to determine that the town had committed itself to provide a nondiscriminatory level of services to the annexed area and to establish compliance with subdivision (3)a. Huyck Corp. v. Town of Wake Forest, 86 N.C. App. 13, 356 S.E.2d 599, aff'd, 321 N.C. 589, 364 S.E.2d 139 (1988).

Failure to Call for Increase in Personnel in Plans. — Plans for services to the annexed area are not defective in failing to call for any significant increase in personnel where the record is devoid of evidence showing any need for increased personnel. Adams-Millis Corp. v. Town of Kernersville, 6 N.C. App. 78, 169 S.E.2d 496, cert. denied, 275 N.C. 681 (1969).

The fact that the metes and bounds description in a resolution of intent to annex failed to close, because one small piece of property owned by a person who did not join the petition for review was not included within the resolution of intent, was not fatal to the validity of the annexation ordinance where the resolution of intent and the published notice of public hearing made full reference to a map filed in the office of the clerk of the city and available for public inspection of the area proposed to be annexed, and this map and a map published in the newspaper notice of the public hearing showed all the property proposed to be annexed. Conover v. Newton, 297 N.C. 506, 256 S.E.2d 216 (1979).

This section does not make it incumbent upon the municipality to justify annexation other than to the extent of its ability to serve the areas to be annexed. Williams v. Town of Grifton, 19 N.C. App. 462, 199 S.E.2d 288 (1973).

While the extent to which an area needs municipal services is among the factors to be considered in a decision to annex, the statute requires only that a city demonstrate an ability to serve the area to be annexed. Thompson v. City of Salisbury, 24 N.C. App. 616, 211 S.E.2d 856, cert. denied, 287 N.C. 264, 214 S.E.2d 437 (1975).

Map Requirement Met. — Annexation report complied with statutory map requirements where the map indicated the current town limits, the area of proposed annexation, and the current town limits of satellite annexation, as well as major roads and property boundaries; there was no requirement that the report contain a sealed map where the town did not plan to extend water and sewer into an annexed area. Sonopress, Inc. v. Town of Weaverville, 149 N.C. App. 492, 562 S.E.2d 32, 2002 N.C. App. LEXIS 282 (2002), cert. denied, 355 N.C. 751, 565 S.E.2d 671 (2002).

Providing nondiscriminating level of services within statutory time is all that is required. Greene v. Town of Valdese, 306 N.C. 79, 291 S.E.2d 630 (1982).

Remedy Where Municipality Has Not Carried Out Service Plans Adopted under Subdivision (3). — The statutory remedy for owners of property in annexed territory where the municipality has not followed through on its service plans adopted under the provisions of subdivision (3) of this section and G.S. 160A-37 is by writ of mandamus. Safrit v. Costlow, 270 N.C. 680, 155 S.E.2d 252 (1967).

Record Held to Sustain Finding of Compliance. — Where the record disclosed the plans of the municipality for extending municipal services to the area annexed, itemizing the cost, and obtaining such cost from current taxes, the record supported a finding by the court of compliance with this section, and such finding would not be disturbed in the absence of evidence to the contrary of sufficient weight to overcome the prima facie presumption of regularity. Huntley v. Potter, 255 N.C. 619, 122 S.E.2d 681 (1961).

Evidence supporting the plans set out in the report, and no evidence that the service would not be adequate, was sufficient to support the conclusion that the police protection requirement of this section would be met. Williams v. Town of Grifton, 19 N.C. App. 462, 199 S.E.2d 288 (1973).

Annexation ordinance and report met the requirements of this section and § 160A-37. Williams v. Town of Grifton, 22 N.C. App. 611, 207 S.E.2d 275 (1974).

A second public hearing after amendment is not required by this section. Adams-Millis Corp. v. Town of Kernersville, 6 N.C. App. 78, 169 S.E.2d 496, cert. denied, 275 N.C. 681 (1969).

There is no requirement that a second public hearing be held on an amended annexation proposal, when that amendment is adopted to achieve compliance with this section, pursuant to the authority granted in G.S. 160A-37(e). Gregory v. Town of Plymouth, 60 N.C. App. 431, 299 S.E.2d 232, cert. denied, 308 N.C. 544, 304 S.E.2d 237 (1983).

There is no requirement that a second public hearing be held on an amended annexation proposal, when that amendment is adopted to achieve compliance with G.S. 160A-35, and G.S. 160A-35 is the corollary to G.S. 160A-47, with the only significant difference in these statutes being that G.S. 160A-35 applies to cities less than 5,000 and G.S. 160A-47 applies to cities of 5,000 or more. Arnold v. City of Asheville, 186 N.C. App. 542, 652 S.E.2d 40, 2007 N.C. App. LEXIS 2250 (2007).

Town Not Required to Provide Service. — Language in annexation ordinances to the effect that since water service then provided to the annexed areas by plaintiff was comparable to that provided by the town, the town would not be required to appropriate funds to extend water and sewer lines to the annexed area was required by G.S. 160A-37(e)(3) and subdivision (3)b to insure that residents of the area to be annexed would have access to comparable water service; in no way did this serve as a promise to be rightfully relied upon that the town would not in the future construct its own water lines within the annexed area or that plaintiff had the exclusive right to furnish water service there. Carolina Water Serv., Inc. v. Town of Atlantic Beach, 121 N.C. App. 23, 464 S.E.2d 317 (1995).

Additional Services Not Required. — Annexation report complied with statutory requirements where it stated that no additional police officers were required by the annexation and that roads would continue to be maintained by the State; evidence supported the town's statements that additional police officers were not required and that the State would continue to provide road maintenance. Sonopress, Inc. v. Town of Weaverville, 149 N.C. App. 492, 562 S.E.2d 32, 2002 N.C. App. LEXIS 282 (2002), cert. denied, 355 N.C. 751, 565 S.E.2d 671 (2002).

Annexation Proper. — Trial court properly found that a village provided independent administrative, engineering, auditing, legal, and planning services to its residents, and that the village was exploring options for obtaining additional police patrol services, and had committed itself to providing its current and future levels of such services to its residents in a non-discriminatory manner; the trial court found that the village was going to provide some additional services to the area to be annexed, notwithstanding land owners' claim they would receive no additional services whatsoever, and the trial court's order affirming the annexation was proper. Nolan v. Village of Marvin, 172 N.C. App. 84, 615 S.E.2d 898, 2005 N.C. App. LEXIS 1432 (2005).

Village essentially complied with the requirements of G.S. 160A-35 because a map prepared by the village as part of its original report clearly included a one-acre tract of land which was ultimately annexed. Moreover, the annexation ordinance would have extended the same police protection, waste collection services, and recreation department facilities that were then provided within the village. Norwood v. Village of Sugar Mt., — N.C. App. —, 667 S.E.2d 524, 2008 N.C. App. LEXIS 1819 (2008).

Annexation Ordinance Unenforceable. — Appellate court's decision that upheld the trial court's judgment upholding the annexation ordinance was reversed, as the village's annexation ordinance did not provide for meaningful extension of municipal services to the lots subject to annexation, which meant that the village had not substantially complied with the statutory procedures for annexation and that the property owners would suffer material injury, in the form of municipal taxes, if annexation proceeds. Nolan v. Village of Marvin, 360 N.C. 256, 624 S.E.2d 305, 2006 N.C. LEXIS 3 (2006).

Financing Statement Not Required. — Town did not need to set out a method for the financing of additional services in its annexation report where the town's statement that no additional services were required was supported by competent evidence in the record; a financing statement was required only if there was to be an extension of services. Sonopress, Inc. v. Town of Weaverville, 149 N.C. App. 492, 562 S.E.2d 32, 2002 N.C. App. LEXIS 282 (2002), cert. denied, 355 N.C. 751, 565 S.E.2d 671 (2002).

Applied in Rexham Corp. v. Town of Pineville, 26 N.C. App. 349, 216 S.E.2d 445 (1975).

Cited in Pinewild Project Ltd. P'ship v. Vill. of Pinehurst, — N.C. App. —, 679 S.E.2d 424, 2009 N.C. App. LEXIS 1180 (July 21, 2009);

Hawks v. Town of Valdese, 299 N.C. 1, 261 S.E.2d 90 (1980); Abbott v. Town of Highlands, 52 N.C. App. 69, 277 S.E.2d 820 (1981); Town of Hazelwood v. Town of Waynesville, 320 N.C. 89, 357 S.E.2d 686 (1987); Ricks v. Town of Selma, 99 N.C. App. 82, 392 S.E.2d 437 (1990); Chicora Country Club, Inc. v. Town of Erwin, 128 N.C. App. 101, 493 S.E.2d 797 (1997); Hayes v. Town of Fairmont, 130 N.C. App. 125, 502 S.E.2d 380 (1998); Town of Spencer v. Town of E. Spencer, 351 N.C. 124, 522 S.E.2d 297 (1999); Buckland v. Town of Haw River, 141 N.C. App. 460, 541 S.E.2d 497, 2000 N.C. App. LEXIS 1307 (2000); Hughes v. Town of Oak Island, 158 N.C. App. 175, 580 S.E.2d 704, 2003 N.C. App. LEXIS 1052 (2003); Hayes v. Town of Fairmont, 167 N.C. App. 522, 605 S.E.2d 717, 2004 N.C. App. LEXIS 2383 (2004).

§ 160A-35.1. Limitation on change in financial participation prior to annexation.

For purposes of the extension of water and sewer services required under G.S. 160A-35, no ordinance or policy substantially diminishing the financial participation of a municipality in the construction of water or sewer facilities required under this Article may apply to an area being annexed unless the ordinance or policy became effective at least 180 days prior to the date of adoption by the municipality of the resolution giving notice of intent to consider annexing the area under G.S. 160A-37(a). (1991, c. 25, s. 1; c. 761, s. 30; 1998-150, s. 5.)

Editor's Note. — Session Laws 1991, c. 25, s. 1, initially amended G.S. 160A-35 by adding a subsection (b). This subsection was recodified as new G.S. 160A-35.1 by Session Laws 1991, c. 761, s. 30, effective July 16, 1991, and given the catchline "Limitation on change in financial participation prior to annexation."

§ 160A-36. Character of area to be annexed.

(a) A municipal governing board may extend the municipal corporate limits to include any area which meets the general standards of subsection (b), and which meets the requirements of subsection (c).

(b) The total area to be annexed must meet the following standards:

(1) It must be adjacent or contiguous to the municipality's boundaries at the time the annexation proceeding is begun, except if the entire territory of a county water and sewer district created under G.S. 162A-86(b1) is being annexed, the annexation shall also include any noncontiguous pieces of the district as long as the part of the district with the greatest land area is adjacent or contiguous to the municipality's boundaries at the time the annexation proceeding is begun.

(2) At least one eighth of the aggregate external boundaries of the area must coincide with the municipal boundary.

(3) No part of the area shall be included within the boundary of another incorporated municipality.

(c) The area to be annexed must be developed for urban purposes at the time of approval of the report provided for in G.S. 160A-35. For purposes of this section, a lot or tract shall not be considered in use for a commercial, industrial, institutional, or governmental purpose if the lot or tract is used only temporarily, occasionally, or on an incidental or insubstantial basis in relation to the size and character of the lot or tract. For purposes of this section, acreage in use for commercial, industrial, institutional, or governmental purposes shall include acreage actually occupied by buildings or other man-made structures together with all areas that are reasonably necessary and appurtenant to such facilities for purposes of parking, storage, ingress and egress, utilities, buffering, and other ancillary services and facilities. Area of streets and street rights-of-way shall not be used to determine total acreage under this section. An area developed for urban purposes is defined as:

(1) Any area which is so developed that at least sixty percent (60%) of the total number of lots and tracts in the area at the time of annexation are used for residential, commercial, industrial, institutional or governmental purposes, and is subdivided into lots and tracts such that at least sixty percent (60%) of the total acreage, not counting the acreage used at the time of annexation for commercial, industrial, governmental or institutional purposes, consists of lots and tracts three acres or less in size.

(2) An area so developed that, at the time of the approval of the annexation report, all tracts in the area to be annexed are used for commercial, industrial, governmental, or institutional purposes.

(3) The entire area of any county water and sewer district created under G.S. 162A-86(b1), but this subsection only applies to annexation by a municipality if that:

a. Municipality has provided in a contract with that district that the area is developed for urban purposes; and

b. Contract provides for the municipality to operate the sewer system of that county water and sewer district;

provided that the special categorization provided by this subsection only applies if the municipality is annexing in one proceeding the entire territory of the district not already within the corporate limits of a municipality.

(d) In fixing new municipal boundaries, a municipal governing board shall use recorded property lines and streets as boundaries. Some or all of the boundaries of a county water and sewer district may also be used when the entire district not already within the corporate limits of a municipality is being annexed.

(e) The area of an abolished water and sewer district shall be considered to be a water and sewer district for the purpose of this section even after its abolition under G.S. 162A-87.2(b). (1959, c. 1010, s. 4; 1973, c. 426, s. 74; 1985, c. 757, s. 205(c); 1993 (Reg. Sess., 1994), c. 696, s. 6; c. 714, s. 6; 1998-150, s. 6.)

Local Modification. — Town of Atlantic Beach: 2001-137 (for annexation ordinances adopted before December 31, 2002); town of Catawba: 1991 (Reg. Sess., 1992), c. 891; 1995, c. 230, s. 1; 1999-283, s. 2.

Legal Periodicals. — For 1984 survey, "Competitive Annexation Among Municipalities: North Carolina Adopts the Prior Jurisdiction Rule," see 63 N.C.L. Rev. 1260 (1985).

See Legislative Survey, 21 Campbell L. Rev. 323 (1999).

For article, "Bargain Basement Annexation: How Municipalities Subvert the Intent of North Carolina Annexation Laws," see 29 N.C. Cent. L.J. 77 (2006).

CASE NOTES

I. In General.
II. Standards Under Subsection (b).
III. Tests Under Subsection (c).
IV. Boundaries.

I. IN GENERAL.

This section was not copied from the laws of other states, but is a result of a study and recommendations made by the Municipal Government Study Commission, which was established in accordance with Joint Resolution 51 of the General Assembly of 1957. Lithium Corp. of Am. v. Town of Bessemer City, 261 N.C. 532, 135 S.E.2d 574 (1964).

This Section and § 160A-48 Compared. — The provisions of subsections (b), (c) and (e) of G.S. 106A-48 are virtually identical to their counterparts in subsections (b), (c) and (d) of this section. Matheson v. City of Asheville, 102 N.C. App. 156, 402 S.E.2d 140 (1991).

When Annexation Proper Generally. — The language of subsection (a) of this section makes it clear that a municipality may annex any area which meets the general standards of subsection (b) and the requirements of subsection (c). Greene v. Town of Valdese, 306 N.C. 79, 291 S.E.2d 630 (1982).

Particular Facts Control in Doubtful Cases. — When compliance with the statutory requirements is in doubt, the determination of whether an area is used for a purpose qualifying it for annexation will depend upon the particular facts of each case. Scovill Mfg. Co. v. Town of Wake Forest, 58 N.C. App. 15, 293 S.E.2d 240, cert. denied, 306 N.C. 559, 294 S.E.2d 371 (1982).

This section does not specify any particular method of calculation for determination of compliance with statutorily mandated requirements and the reasonableness of the method chosen is to be determined in light of the particular circumstances of the questioned annexation proceedings. Lowe v. Town of Mebane, 76 N.C. App. 239, 332 S.E.2d 739 (1985).

Contiguous Area and Coincidence of Boundary Requirements Held Met. — For case holding that where each of three portions included in proposed annexation area was contiguous to the existing town boundary, and, by using a railroad strip as a connector, were contiguous to each other, when viewed as an entire area, the area was contiguous to the boundaries of the town as they existed at the commencement of the annexation proceedings and that the required coincidence of boundaries existed, see Huyck Corp. v. Town of Wake Forest, 86 N.C. App. 13, 356 S.E.2d 599, aff'd, 321 N.C. 589, 364 S.E.2d 139 (1988).

Reason for Providing for Judicial Review. — The difficulties of applying the standards of this section in extreme cases were the reason the Municipal Government Study Commission recommended a provision for court review, set out in G.S. 160A-38, to determine whether the agency making the decision made a reasonable decision in accord with statutory standards. Lithium Corp. of Am. v. Town of Bessemer City, 261 N.C. 532, 135 S.E.2d 574 (1964).

The trial court's order affirming a town annexation ordinance had to be vacated where the court applied the material prejudice standard of review to the adequacy of maps contained in the town report as well as to the questions of solid waste collection and the financing of services instead of determining whether or not the town complied with this section in formulating and carrying out its annexation plan; procedural irregularities under G.S. 160A-37 are to be evaluated under a "material prejudice" standard, while violations of either G.S. 160A-35 or this section are to be viewed in light of compliance or lack thereof and, if necessary, result in appropriate amendment. Sonopress, Inc. v. Town of Weaverville, 139 N.C. App. 378, 533 S.E.2d 537, 2000 N.C. App. LEXIS 948 (2000).

Cited in In re Annexation Ordinance, 300 N.C. 337, 266 S.E.2d 661 (1980); Thrash v. City of Asheville, 95 N.C. App. 457, 383 S.E.2d 657 (1989); Chicora Country Club, Inc. v. Town of Erwin, 128 N.C. App. 101, 493 S.E.2d 797 (1997); Arquilla v. City of Salisbury, 136 N.C. App. 24, 523 S.E.2d 155, 1999 N.C. App. LEXIS 1294 (1999).

II. STANDARDS UNDER SUBSECTION (b).

Annexation of Area in Another Municipality Prohibited. — Any new or amended proceeding by a town correcting procedural irregularities would be an exercise in futility after the disputed area became a part of another city, because after that date any attempt by the town to annex the disputed area would be in violation of this statute, which prohibits the annexation of an area already included within the boundary of another incorporated municipality. Town of Hudson v. City of Lenoir, 279 N.C. 156, 181 S.E.2d 443 (1971), overruled on other grounds, City of Burlington v. Town of Elon College, 310 N.C. 723, 314 S.E.2d 538 (1984).

Summary judgment was proper in case involving a determination of prior jurisdiction between two towns' competing resolutions of intent where one municipality had sought to involuntarily annex two acres within the boundaries of the other. Town of Spencer v. Town of E. Spencer, 351 N.C. 124, 522 S.E.2d 297 (1999).

Competing Resolutions of Intent and Priority Jurisdiction. — A resolution of intent to annex territory which includes any territory already within the boundaries of another municipality is void and will lose priority to an intervening and competing valid resolution of intent; the elements listed in this section are "essential elements" with regard to a "prior jurisdiction" determination. Town of Spencer v. Town of E. Spencer, 351 N.C. 124, 522 S.E.2d 297 (1999).

Territory which is contiguous solely to the "satellite corporate limits" fails to satisfy the requirement of subdivision (b)(1) of this section that the area to be annexed in an involuntary annexation proceeding be contiguous or adjacent to the municipal boundaries of the city which seeks annexation. Territory contiguous solely to "satellite corporate limits" is not eligible for annexation until such "satellite corporate limits" become "a part of the primary corporate limits." This occurs in accord with G.S. 160A-58.6 when, through annexation of intervening territory, the boundaries of the satellite area and those of the primary town area touch. Hawks v. Town of Valdese, 299 N.C. 1, 261 S.E.2d 90 (1980).

If a town wishes to annex involuntarily two unannexed areas on either side of the satellite area, it must first annex the area which abuts directly on both the primary corporate limits and the satellite corporate limits. Only after this intervening territory has been successfully annexed is the area which presently abuts solely on satellite corporate limits eligible for annexation. Hawks v. Town of Valdese, 299 N.C. 1, 261 S.E.2d 90 (1980).

Coincidence of Boundary Requirement. — In considering the coincidence of boundary requirement, the entire area proposed for annexation must be viewed as a whole, rather than as various component portions. Huyck Corp. v. Town of Wake Forest, 86 N.C. App. 13, 356 S.E.2d 599, aff'd, 321 N.C. 589, 364 S.E.2d 139 (1988).

Purposes Underlying Subsection (b) Subverted. — Superior court properly remanded town's annexation ordinance for amendment of its proposed boundaries, where although the literal contiguity requirements of subsection (b) of this section and G.S. 160A-41(1) were apparently satisfied by the town's ordinance, the town's compliance with the literal requirements of these statutes resulted in the subversion of the purposes underlying subsection (b), since the town's intentional gerrymandering of the annexation boundary created isolated islands connected to the town by a single narrow corridor of land. Amick v. Town of Stallings, 95 N.C. App. 64, 382 S.E.2d 221 (1989).

When a town proposed to annex certain land, it did not comply with the purpose of the standards in G.S. 160A-36(b), to provide essential government services within compact borders, even though it technically complied with the one-eighth contiguity requirement of G.S. 160A-36(b)(2), because it sought to annex certain noncontiguous valuable property by connecting it to the town by a narrow strip of land, surrounded on either side by nonannexed property, thus creating the potential for confusion in the provision of emergency and other services, and this was an impermissible "shoestring" annexation. Hughes v. Town of Oak Island, 158 N.C. App. 175, 580 S.E.2d 704, 2003 N.C. App. LEXIS 1052 (2003), aff'd, 357 N.C. 653, 588 S.E.2d 467 (2003).

III. TESTS UNDER SUBSECTION (C).

Tax Records and Land Use Maps Are Proper Basis for Use Calculations. — Tax records and land use maps have been approved as accepted methods designed to provide reasonably accurate results for calculating the land use requirements in G.S. 160A-36 for the annexation of property. Sonopress, Inc. v. Town of Weaverville, 149 N.C. App. 492, 562 S.E.2d 32, 2002 N.C. App. LEXIS 282 (2002), cert. denied, 355 N.C. 751, 565 S.E.2d 671 (2002).

For discussion as to history and scope of subsection (c), see Tar Landing Villas Owners' Ass'n v. Town of Atlantic Beach, 64 N.C. App. 239, 307 S.E.2d 181 (1983), cert. denied, 310 N.C. 156, 311 S.E.2d 296 (1984).

"Use" Test and "Subdivision" Test for Determining Availability for Annexation. — The General Assembly adopted a standard containing two tests for determining availability for annexation: (1) The use test, i.e., that not less than 60% of the lots and tracts in the area must be in actual use, other than for agriculture, and (2) the subdivision test, i.e., that not less than 60% of the acreage which is in residential use, if any, and is vacant must consist of lots and tracts of five acres or less in size. Lithium Corp. of Am. v. Town of Bessemer City, 261 N.C. 532, 135 S.E.2d 574 (1964); Adams-Millis Corp. v. Town of Kernersville, 6 N.C. App. 78, 169 S.E.2d 496, cert. denied, 275 N.C. 681 (1969); Huyck Corp. v. Town of Wake Forest, 86 N.C. App. 13, 356 S.E.2d 599, aff'd, 321 N.C. 589, 364 S.E.2d 139 (1988).

The criteria in subsection (c) are known as the "use" test and the "subdivision" text. Thompson v. City of Salisbury, 24 N.C. App. 616, 211 S.E.2d 856, cert. denied, 287 N.C. 264, 214 S.E.2d 437 (1975).

Subsection (c) contains two tests for determining the availability for annexation, the use test and the subdivision test. American Greetings Corp. v. Town of Alexander Mills, 128 N.C. App. 727, 497 S.E.2d 108 (1998).

Both Tests Must Be Complied With. — The fact that the General Assembly connected the two test clauses in subsection (c) of this section with the conjunctive "and," and the clear abuses and hardships which a literal application of the use test, if alone applied, would produce, leads to the conclusion that the legislative intent is that both tests be complied with. Lithium Corp. of Am. v. Town of Bessemer City, 261 N.C. 532, 135 S.E.2d 574 (1964).

Both tests established by the General Assembly must be met in order for an area to meet the statutory standard. Adams-Millis Corp. v. Town of Kernersville, 6 N.C. App. 78, 169 S.E.2d 496, cert. denied, 275 N.C. 681 (1969); Huyck Corp. v. Town of Wake Forest, 86 N.C. App. 13, 356 S.E.2d 599, aff'd, 321 N.C. 589, 364 S.E.2d 139 (1988).

Both the "use" test and the "subdivision" test must be met before an area can be classified as urban. Scovill Mfg. Co. v. Town of Wake Forest, 58 N.C. App. 15, 293 S.E.2d 240, cert. denied, 306 N.C. 559, 294 S.E.2d 371 (1982).

Application of Tests in Subsection (c). — The use and subdivision tests prescribed by subsection (c) of this section yield accurate results only if applied to a land area which encompasses only unannexed territory. This is so because these tests require a determination of the percentage of lots being used for "urban purposes" and the percentage of "total acreage" subdivided into lots of five acres or less. Such percentage figures will be skewed and inaccurate if not based on data from all the acreage and lots encompassed by the land area under consideration. Hawks v. Town of Valdese, 299 N.C. 1, 261 S.E.2d 90 (1980).

Application of Both Tests May Cause Absurd Results in Extreme Cases. — Literal insistence upon the application of both tests in subsection (c) might in some extreme and improbable circumstances bring about absurd results adverse to municipalities. Lithium Corp. of Am. v. Town of Bessemer City, 261 N.C. 532, 135 S.E.2d 574 (1964).

When applying the subdivision test the central inquiry is the degree of actual urbanization of the proposed area. American Greetings Corp. v. Town of Alexander Mills, 128 N.C. App. 727, 497 S.E.2d 108 (1998).

Determining What Is a "Lot". — There are several methods which can be used in determining what is a lot in making an appraisal of an area to be annexed. One is to count each numbered lot separately. Another is to consider a landlocked lot as part of the lot in front of it and group the two lots, i.e., the landlocked lot and the one providing it with access to a street, as being a single lot. A third method would be to consider a group of lots in single ownership and used for a single purpose as being a tract within the meaning of the statute, and count tracts rather than lots. Any one of these methods would be "calculated to provide reasonably accurate results," as required by G.S. 160A-42. Adams-Millis Corp. v. Town of Kernersville, 6 N.C. App. 78, 169 S.E.2d 496, cert. denied, 275 N.C. 681 (1969).

Property owners did not show that a town was unreasonable in relying upon an actual survey, as allowed by G.S. 160A-36; thus, the reviewing court did not err in concluding that one property consisted of two separate lots for the purposes of the subdivision test. Hayes v. Town of Fairmont, 167 N.C. App. 522, 605 S.E.2d 717, 2004 N.C. App. LEXIS 2383 (2004), cert. denied, 359 N.C. 410, 612 S.E.2d 320 (2005).

The word "lot" in subsection (c) includes the concept of a condominium unit. Tar Landing Villas Owners' Ass'n v. Town of Atlantic Beach, 64 N.C. App. 239, 307 S.E.2d 181 (1983), cert. denied, 310 N.C. 156, 311 S.E.2d 296 (1984).

Landlocked Lot and Fronting Lot as Single Lot. — It is not unreasonable and beyond the statutory definition to classify a landlocked lot and its fronting lot in single ownership as a single lot in residential use, where only the fronting lot contains "a habitable dwelling unit." Adams-Millis Corp. v. Town of Kernersville, 6 N.C. App. 78, 169 S.E.2d 496, cert. denied, 275 N.C. 681 (1969).

Lots in Single Ownership Used for Common Purpose May Be Considered Single Tract. — In appraising an area to be annexed, one of the methods which can be used to determine what is a tract is to consider several lots in single ownership used for a common purpose as being a single tract; these consolidated lots can then be used to determine the percentage of tracts used for urban purposes. Lowe v. Town of Mebane, 76 N.C. App. 239, 332 S.E.2d 739 (1985).

"Use" means "to put into service" under subsection (c). Southern Ry. v. Hook, 261 N.C. 517, 135 S.E.2d 562 (1964).

Tract Held for Future Development Not "Used". — Where about a tenth of a tract of land, marked off by a bumper strip or barrier, was used for parking, and the rest of the tract was graded and held by the owner for possible future industrial development, the vacant part of the tract was not "used" for industrial purposes within the purview of subsection (c). Southern Ry. v. Hook, 261 N.C. 517, 135 S.E.2d 562 (1964).

As to classification of tract as being in industrial use, see Adams-Millis Corp. v. Town of Kernersville, 6 N.C. App. 78, 169 S.E.2d 496, cert. denied, 275 N.C. 681 (1969).

Industrial Classification Proper Where Area Is Actively So Used. — When an area is used for an active industrial purpose, the land is properly classified as in industrial use within the meaning of the annexation statute. Scovill Mfg. Co. v. Town of Wake Forest, 58 N.C. App. 15, 293 S.E.2d 240, cert. denied, 306 N.C. 559, 294 S.E.2d 371 (1982).

Industrial Classification Improper Absent Evidence of Such Use. — An area proposed for annexation is improperly classified as property in use for industrial purposes where there is no evidence that the land in question is being used either directly or indirectly for industrial purposes. Scovill Mfg. Co. v. Town of Wake Forest, 58 N.C. App. 15, 293 S.E.2d 240, cert. denied, 306 N.C. 559, 294 S.E.2d 371 (1982).

Transmission of electrical power over land by a power company is an industrial activity for an urban use. Scovill Mfg. Co. v. Town of Wake Forest, 58 N.C. App. 15, 293 S.E.2d 240, cert. denied, 306 N.C. 559, 294 S.E.2d 371 (1982).

Golf Course as Commercial Purpose. — Golf course, open to the public and operated for profit, is used for a commercial purpose within the meaning of subsection (c). Thompson v. City of Salisbury, 24 N.C. App. 616, 211 S.E.2d 856, cert. denied, 287 N.C. 264, 214 S.E.2d 437 (1975).

Classification of apartment complex as commercial rather than residential property was a reasonable method of complying with statutorily mandated requirements for the character of an area to be annexed; the general statutory intent is not to exclude areas of urbanized land from annexation on a technicality, but to provide municipalities with a flexible planning tool. Lowe v. Town of Mebane, 76 N.C. App. 239, 332 S.E.2d 739 (1985).

Annexation Ordinance Statement Held Insufficient for Lack of Specific Findings. — A statement in an annexation ordinance that the area to be annexed was in the process of being developed for urban purposes, that more than 60 percent of the area was in use for residential, commercial, industrial, governmental or institutional purposes, and that at least 60 percent of the total acreage, not counting the acreage so used, consisted of lots and tracts of five acres or less in size, did not meet the requirements of this section, as the statement was a mere conclusion and there were no specific findings nor any showing on the face of the record as to the method used by the municipality in making its calculations or as to the present use of any particular tract. Huntley v. Potter, 255 N.C. 619, 122 S.E.2d 681 (1961).

Review as to Availability of Area. — If a municipality clearly complies with the standards of subsection (c) of this section, there is nothing to review with respect to the availability of an area proposed for annexation. Where compliance is in doubt, the determination must be made upon the facts in the particular case. Lithium Corp. of Am. v. Town of Bessemer City, 261 N.C. 532, 135 S.E.2d 574 (1964).

Substantial Compliance with Statute Shown. — Trial court erred in concluding that the usage of disputed acres affected the classification of a golf course tract as a whole when the golf course was annexed by a town ordinance, because the golf course tract was properly designated as commercial by the town in its original calculations, and the entire acreage should have been included as commercial acreage for purposes of calculations under the use test; based on the new calculations, the annexation area met the 60 percent minimum required under the subdivision test of G.S. 160A-36(c)(1), and, given that the town substantially complied with the provisions of G.S. 160A-36, the ordinance was properly affirmed without amendment pursuant to G.S. 160A-38. Hayes v. Town of Fairmont, 167 N.C. App. 522, 605 S.E.2d 717, 2004 N.C. App. LEXIS 2383 (2004), cert. denied, 359 N.C. 410, 612 S.E.2d 320 (2005).

Village essentially complied with the requirements of G.S. 160A-36 because (1) the village's use and reliance on the then-existing recorded deed and plat, both of which were consistent with the actual description of a one-acre tract of property, complied with the mandates of G.S. 160A-36(d); (2) the recorded line that the village used from a voluntarily-annexed tract was already part of the pre-existing municipal boundary; as such, the line did not constitute a new municipal boundary within the meaning of the statute; (3) the village correctly classified the a tract of land for purposes of G.S. 160A-36(c)(1)'s subdivision test; (4) the village used methods calculated to provide reasonably accurate results to determine the degree of land subdivision; and (5) the village met the literal contiguity requirements in annexing an area. Norwood v. Village of Sugar Mt., — N.C. App. —, 667 S.E.2d 524, 2008 N.C. App. LEXIS 1819 (2008).

Statutory Requirements Not Met. — Where tract was not currently under active development; a plat was never recorded by either party and there was no evidence that the family intended to sell any portion of it, the tract was not sufficiently urbanized to satisfy the statutory requirements. American Greetings Corp. v. Town of Alexander Mills, 128 N.C. App. 727, 497 S.E.2d 108 (1998).

In order for a town to comply with the statutory requirements, there must exist some actual, minimum urbanization of the proposed annexation property. American Greetings Corp. v. Town of Alexander Mills, 128 N.C. App. 727, 497 S.E.2d 108 (1998).

When a town proposed to annex certain land, it did not comply with the subdivision test in G.S. 160A-36(c)(1), requiring that at least 60 percent of a proposed annexation site, not counting acreage used at the time of annexation for commercial, industrial, governmental, or industrial purposes, consist of lots and tracts three acres or less in size, because it designated certain acreage in the proposed annexation area as commercial, when, in fact, the commercial use of the acreage was only proposed, so the acreage was not being used at the time of the annexation for commercial purposes. Hughes v. Town of Oak Island, 158 N.C. App. 175, 580 S.E.2d 704, 2003 N.C. App. LEXIS 1052 (2003), aff'd, 357 N.C. 653, 588 S.E.2d 467 (2003).

IV. BOUNDARIES.

Purpose of Subsection (d). — The legislative history of subsection (d) of this section suggests that the reason for its inclusion was the legislature's concern that the full range of municipal services be available to citizens in the annexed area. Recognizing that water and, particularly, sewer services are necessarily limited by natural drainage boundaries, the Municipal Government Study Commission, whose recommendations were followed in establishing the present annexation procedures, included topography as an important consideration to be incorporated into the new statutory scheme of annexation. In order to ensure consideration of such topographic features, subsection (d) was enacted specifically enumerating certain features which create natural drainage boundaries. Greene v. Town of Valdese, 306 N.C. 79, 291 S.E.2d 630 (1982).

Subsection (d) contains no mandatory standards or requirements for annexation. Greene v. Town of Valdese, 306 N.C. 79, 291 S.E.2d 630 (1982).

Requirements of Subsection (d) Not Intended to Defeat Otherwise Proper Annexation. — It was not the intent of the legislature to defeat the annexation of an area which was otherwise ripe for annexation because of the directory language contained in subsection (d) of this section. Greene v. Town of Valdese, 306 N.C. 79, 291 S.E.2d 630 (1982).

"Practical" as used in subsection (d) is defined as "that which is possible of reasonable performance." Greene v. Town of Valdese, 306 N.C. 79, 291 S.E.2d 630 (1982).

Tree lines do not constitute "natural topographic features" within the meaning of the requirement of subsection (d) of this section. Greene v. Town of Valdese, 306 N.C. 79, 291 S.E.2d 630 (1982).

No provision in subsection (d) prevents a municipality from using a street as a reference in setting the boundary lines of an area to be annexed. Rexham Corp. v. Town of Pineville, 26 N.C. App. 349, 216 S.E.2d 445 (1975).

Drawing boundary exactly five feet from and parallel to a street for its entire length did not violate subsection (d). Lowe v. Town of Mebane, 76 N.C. App. 239, 332 S.E.2d 739 (1985).

Splitting of Tracts Not Prohibited. — The statutory requirement contained in subsection (d) that a municipality use natural topographic features wherever practical in setting an annexation boundary does not demonstrate a legislative intent to prevent the splitting of tracts. Rexham Corp. v. Town of Pineville, 26 N.C. App.

349, 216 S.E.2d 445 (1975).

Proof of Noncompliance with Subsection (d). — In order to establish noncompliance with subsection (d) of this section, petitioners must show two things: (1) that the boundary of the annexed area does not follow natural topographic features, and (2) that it would have been practical for the boundary to follow such features. Greene v. Town of Valdese, 306 N.C. 79, 291 S.E.2d 630 (1982); Lowe v. Town of Mebane, 76 N.C. App. 239, 332 S.E.2d 739 (1985); Weeks v. Town of Coats, 121 N.C. App. 471, 466 S.E.2d 83 (1996).

Topographic Features Not Followed. — There was sufficient evidence to support the court's conclusion that the town did not attempt to follow topographic features in violation of G.S. 160A-36(d). Weeks v. Town of Coats, 121 N.C. App. 471, 466 S.E.2d 83 (1996).

§ 160A-37. Procedure for annexation.

(a) Notice of Intent. — Any municipal governing board desiring to annex territory under the provisions of this Part shall first pass a resolution stating the intent of the municipality to consider annexation. Such resolution shall describe the boundaries of the area under consideration, fix a date for the public informational meeting, and fix a date for a public hearing on the question of annexation. The date for the public informational meeting shall be not less than 45 days and not more than 55 days following passage of the resolution. The date for the public hearing to be not less than 60 days and not more than 90 days following passage of the resolution.

(b) Notice of Public Hearing. — The notice of public hearing shall:

(1) Fix the date, hour and place of the public informational meeting and the date, hour, and place of the public hearing.

(2) Describe clearly the boundaries of the area under consideration, and include a legible map of the area.

(3) State that the report required in G.S. 160A-35 will be available at the office of the municipal clerk at least 30 days prior to the date of the public informational meeting.

(4) Include an explanation of an owner's rights pursuant to subsection (f1) and (f2) of this section.

Such notice shall be given by publication once a week for at least two successive weeks prior to the date of the informational meeting in a newspaper having general circulation in the municipality and, in addition thereto, if the area to be annexed lies in a county containing less than fifty percent (50%) of the land area of the municipality, in a newspaper having general circulation in the area of proposed annexation. The period from the date of the first publication to the date of the last publication, both dates inclusive, shall be not less than eight days including Sundays, and the date of the last publication shall be not more than seven days preceding the date of public informational meeting. If there be no such newspaper, the municipality shall post the notice in at least five public places within the municipality and at least five public places in the area to be annexed for 30 days prior to the date of public informational meeting. In addition, notice shall be mailed at least four weeks prior to date of the informational meeting, by first class mail, postage prepaid to the owners as shown by the tax records of the county of all freehold interests in real property located within the area to be annexed. The person or persons mailing such notices shall certify to the governing board that fact, and such certificate shall become a part of the record of the annexation proceeding and shall be deemed conclusive in the absence of fraud. If the notice is returned to the city by the postal service by the tenth day before the informational meeting, a copy of the notice shall be sent by certified mail, return receipt requested, at least seven days before the informational meeting. Failure to comply with the mailing requirement of this subsection shall not invalidate the annexation unless it is shown that the requirements were not substantially complied with.

If the governing board by resolution finds that the tax records are not adequate to identify the owners of some or all of the parcels of real property within the area it may in lieu of the mail procedure as to those parcels where the owners could not be so identified, post the notice at least 30 days prior to the date of public informational meeting on all buildings on such parcels, and in at least five other places within the area to be annexed. In any case where notices are placed on property, the person placing the notice shall certify that fact to the governing board.

(c) Action Prior to Informational Meeting. — At least 30 days before the date of the public informational meeting, the governing board shall approve the report provided for in G.S. 160A-35, and shall make it available to the public at the office of the municipal clerk. In addition, the municipality may prepare a summary of the full report for public distribution. In addition, the city shall post in the office of the city clerk at least 30 days before the public informational meeting a legible map of the area to be annexed and a list of the persons holding freehold interests in property in the area to be annexed that it has identified.

(c1) Public Informational Meeting. — At the public informational meeting a representative of the municipality shall first make an explanation of the report required in G.S. 160A-35. Following such explanation, all persons resident or owning property in the territory described in the notice of public hearing, and all residents of the municipality, shall be given the opportunity to ask questions and receive answers regarding the proposed annexation.

(d) Public Hearing. — At the public hearing a representative of the municipality shall first make an explanation of the report required in G.S. 160A-35. Following such explanation, all persons resident or owning property in the territory described in the notice of public hearing, and all residents of the municipality, shall be given an opportunity to be heard.

(e) Passage of the Annexation Ordinance. — The municipal governing board shall take into consideration facts presented at the public hearing and shall have authority to amend the report required by G.S. 160A-35 to make changes in the plans for serving the area proposed to be annexed so long as such changes meet the requirements of G.S. 160A-35. At any regular or special meeting held no sooner than the tenth day following the public hearing and not later than 90 days following such public hearing, the governing board shall have authority to adopt an ordinance extending the corporate limits of the municipality to include all, or such part, of the area described in the notice of public hearing which meets the requirements of G.S. 160A-36 and which the governing board has concluded should be annexed. The ordinance shall:

(1) Contain specific findings showing that the area to be annexed meets the requirements of G.S. 160A-36. The external boundaries of the area to be annexed shall be described by metes and bounds. In showing the application of G.S. 160A-36(c) and (d) to the area, the governing board may refer to boundaries set forth on a map of the area and incorporate same by reference as a part of the ordinance.

(2) A statement of the intent of the municipality to provide services to the area being annexed as set forth in the report required by G.S. 160A-35.

(3) A specific finding that on the effective date of annexation the municipality will have funds appropriated in sufficient amount to finance construction of any water and sewer lines found necessary in the report required by G.S. 160A-35 to extend the basic water and/or sewer system of the municipality into the area to be annexed, or that on the effective date of annexation the municipality will have authority to issue bonds in an amount sufficient to finance such construction. If authority to issue such bonds must be secured from the electorate of

the municipality prior to the effective date of annexation, then the effective date of annexation shall be no earlier than the day following the statement of the successful result of the bond election.

(4) Fix the effective date for annexation. The effective date of annexation may be fixed for any date not less than 40 days nor more than 400 days from the date of passage of the ordinance.

(f) Effect of Annexation Ordinance. — Except as provided in subsection (f1) of this section, from and after the effective date of the annexation ordinance, the territory and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in such municipality and shall be entitled to the same privileges and benefits as other parts of such municipality. Real and personal property in the newly annexed territory on the January 1 immediately preceding the beginning of the fiscal year in which the annexation becomes effective is subject to municipal taxes as provided in G.S. 160A-58.10. If the effective date of annexation falls between June 1 and June 30, and the effective date of the privilege license tax ordinance of the annexing municipality is June 1, then businesses in the area to be annexed shall be liable for taxes imposed in such ordinance from and after the effective date of annexation.

(f1) Property Subject to Present-Use Value Appraisal. — If an area described in an annexation ordinance includes agricultural land, horticultural land, or forestland that meets either of the conditions listed below on the effective date of annexation, then the annexation becomes effective as to that property pursuant to subsection (f2) of this section:

(1) The land is being taxed at present-use value pursuant to G.S. 105-277.4.

(2) The land meets both of the following conditions:

a. On the date of the resolution of intent for annexation it was being used for actual production and is eligible for present-use value taxation under G.S. 105-277.4, but the land had not been in use for actual production for the required time under G.S. 105-277.3.

b. The assessor for the county where the land subject to annexation is located has certified to the city that the land meets the requirements of this subdivision.

(f2) Effective Date of Annexation for Certain Property. — Annexation of property subject to annexation under subsection (f1) of this section becomes effective as provided in this subsection:

(1) Upon the effective date of the annexation ordinance, the property is considered part of the city only (i) for the purpose of establishing city boundaries for additional annexations pursuant to this Article and (ii) for the exercise of city authority pursuant to Article 19 of this Chapter.

(2) For all other purposes, the annexation becomes effective as to each tract of the property or part thereof on the last day of the month in which that tract or part thereof becomes ineligible for classification pursuant to G.S. 105-277.4 or no longer meets the requirements of subdivision (f1)(2) of this section. Until annexation of a tract or a part of a tract becomes effective pursuant to this subdivision, the tract or part of a tract is not subject to taxation by the city under Article 12 of Chapter 105 of the General Statutes nor is the tract or part of a tract entitled to services provided by the city.

(g) Simultaneous Annexation Proceedings. — If a municipality is considering the annexation of two or more areas which are all adjacent to the municipal boundary but are not adjacent to one another, it may undertake simultaneous proceedings under authority of this Part for the annexation of such areas.

(h) Remedies for Failure to Provide Services. — If, not earlier than one year from the effective date of annexation, and not later than 15 months from the effective date of annexation, any person owning property in the annexed territory shall believe that the municipality has not followed through on its service plans adopted under the provisions of G.S. 160A-35(3) and subsection (e) of this section, the person may apply for a writ of mandamus under the provisions of Article 40, Chapter 1 of the General Statutes. Relief may be granted by the judge of superior court

(1) If the municipality has not provided the services set forth in its plan submitted under the provisions of G.S. 160A-35(3)a on substantially the same basis and in the same manner as such services were provided within the rest of the municipality prior to the effective date of annexation, and

(2) If at the time the writ is sought such services set forth in the plan submitted under the provisions of G.S. 160A-35(3)a are still being provided on substantially the same basis and in the same manner as on the date of annexation of the municipality.

Relief may also be granted by the judge of superior court

(1) If the plans submitted under the provisions of G.S. 160A-35(3)b. require the construction of major trunk water mains and sewer outfall lines and

(2) If contracts for such construction have not yet been let.

If a writ is issued, costs in the action, including a reasonable attorney's fee for such aggrieved person, shall be charged to the municipality.

(i) No resolution of intent may be adopted under subsection (a) of this section unless the city council (or a planning agency created or designated under either G.S. 160A-361 or the charter) has, by resolution adopted at least one year prior to adoption of the resolution of intent, identified the area as being under consideration for annexation and included a statement in the resolution notifying persons subject to the annexation of their rights under subsections (f1) and (f2) of this section; provided, adoption of such resolution of consideration shall not confer prior jurisdiction over the area as to any other city. The area described under the resolution of intent may comprise a smaller area than that identified by the resolution of consideration. The resolution of consideration may have a metes and bounds description or a map, shall remain effective for two years after adoption, and shall be filed with the city clerk. A new resolution of consideration adopted before expiration of the two-year period for a previously adopted resolution covering the same area shall relate back to the date of the previous resolution.

(j) Subsection (i) of this section shall not apply to the annexation of any area if the resolution of intent describing the area and the ordinance annexing the area both provide that the effective date of the annexation shall be at least one year from the date of passage of the annexation ordinance.

(k) If a city fails to deliver police protection, fire protection, solid waste or street maintenance services as provided for in G.S. 160A-35(3)a. within 60 days after the effective date of the annexation, the owner of the property may petition the Local Government Commission for abatement of taxes to be paid to the city for taxes that have been levied as of the end of the 60-day period, if the petition is filed not more than 90 days after the expiration of the 60-day period. If the Local Government Commission finds that services were not extended by the end of the 60-day period, it shall enter an order directing the city not to levy any further ad valorem taxes on the property until the fiscal year commencing after extension of the municipal services. (1959, c. 1010, s. 5; 1967, c. 1226, s. 1; 1973, c. 426, s. 74; 1975, c. 576, s. 3; 1977, c. 517, s. 5; 1983, c. 636, ss. 2, 4, 6, 36; 1985, c. 384, s. 1; 1987, c. 44, s. 1; 1989, c. 598, s. 11; 1998-150, s. 7; 2001-487, s. 36; 2006-264, s. 17(a)-(c).)

Local Modification. — Town of Grifton: 1975, c. 479.

Cross References. — As to effective date of certain annexation ordinances adopted from

January 1, 1987, to August 3, 1987, see G.S. 160A-58.9.

Editor's Note. — Session Laws 1983, c. 636, which amended this section, in s. 37.1, as amended by Session Laws 1983, c. 768, s. 25, provided: "The General Assembly intends by this act to repeal all acts and provisions of acts that modify the application to particular cities and towns of Parts 2 and 3 of Article 4A of Chapter 160A of the General Statutes or that exempt particular cities or towns from the application of either or both of those two Parts. Therefore, all such acts and provisions of Acts, even if not specifically listed and repealed in Sections 26 through 35.4 of this act, are repealed. Neither this section nor Sections 26 through 35.4 of this act shall affect any annexation in progress on the dates of ratification of this act under any of the repealed or amended sections."

Section 38 of Session Laws 1983, c. 636 provided: "This act shall be effective with respect to all annexations where resolutions of intent are adopted on or after the date of ratification of this act, except that Sections 36 and 37 shall become effective with respect to all annexations where resolutions of intent are adopted on or after July 1, 1984, Sections 25.1 through 35.5 and Section 37.1 are effective upon ratification and Section 25 shall become effective as provided in that section. No annexation where a resolution of intent was adopted prior to the date of ratification of this act shall be affected by this act except as provided in Section 25."

The act was ratified June 29, 1983.

Article 40, Chapter 1, referred to in the first sentence of subsection (h), was repealed by Session Laws 1967, c. 954, s. 4.

Session Laws 2001-487, s. 36, amended this section in the coded bill drafting format provided by G.S. 120-20.1. Subdivisions (f1)(1) and (f1)(2) have been set out in the form above at the direction of the Revisor of Statutes. The words in brackets were added by S.L. 2001-487, but were not underlined per code drafting guidelines, and the words "Land that" at the beginning of subdivisions (f1)(1) and (f1)(2) probably should have been deleted, but were not stricken through per code drafting guidelines.

Legal Periodicals. — For 1984 survey, "Competitive Annexation Among Municipalities: North Carolina Adopts the Prior Jurisdiction Rule," see 63 N.C.L. Rev. 1260 (1985).

See Legislative Survey, 21 Campbell L. Rev. 323 (1999).

For casenote, "Carolina Power & Light v. City of Asheville Municipal Annexation in North Carolina: The Pros, the Cons and the Judiciary," see 27 N.C. Cent. L.J. 224 (2005).

CASE NOTES

This section provides two different procedural methods for beginning the involuntary annexation process under G.S. 160A-33 to 160A-42 and former G.S. 160A-43 and 160A-44. A municipality may either pass a resolution of consideration one year prior to adopting its resolution of intent, or it may immediately adopt the resolution of intent and postpone the effective date of annexation for at least a year after the ordinance is passed. Town of Hazelwood v. Town of Waynesville, 83 N.C. App. 670, 351 S.E.2d 558, rev'd on other grounds, 320 N.C. 89, 357 S.E.2d 686 (1987).

The trial court's order affirming a town annexation ordinance had to be vacated where the court applied the material prejudice standard of review to the adequacy of maps contained in the town report as well as to the questions of solid waste collection and the financing of services instead of determining whether or not the town complied with this section in formulating and carrying out its annexation plan; procedural irregularities under this section are to be evaluated under a "material prejudice" standard, while violations of either G.S. 160A-35 or G.S. 160A-36 are to be viewed in light of compliance or lack thereof and, if necessary, result in appropriate amendment. Sonopress, Inc. v. Town of Weaverville, 139 N.C. App. 378, 533 S.E.2d 537, 2000 N.C. App. LEXIS 948 (2000).

Notice of Rescinded Ordinance Not Required. — There is no provision in this section or any other section in this chapter that would impose a duty on the town to give plaintiffs notice of the fact that the town had rescinded an earlier annexation ordinance. Chicora Country Club, Inc. v. Town of Erwin, 128 N.C. App. 101, 493 S.E.2d 797 (1997).

Deliberate preference for voluntary annexation is incorporated into law. Town of Hazelwood v. Town of Waynesville, 320 N.C. 89, 357 S.E.2d 686, rehearing denied, 320 N.C. 639, 360 S.E.2d 106 (1987).

Resolution of intent is "first mandatory public procedural step" for purposes of the prior jurisdiction rule. Town of Hazelwood v. Town of Waynesville, 320 N.C. 89, 357 S.E.2d 686, rehearing denied, 320 N.C. 639, 360 S.E.2d 106 (1987).

The adoption of a resolution of intent is the critical date for determining whether a municipality utilizing involuntary annexation procedures has prior jurisdiction over the same territory being considered for voluntary annexation by a different municipality. Town of

Hazelwood v. Town of Waynesville, 320 N.C. 89, 357 S.E.2d 686, rehearing denied, 320 N.C. 639, 360 S.E.2d 106 (1987).

Sections 160A-31(d), 160A-49(e) and subsection (e) of this section are in pari materia. Conover v. Newton, 297 N.C. 506, 256 S.E.2d 216 (1979).

The legislature has empowered municipal governing boards to amend the report required by G.S. 160A-35, to accommodate changes in the plans for serving the area proposed to be annexed, so long as such changes meet the requirements of G.S. 160A-35. Gregory v. Town of Plymouth, 60 N.C. App. 431, 299 S.E.2d 232, cert. denied, 308 N.C. 544, 304 S.E.2d 237 (1983).

Subsection (e) contains no provision requiring a second public hearing before the annexation report may be amended; to hold that a public hearing is always necessary when an annexation report is amended would result in a proliferation of unnecessary hearings. Williams v. Town of Grifton, 22 N.C. App. 611, 207 S.E.2d 275 (1974).

There is no requirement in subsection (e) that a second public hearing be held on the report as amended. Conover v. Newton, 297 N.C. 506, 256 S.E.2d 216 (1979).

There is no requirement that a second public hearing be held on an amended annexation proposal, when that amendment is adopted to achieve compliance with G.S. 160A-35, pursuant to the authority granted in subsection (e) of this section. Gregory v. Town of Plymouth, 60 N.C. App. 431, 299 S.E.2d 232, cert. denied, 308 N.C. 544, 304 S.E.2d 237 (1983).

Nor Any Provision as to Duration of Public Inspection of Amended Reports. — There is no requirement in subsection (e) that the amended report be available for public inspection for any particular amount of time before final action is taken on the annexation proposal. Conover v. Newton, 297 N.C. 506, 256 S.E.2d 216 (1979).

Newly annexed territory is subject to municipal taxes levied for the fiscal year following the effective date of annexation under subsection (f) of this section. A taxpayer's right to recover taxes paid under protest for a fiscal year depends upon the date the annexation ordinance became effective under G.S. 160A-38(i). Adams-Millis Corp. v. Town of Kernersville, 281 N.C. 147, 187 S.E.2d 704 (1972), decided under this section as it stood before the 1975 amendment.

Effect of Appeal on Effective Date of Annexation for Tax Purposes. — Where an appeal from an annexation ordinance was pending in the Court of Appeals on the effective date of annexation specified in the ordinance, May 15, 1969, and the decision of the Court of Appeals was filed and certified in September, 1969, property within the area being annexed was not subject to municipal ad valorem taxes for the fiscal year beginning July 1, 1969, since (1) newly annexed territory is subject to municipal taxes levied for the fiscal year following the effective date of annexation, under subsection (f) of this section, and (2) under G.S. 160A-38(i), the appeal postponed the effective date of the ordinance until the date of the final judgment of the appellate court. Adams-Millis Corp. v. Town of Kernersville, 281 N.C. 147, 187 S.E.2d 704 (1972), decided under this section as it stood before the 1975 amendment.

Annexed Areas Need Not Be Contiguous to Each Other. — If the areas to be annexed meet the standards prescribed, it does not matter whether they be contiguous. Subsection (g) of this section simply alleviates the necessity for separate annexation proceedings where areas to be annexed are adjacent to the municipality but not adjacent to each other, and specifically provides that annexation procedures may be simultaneously instituted and carried forward. Adams-Millis Corp. v. Town of Kernersville, 6 N.C. App. 78, 169 S.E.2d 496, cert. denied, 275 N.C. 681 (1969).

But Contiguous Areas Are Not Excluded from Annexation. — Subsection (g) of this section is not interpreted to exclude annexation of areas contiguous to the municipality which are also contiguous to each other. Adams-Millis Corp. v. Town of Kernersville, 6 N.C. App. 78, 169 S.E.2d 496, cert. denied, 275 N.C. 681 (1969).

Fact that the metes and bounds description in a resolution of intent to annex failed to close because one small piece of property owned by a person who did not join the petition for review was not included within the resolution of intent was not fatal to the validity of the annexation ordinance, where the resolution of intent and the published notice of public hearing made full reference to a map, filed in the office of the clerk of the city, and available for public inspection of the area proposed to be annexed, and this map and a map published in the newspaper notice of the public hearing showed all the property proposed to be annexed. Conover v. Newton, 297 N.C. 506, 256 S.E.2d 216 (1979).

Property Owner Not Materially Prejudiced by Illegible Map. — Although the public notice provided by town for public hearing on annexation and printed in newspaper included an illegible map, the property owner was not materially prejudiced, since the public notice adequately described the property at issue; further, the property owner was not materially prejudiced by the denial of its request for a postponement of the public hearing because it had ample notice of the proposed annexation and an opportunity to be heard. Sonopress, Inc. v. Town of Weaverville, 149 N.C. App. 492, 562 S.E.2d 32, 2002 N.C. App. LEXIS 282 (2002), cert. denied, 355 N.C. 751, 565 S.E.2d 671 (2002).

Where annexation is completed without being challenged in the manner prescribed by G.S. 160A-38, it becomes an accomplished fact, and the remedies of property owners and citizens within the annexed areas are those provided in subsection (h) of this section. Gaskill v. Costlow, 270 N.C. 686, 155 S.E.2d 148 (1967).

Remedy Where Municipality Has Not Carried Out Service Plans. — The statutory remedy for owners of property in annexed territory where the municipality has not followed through on its service plans adopted under the provisions of subdivision (3) of G.S. 160A-35 and subsection (e) of this section is by writ of mandamus. Safrit v. Costlow, 270 N.C. 680, 155 S.E.2d 252 (1967).

Time for Bringing Action for Mandamus. — The owner of property within territory annexed by a municipality may bring an action for mandamus after the expiration of one year from the effective date of annexation and prior to the expiration of 15 months from such date to compel the municipality to follow through on its plans for furnishing essential municipal services to the area annexed in accordance with the plans filed in the proceedings. Safrit v. Costlow, 270 N.C. 680, 155 S.E.2d 252 (1967).

Annexation ordinance and annexation report met the requirements of G.S. 160A-35 and this section. Williams v. Town of Grifton, 22 N.C. App. 611, 207 S.E.2d 275 (1974).

Town Not Required to Provide Service. — Language in annexation ordinances to the effect that since water service then provided to the annexed areas by plaintiff was comparable to that provided by the town, the town would not be required to appropriate funds to extend water and sewer lines to the annexed area was required by subdivision (e)(3) and G.S. 160A-35(3)b to insure that residents of the area to be annexed would have access to comparable water service; in no way did this serve as a promise to be rightfully relied upon that the town would not in the future construct its own water lines within the annexed area or that plaintiff had the exclusive right to furnish water service there. Carolina Water Serv., Inc. v. Town of Atlantic Beach, 121 N.C. App. 23, 464 S.E.2d 317 (1995).

New Public Hearing Not Required. — Although town's annexation report failed to fully set forth the town's policies regarding sanitation services, the trial court did not have to order a new public hearing, but could remand the issue to the town to more fully and adequately set forth the town's policy, and the proposed extension of such services into the area of annexation; a municipal governing board has the authority to amend an annexation report to make changes in the plans for serving the area proposed to be annexed without another public hearing as long as the changes meet the statutory requirements and were part of the original notice of public hearing. Sonopress, Inc. v. Town of Weaverville, 149 N.C. App. 492, 562 S.E.2d 32, 2002 N.C. App. LEXIS 282 (2002), cert. denied, 355 N.C. 751, 565 S.E.2d 671 (2002).

Informational Meeting. — Land owners failed to demonstrate how they had suffered material injury as a result of a village's failure to answer one question at the informational meeting, the answer to which could have no effect on the validity of the proposed annexation, and the annexation was proper. Nolan v. Village of Marvin, 172 N.C. App. 84, 615 S.E.2d 898, 2005 N.C. App. LEXIS 1432 (2005).

Annexation Proper. — Village essentially complied with the requirements of G.S. 160A-37 because, while it would have been impermissible for the village to annex property that it had not included in its original report, it was permitted to omit property described in its original report from the property it ultimately annexed, which was exactly what occurred. Norwood v. Village of Sugar Mt., — N.C. App. —, 667 S.E.2d 524, 2008 N.C. App. LEXIS 1819 (2008).

Applied in Huntley v. Potter, 255 N.C. 619, 122 S.E.2d 681 (1961); Dunn v. City of Charlotte, 284 N.C. 542, 201 S.E.2d 873 (1974); Rexham Corp. v. Town of Pineville, 26 N.C. App. 349, 216 S.E.2d 445 (1975); Hawks v. Town of Valdese, 299 N.C. 1, 261 S.E.2d 90 (1980); Scovill Mfg. Co. v. Town of Wake Forest, 58 N.C. App. 15, 293 S.E.2d 240 (1982); Town of Spencer v. Town of E. Spencer, 351 N.C. 124, 522 S.E.2d 297 (1999).

Cited in Lowe v. Town of Mebane, 76 N.C. App. 239, 332 S.E.2d 739 (1985); Huyck Corp. v. Town of Wake Forest, 86 N.C. App. 13, 356 S.E.2d 599 (1987); Chapel Hill Country Club, Inc. v. Town of Chapel Hill, 97 N.C. App. 171, 388 S.E.2d 168 (1990); Ingles Markets, Inc. v. Town of Black Mt., 98 N.C. App. 372, 390 S.E.2d 688 (1990); Asheville Indus., Inc. v. City of Asheville, 112 N.C. App. 713, 436 S.E.2d 873 (1993); Hayes v. Town of Fairmont, 130 N.C. App. 125, 502 S.E.2d 380 (1998); Town of Spencer v. Town of E. Spencer, 129 N.C. App. 751, 501 S.E.2d 367 (1998); Buckland v. Town of Haw River, 141 N.C. App. 460, 541 S.E.2d 497, 2000 N.C. App. LEXIS 1307 (2000); Hughes v. Town of Oak Island, 158 N.C. App. 175, 580 S.E.2d 704, 2003 N.C. App. LEXIS 1052 (2003); Nolan v. Village of Marvin, 360 N.C. 256, 624 S.E.2d 305, 2006 N.C. LEXIS 3 (2006).

§ 160A-37.1. Contract with rural fire department.

(a) If the area to be annexed described in a resolution of intent passed under G.S. 160A-37(a) includes an area in an insurance district defined under G.S. 153A-233, a rural fire protection district under Article 3A of Chapter 69 of the General Statutes, or a fire service district under Article 16 of Chapter 153A of the General Statutes, and a rural fire department was on the date of adoption of the resolution of intent providing fire protection in the area to be annexed, then the city (if the rural fire department makes a written request for a good faith offer, and the request is signed by the chief officer of the fire department and delivered to the city clerk no later than 15 days before the public hearing) is required to make a good faith effort to negotiate a five-year contract with the rural fire department to provide fire protection in the area to be annexed.

(b) If the area is a rural fire protection district or a fire service district, then an offer to pay annually for the term of the contract the amount of money that the tax rate in the district in effect on the date of adoption of the resolution of intent would generate based on property values on January 1 of each year in the area to be annexed which is in such a district is deemed to be a good faith offer of consideration for the contract.

(c) If the area is an insurance district but not a rural fire protection district or fire service district, then an offer to pay annually over the term of the contract the amount of money which is determined to be the equivalent of the amount which would be generated by multiplying the fraction of the city's general fund budget in that current fiscal year which is proposed to be expended for fire protection times the tax rate for the city in the current year, and multiplying that result by the property valuation in the area to be annexed which is served by the rural fire department is deemed to be a good faith offer of consideration for the contract; Provided that the payment shall not exceed the equivalent of fifteen cents (15¢) on one hundred dollars ($100.00) valuation of annexed property in the district according to county valuations for the current fiscal year.

(d) Any offer by a city to a rural fire department which would compensate the rural fire department for revenue loss directly attributable to the annexation by paying such annually for five years, is deemed to be a good faith offer of consideration for the contract.

(e) Under subsections (b), (c), or (d) of this section, if the good faith offer is for first responder service, an offer of one-half the calculated amount under those subsections is deemed to be a good faith offer.

(f) This section does not obligate the city or rural fire department to enter into any contract.

(g) The rural fire department may, if it feels that no good faith offer has been made, appeal to the Local Government Commission within 30 days following the passage of an annexation ordinance. The rural fire department may apply to the Local Government Commission for an order staying the operation of the annexation ordinance pending the outcome of the review. The Commission may grant or deny the stay in its discretion upon such terms as it deems proper, and it may permit annexation of any part of the area described in the ordinance concerning which no question for review has been raised, provided that no other appeal under G.S. 160A-38 is pending.

(h) The Local Government Commission may affirm the ordinance, or if the Local Government Commission finds that no good faith offer has been made, it shall remand the ordinance to the municipal governing board for further proceedings, and the ordinance shall then not become effective unless the Local Government Commission finds that a good faith offer has been made.

(i) Any party to the review under subsection (h) may obtain judicial review in accordance with Chapter 150B of the General Statutes. (1983, c. 636, s. 20; 1987, c. 827, s. 1.)

Cross References. — As to effective date of annexation ordinances adopted under Article 4A of Chapter 160A, see G.S. 160A-58.9A.

Editor's Note. — Session Laws 1983, c. 636, which enacted this section, in s. 37.1, as amended by Session Laws 1983, c. 768, s. 25, provided: "The General Assembly intends by this act to repeal all acts and provisions of acts that modify the application to particular cities and towns of Parts 2 and 3 of Article 4A of Chapter 160A of the General Statutes or that exempt particular cities or towns from the application of either or both of those two Parts. Therefore, all such acts and provisions of Acts, even if not specifically listed and repealed in Sections 26 through 35.4 of this act, are repealed. Neither this section nor sections 26 through 35.4 of this act shall affect any annexation in progress on the dates of ratification of this act under any of the repealed or amended sections."

Section 38 of Session Laws 1983, c. 636 provided: "This act shall be effective with respect to all annexations where resolutions of intent are adopted on or after the date of ratification of this act, except that Sections 36 and 37 shall become effective with respect to all annexations where resolutions of intent are adopted on or after July 1, 1984, Sections 25.1 through 35.5 and Section 37.1 are effective upon ratification and Section 25 shall become effective as provided in that section. No annexation where a resolution of intent was adopted prior to the date of ratification of this act shall be affected by this act except as provided in Section 25."

The act was ratified June 29, 1983.

§ 160A-37.2. Assumption of debt.

(a) If the city has annexed any area which is served by a rural fire department and which is in an insurance district defined under G.S. 153A-233, a rural fire protection district under Article 3A of Chapter 69 of the General Statutes or a fire service district under Article 17 of Chapter 153A of the General Statutes, then upon the effective date of annexation if the city has not contracted with the rural fire department for fire protection, or when the rural fire department ceases to provide fire protection under contract, then the city shall pay annually a proportionate share of any payments due on any debt (including principal and interest) relating to facilities or equipment of the rural fire department, if the debt was existing at the time of adoption of the resolution of intent, with the payments in the same proportion that the assessed valuation of the area of the district annexed bears to the assessed valuation of the entire district on the date the annexation ordinance becomes effective or another date for valuation mutually agreed upon by the city and the fire department.

(b) The city and rural fire department shall jointly present a payment schedule to the Local Government Commission for approval and no payment may be made until such schedule is approved. (1983, c. 636, s. 22; 1998-150, s. 8.)

Editor's Note. — Session Laws 1983, c. 636, s. 37.1, as amended by Session Laws 1983, c. 768, s. 25, provided: "The General Assembly intends by this act to repeal all acts and provisions of acts that modify the application to particular cities and towns of Parts 2 and 3 of Article 4A of Chapter 160A of the General Statutes or that exempt particular cities or towns from the application of either or both of those two Parts. Therefore, all such acts and provisions of acts, even if not specifically listed and repealed in Sections 26 through 35.4 of this act, are repealed. Neither this section nor Sections 26 through 35.4 of this act shall affect any annexation in progress on the dates of ratification of this act under any of the repealed or amended sections."

Session Laws 1983, c. 636, s. 38, provided: "This act shall be effective with respect to all annexations where resolutions of intent are adopted on or after the date of ratification of this act, except that Sections 36 and 37 shall become effective with respect to all annexations where resolutions of intent are adopted on or after July 1, 1984, Sections 25.1 through 35.5 and Section 37.1 are effective upon ratification and Section 25 shall become effective as provided in that section. No annexation where a resolution of intent was adopted prior to the date of ratification of this act shall be affected by this act except as provided in Section 25."

The act was ratified June 29, 1983.

§ 160A-37.3. Contract with private solid waste collection firm(s).

(a) If the area to be annexed described in a resolution of intent passed under G.S. 160A-37(a) includes an area where a firm (i) meets the requirements of subsection (a1) of this section, (ii) on the ninetieth day preceding the date of adoption of the resolution of intent or resolution of consideration was providing solid waste collection services in the area to be annexed, (iii) on the date of adoption of the resolution of intent is still providing such services, and (iv) by reason of the annexation the firm's franchise with a county or arrangements with third parties for solid waste collection will be terminated, the city shall do one of the following:

(1) Contract with the firm for a period of two years after the effective date of the annexation ordinance to allow the firm to provide collection services to the city in the area to be annexed for sums determined under subsection (d) of this section.

(2) Pay to the firm the firm's economic loss, with one-third of the economic loss to be paid within 30 days of the termination and the balance paid in 12 equal monthly installments during the next succeeding 12 months. Any remaining economic loss payment is forfeited if the firm terminates service to customers in the annexation area prior to the effective date of the annexation.

(3) Make other arrangements satisfactory to the parties.

(a1) To qualify for the options set forth in subsection (a) of this section, a firm must have done one of the following:

(1) Subsequent to receiving notice of the annexation in accordance with subsection (b) of this section, filed with the city clerk at least 10 days prior to the public hearing a written request to contract with the city to provide solid waste collection services containing a certification, signed by an officer or owner of the firm, that the firm serves at least 50 customers within the county at that time.

(2) Contacted the city clerk pursuant to public notice published by the city, pursuant to G.S. 160A-37(b), at least 10 days before the hearing and provided to the city clerk a written request to contract with the city to provide solid waste collection services. The request must contain a certification signed by an officer or owner of the firm that the firm serves at least 50 customers within the county at that time.

(a2) Firms shall file notice of provision of solid waste collection service with the city clerk of all cities located in the firm's collection area or within five miles thereof.

(b) At least four weeks prior to the date of the informational meeting, the city shall provide written notice of the resolution of intent to all firms serving the area to be annexed. The notice shall be sent to all firms that filed notice in accordance with subsection (a2) of this section by certified mail, return receipt requested, to the address provided by the firm under subsection (a2) of this section.

(c) The city may require that the contract contain:

(1) A requirement that the firm post a performance bond and maintain public liability insurance coverage;

(2) A requirement that the firm agree to service customers in the annexed area that were not served by that firm on the effective date of annexation;

(3) A provision that divides the annexed area into service areas if there were more than one firm being contracted within the area, such that the entire area is served by the firms, or by the city as to customers not served by the firms;

(4) A provision that the city may serve customers not served by the firm on the effective date of annexation;

(5) A provision that the contract can be cancelled in writing, delivered by certified mail to the firm in question with 30 days to cure substantial violations of the contract, but no contract may be cancelled on these grounds unless the Local Government Commission finds that substantial violations have occurred, except that the city may suspend the contract for up to 30 days if it finds substantial violation of health laws;

(6) Performance standards, not exceeding city standards existing at the time of notice published pursuant to G.S. 160A-37(b), with provision that the contract may be cancelled for substantial violations of those standards, but no contract may be cancelled on those grounds unless the Local Government Commission finds that substantial violations have occurred;

(7) A provision for monetary damages if there are violations of the contract or of performance standards.

(d) If the services to be provided to the city by reason of the annexation are substantially the same as rendered under the franchise with the county or arrangements with the parties, the amount paid by the city shall be at least ninety percent (90%) of the amount paid or required under the existing franchise or arrangements. If such services are required to be adjusted to conform to city standards or as a result of changes in the number of customers, and as a result there are changes in disposal costs (including mileage and landfill charges), requirements for storage capacity (dumpsters and/or residential carts), and/or frequency of collection, the amount paid by the city for the service shall be increased or decreased to reflect the value of such adjusted services as if computed under the existing franchise or arrangements. In the event agreement cannot be reached between the city and the firm under this subsection, the matters shall be determined by the Local Government Commission.

(e), (f) Repealed by Session Laws 2006-193, s. 1, applicable to annexations for which a resolution of intent is adopted on or after January 1, 2007.

(g) The firm may, if it contends that no contract has been offered, appeal to the Local Government Commission within 30 days following passage of an annexation ordinance. The firm may appeal to the Local Government Commission for an order staying the operation of the annexation ordinance pending the outcome of the review. The Commission may grant or deny the stay upon such terms as it deems proper. If the Local Government Commission finds that the city has not made an offer which complies with this section, it shall remand the ordinance to the municipal governing board for further proceedings, and the ordinance shall not become effective until the Local Government Commission finds that such an offer has been made. Either the firm or the city may obtain judicial review in accordance with Chapter 150B of the General Statutes.

(h) A firm which has given notice under subsection (a) of this section that it desires to contract, and any firm that the city believes is eligible to give such notice, shall make available to the city not later than 30 days following a written request of the city, sent by certified mail return receipt requested, all information in its possession or control, including but not limited to operational, financial and budgetary information, necessary for the city to determine if the firm qualifies for the benefits of this section and to determine the nature and scope of the potential contract and/or economic loss. The firm forfeits its rights under this section if it fails to make a good faith response within 30 days following receipt of the written request for information from the city, provided that the city's written request states that statutory rights will be forfeited in the absence of a timely response and includes a specific reference to this section.

(i) As used in this section, the following terms mean:

(1) Economic loss. — A sum equal to 15 times the average gross monthly revenue for the three months prior to the passage of the resolution of intent or resolution of consideration, as applicable under subsection (a) of this section, collected or due the firm for residential, commercial, and industrial collection service in the area annexed or to be annexed; provided that revenue shall be included in calculations under this subdivision only if policies of the city will provide solid waste collection to those customers such that arrangements between the firm and the customers will be terminated.

(2) Firm. — A private solid waste collection firm. (1985, c. 610, s. 3; 1987, c. 827, s. 1; 1989, c. 598, s. 6; 1998-150, s. 9; 2006-193, s. 1.)

Cross References. — As to effective date of annexation ordinances adopted under Article 4A of Chapter 160A, see G.S. 160A-58.9A.

Editor's Note. — Subsection (h) of this section was amended by Session Laws 1998-150, s. 9, in the coded bill drafting format provided by G.S. 120-20.1; however, the introductory language stated the section was amended by adding a new subsection. It has been set out in the form above at the direction of the Revisor of Statutes.

§ 160A-38. Appeal.

(a) Within 60 days following the passage of an annexation ordinance under authority of this Part, any person owning property in the annexed territory who shall believe that he will suffer material injury by reason of the failure of the municipal governing board to comply with the procedure set forth in this Part or to meet the requirements set forth in G.S. 160A-36 as they apply to his property may file a petition in the superior court of the county in which the municipality is located seeking review of the action of the governing board.

(b) Such petition shall explicitly state what exceptions are taken to the action of the governing board and what relief the petitioner seeks. Within 10 days after the petition is filed with the court, the person seeking review shall serve copies of the petition by registered mail, return receipt requested, upon the municipality.

(c) Within 15 days after receipt of the copy of the petition for review, or within such additional time as the court may allow, the municipality shall transmit to the reviewing court

(1) A transcript of the portions of the municipal journal or minute book in which the procedure for annexation has been set forth and

(2) A copy of the report setting forth the plans for extending services to the annexed area as required in G.S. 160A-35.

(d) If two or more petitions for review are submitted to the court, the court may consolidate all such petitions for review at a single hearing, and the municipality shall be required to submit only one set of minutes and one report as required in subsection (c).

(e) At any time before or during the review proceeding, any petitioner or petitioners may apply to the reviewing court for an order staying the operation of the annexation ordinance pending the outcome of the review. The court may grant or deny the stay in its discretion upon such terms as it deems proper, and it may permit annexation of any part of the area described in the ordinance concerning which no question for review has been raised.

(f) The court shall fix the date for review of annexation proceedings under this Chapter, which review date shall preferably be within 30 days following the last day for receiving petitions to the end that review shall be expeditious and without unnecessary delays. The review shall be conducted by the court without a jury. The court may hear oral arguments and receive written briefs, and may take evidence intended to show either

(1) That the statutory procedure was not followed or
(2) That the provisions of G.S. 160A-35 were not met, or
(3) That the provisions of G.S. 160A-36 have not been met.

(g) The court may affirm the action of the governing board without change, or it may

(1) Remand the ordinance to the municipal governing board for further proceedings if procedural irregularities are found to have materially prejudiced the substantive rights of any of the petitioners.
(2) Remand the ordinance to the municipal governing board for amendment of the boundaries to conform to the provisions of G.S. 160A-36 if it finds that the provisions of G.S. 160A-36 have not been met; provided, that the court cannot remand the ordinance to the municipal governing board with directions to add area to the municipality which was not included in the notice of public hearing and not provided for in plans for service.
(3) Remand the report to the municipal governing board for amendment of the plans for providing services to the end that the provisions of G.S. 160A-35 are satisfied.
(4) Declare the ordinance null and void, if the court finds that the ordinance cannot be corrected by remand as provided in subdivisions (1), (2), or (3) of this subsection.

If any municipality shall fail to take action in accordance with the court's instructions upon remand within 90 days following entry of the order embodying the court's instructions, the annexation proceeding shall be deemed null and void.

(h) Any party to the review proceedings, including the municipality, may appeal to the Court of Appeals from the final judgment of the superior court under rules of procedure applicable in other civil cases. The superior court may, with the agreement of the municipality, permit annexation to be effective with respect to any part of the area concerning which no appeal is being made and which can be incorporated into the city without regard to any part of the area concerning which an appeal is being made.

(i) If part or all of the area annexed under the terms of an annexation ordinance is the subject of an appeal to the superior court, Court of Appeals or Supreme Court on the effective date of the ordinance, then the ordinance shall be deemed amended to make the effective date with respect to such area the last day of the next full calendar month following the date of the final judgment of the superior court, Court of Appeals or Supreme Court, whichever is appropriate, or the date the municipal governing board completes action to make the ordinance conform to the court's instructions in the event of remand. For the purposes of this subsection, a denial of a petition for a rehearing or for discretionary review shall be treated as a final judgment.

(j) The provisions of subsection (i) of this section shall apply to any judicial review authorized in whole or in part by G.S. 160A-37.1(i) or G.S. 160A-37.3(g).

(k) In any proceeding related to an annexation ordinance appeal under this section, a city shall not state a claim for lost property tax revenue caused by the appeal. Nothing in this Article shall be construed to mean that as a result of an appeal a municipality may assert a claim for property tax revenue lost during the pendency of the appeal.

(*l*) Any settlement agreed to by all parties in an appeal under this section may be presented to the superior court in the county in which the municipality is located. If the superior court, in its discretion, approves the settlement, it shall be binding on all parties without the need for approval by the General Assembly. (1959, c. 1010, s. 6; 1973, c. 426, s. 74; 1977, c. 148, ss. 6, 7; 1989, c.

598, s. 7; 1995 (Reg. Sess., 1996), c. 746, s. 4; 1998-150, s. 10; 1999-148, s. 2; 2009-570, s. 27.)

Cross References. — As to effective date of annexation ordinances adopted under Article 4A of Chapter 160A, see G.S. 160A-58.9A.

Editor's Note. — The subsection designation (k) was assigned by the Revisor of Statutes, the subsection designation in Session Laws 1995 (Reg. Sess., 1996), c. 746, s. 4, having been (*l*).

Effect of Amendments. — Session Laws 2009-570, s. 27, effective August 28, 2009, substituted "judgment" for "judgement" in the last sentence of subsection (i).

Legal Periodicals. — For 1984 survey, "Competitive Annexation Among Municipalities: North Carolina Adopts the Prior Jurisdiction Rule," see 63 N.C.L. Rev. 1260 (1985).

See Legislative Survey, 21 Campbell L. Rev. 323 (1999).

CASE NOTES

Reason for Judicial Review. — The difficulties of applying the standards of G.S. 160A-36 in extreme cases are the reason the Municipal Government Study Commission recommended a provision for court review, set out in this section, to determine whether the agency making the decision made a reasonable decision in accord with statutory standards. Lithium Corp. of Am. v. Town of Bessemer City, 261 N.C. 532, 135 S.E.2d 574 (1964).

Scope of Superior Court Review. — The superior court's review of an involuntary annexation proceeding, pursuant to this section, is limited in scope to the following: (1) Did the municipality comply with the statutory procedures? (2) If not, will petitioners "suffer material injury" by reason of the municipality's failure to comply? (3) Does the character of the area specified for annexation meet the requirements of G.S. 160A-36 as applied to petitioners' property? Conover v. Newton, 297 N.C. 506, 256 S.E.2d 216 (1979).

Subsection (f) of this section and G.S. 160A-50(f) limit the court's inquiry on review of an annexation ordinance to a determination of whether applicable annexation statutes have been substantially complied with. Huyck Corp. v. Town of Wake Forest, 86 N.C. App. 13, 356 S.E.2d 599, aff'd, 321 N.C. 589, 364 S.E.2d 139 (1988).

In determining the validity of an annexation ordinance, the court's review is limited to the following inquiries: (1) Did the municipality comply with the statutory procedures? (2) If not, will the petitioner suffer material injury thereby? (3) Does the area to be annexed meet the requirements of G.S. 160A-36 or G.S. 160A-48? Huyck Corp. v. Town of Wake Forest, 86 N.C. App. 13, 356 S.E.2d 599, aff'd, 321 N.C. 589, 364 S.E.2d 139 (1988).

Section Provides Only Procedure Available to Property Owners to Prevent Annexation. — The statutory remedy provided by this section is the only procedure available to property owners to prevent the annexation provided by an annexation ordinance. Gaskill v. Costlow, 270 N.C. 686, 155 S.E.2d 148 (1967).

Remedy Under § 160A-37 Exclusive Where Annexation Not Challenged Under This Section. — Where annexation is completed without being challenged in the manner prescribed by this section, it becomes an accomplished fact, and the remedies of property owners and citizens within the annexed areas are those provided in subsection (h) of G.S. 160A-37. Gaskill v. Costlow, 270 N.C. 686, 155 S.E.2d 148 (1967).

And Independent Action to Have Ordinance Declared Void Ab Initio May Not Be Maintained. — An owner of land in an area annexed by a municipality may attack the validity of the annexation ordinance only by filing a petition within 30 days following the passage of the ordinance seeking a review of the action of the municipal board of commissioners, in accordance with the procedure provided by this section, and an independent action instituted some 22 months after the adoption of the ordinance and seeking to have it declared void ab initio will be dismissed. Gaskill v. Costlow, 270 N.C. 686, 155 S.E.2d 148 (1967).

Who May Appeal. — Subsection (a) allows persons owning property in the area to be annexed to appeal if such property owners believe that they will suffer material injury. Taylor v. City of Raleigh, 22 N.C. App. 259, 206 S.E.2d 401 (1974), aff'd, 290 N.C. 608, 227 S.E.2d 576 (1976).

Any person owning property in annexed territory has a right, within 30 days following the passage of the annexation ordinance, to challenge its validity by petition for review filed in the superior court. Gaskill v. Costlow, 270 N.C. 686, 155 S.E.2d 148 (1967).

Fact that city was proceeding under a local act which did not set forth the persons who could appeal, rather than under this Chapter, did not extend the right to challenge the annexation to persons outside the annexed area who did not own property within it. Taylor v. City of Raleigh, 22 N.C. App. 259, 206 S.E.2d 401

(1974), aff'd, 290 N.C. 608, 227 S.E.2d 576 (1976).

The only persons given authority by this Chapter to challenge an annexation ordinance are those who own property in the annexed area. Davis v. City of Archdale, 81 N.C. App. 505, 344 S.E.2d 369 (1986).

Plaintiff town had no standing to challenge annexations of contiguous properties by nearby village. Town of Seven Devils v. Village of Sugar Mt., 125 N.C. App. 692, 482 S.E.2d 39 (1997), cert. denied, 346 N.C. 185, 486 S.E.2d 219 (1997).

The consolidation of two or more petitions for review in a single hearing referred to in subsection (d) refers to the consolidation of two or more petitions which involve a single annexation area and ordinance. Dunn v. City of Charlotte, 284 N.C. 542, 201 S.E.2d 873 (1974).

Failure to Allege Material Injury Not Fatal. — While the better practice would be to allege specifically that the petitioner will suffer material injury by reason of the failure of respondent to comply with the statutory procedures regarding annexation, the failure to do so is not fatal, particularly if the petition contains allegations from which material injury can be implied. Adams-Millis Corp. v. Town of Kernersville, 6 N.C. App. 78, 169 S.E.2d 496, cert. denied, 275 N.C. 681 (1969).

Effect of Appeal on Effective Date of Annexation for Tax Purposes. — Where an appeal from an annexation ordinance was pending in the Court of Appeals on the effective date of annexation specified in the ordinance, May 15, 1969, and the decision of the Court of Appeals was filed and certified in September 1969, property within the area being annexed was not subject to municipal ad valorem taxes for the fiscal year beginning July 1, 1969, since (1) newly annexed territory is subject to municipal taxes levied for the fiscal year following the effective date of annexation, G.S. 160A-37(f), and (2) under subsection (i) of this section the appeal postponed the effective date of the ordinance until the date of the final judgment of the appellate court. Adams-Millis Corp. v. Town of Kernersville, 281 N.C. 147, 187 S.E.2d 704 (1972).

Findings of fact of the superior court are binding on appeal if supported by competent evidence, even though there is evidence to the contrary. Scovill Mfg. Co. v. Town of Wake Forest, 58 N.C. App. 15, 293 S.E.2d 240, cert. denied, 306 N.C. 559, 294 S.E.2d 371 (1982).

Record Must Show Prima Facie Compliance. — Upon review in the superior court of a municipal annexation ordinance enacted pursuant to this Article, the record of the proceedings, including the report and annexation ordinance, must show prima facie complete and substantial compliance with this Article as a condition precedent to the right of the municipality to annex the territory. Huntley v. Potter, 255 N.C. 619, 122 S.E.2d 681 (1961); In re Annexation Ordinance, 255 N.C. 633, 122 S.E.2d 690 (1961).

Burden on Petitioners to Prove Prejudicial Irregularity Where Prima Facie Compliance Shown. — Where, upon review in the superior court of an annexation ordinance, the record of the proceeding shows prima facie that there has been substantial compliance with the requirements and provisions of the annexation statute, the burden is upon petitioners to show by competent evidence failure on the part of the municipality to comply with the statutory requirements as a matter of fact, or irregularity in the proceedings which materially prejudices the substantive rights of petitioners. Huntley v. Potter, 255 N.C. 619, 122 S.E.2d 681 (1961); In re Annexation Ordinance, 255 N.C. 633, 122 S.E.2d 690 (1961); Scovill Mfg. Co. v. Town of Wake Forest, 58 N.C. App. 15, 293 S.E.2d 240, cert. denied, 306 N.C. 559, 294 S.E.2d 371 (1982); Huyck Corp. v. Town of Wake Forest, 86 N.C. App. 13, 356 S.E.2d 599, aff'd, 321 N.C. 589, 364 S.E.2d 139 (1988).

The burden is upon petitioners in such case by reason of the presumption that public officials will discharge their duties in good faith and exercise their powers in accord with the spirit and purpose of the law. Huntley v. Potter, 255 N.C. 619, 122 S.E.2d 681 (1961).

Trial court erred in striking down a village's annexation ordinances because the village substantially complied with the essential statutory provisions in annexing the property owners' land and the property owners failed to produce competent evidence demonstrating that the village failed to meet the statutory requirements as a matter of fact or that an irregularity in the proceedings existed which materially prejudiced the owners' substantive rights so that the owners suffered a material injury. Norwood v. Village of Sugar Mt., — N.C. App. —, 667 S.E.2d 524, 2008 N.C. App. LEXIS 1819 (2008).

Nothing to Review on Issue of Availability If Compliance Is Clear. — If a municipality clearly complies with the standards of subsection (c) of G.S. 160A-36, there is nothing to review with respect to the availability of an area proposed for annexation. Lithium Corp. of Am. v. Town of Bessemer City, 261 N.C. 532, 135 S.E.2d 574 (1964).

Where compliance is in doubt, the determination must be made upon the facts in the particular case with respect to the availability of an area proposed for annexation under subsection (c) of G.S. 160A-36. Lithium Corp. of Am. v. Town of Bessemer City, 261 N.C. 532, 135 S.E.2d 574 (1964).

Court May Not Amend Record. — The superior court itself is without authority to amend the report, ordinance or other part of the record. This is true even if evidence is presented which justifies amendment. Huntley v. Potter, 255 N.C. 619, 122 S.E.2d 681 (1961).

But Must Remand Where Compliance Not Shown by Record. — Under this section, if the record of annexation proceedings on its face fails to show substantial compliance with any essential provision of this Article, the superior court upon review must remand to the governing board for amendment with respect to such noncompliance. Huntley v. Potter, 255 N.C. 619, 122 S.E.2d 681 (1961).

Remand of Ordinance for Amendment. — Trial court, pursuant to G.S. 160A-38(g)(2), instead of striking a village ordinance should have simply remanded the ordinance to the village to amend the annexation boundaries so as to conform with G.S. 160A-36. Norwood v. Village of Sugar Mt., — N.C. App. —, 667 S.E.2d 524, 2008 N.C. App. LEXIS 1819 (2008).

Public Hearing on Remand. — Neither subdivision (g)(2) of this section nor any other provisions of the annexation statute requires the municipal governing board upon remand to hold a second public hearing unless it adds an area not included in the original notice of public hearing and not provided for in the plans for service. Rexham Corp. v. Town of Pineville, 26 N.C. App. 349, 216 S.E.2d 445 (1975).

When Court May Permit Annexation of Part of Area. — The superior court may permit, under subsection (h) of this section, an annexation ordinance to be effective with respect to a part of the area proposed only when there is no appeal in regard to such part and the municipality agrees to the order for such partial annexation. Huntley v. Potter, 255 N.C. 619, 122 S.E.2d 681 (1961).

Where an order is issued restraining the operation of an annexation ordinance as to the entire area pending review, subsection (e) of this section has no application, since the statute permits the court to approve the annexation of a part of the proposed area only when no question for review has been raised as to such part. Huntley v. Potter, 255 N.C. 619, 122 S.E.2d 681 (1961).

Voiding of Town Ordinance Rather Than Remanding. — When a town adopted an ordinance proposing to annex certain land, it was proper for the trial court to declare the ordinance void, under G.S. 160A-38(g)(4), rather than remanding the matter to the town for amendment of the boundaries, because there was no evidence that the annexation area could be corrected on remand to comply with the applicable statutes. Hughes v. Town of Oak Island, 158 N.C. App. 175, 580 S.E.2d 704, 2003 N.C. App. LEXIS 1052 (2003), aff'd, 357 N.C. 653, 588 S.E.2d 467 (2003).

Findings of fact of the superior court are binding on appeal if supported by competent evidence, even though there is evidence to the contrary. Scovill Mfg. Co. v. Town of Wake Forest, 58 N.C. App. 15, 293 S.E.2d 240, cert. denied, 306 N.C. 559, 294 S.E.2d 371 (1982).

Jurisdiction of Court of Appeals. — An appeal from an order of the superior court affirming an annexation ordinance was properly taken to the Court of Appeals, notwithstanding that by clear legislative oversight subsections (h) and (i) of this section were not amended to include the Court of Appeals as one of the appellate courts, since G.S. 7A-27 gives initial appellate jurisdiction of such cause to the Court of Appeals, and the Court of Appeals, therefore, is deemed to be included in subsections (h) and (i). Adams-Millis Corp. v. Town of Kernersville, 281 N.C. 147, 187 S.E.2d 704 (1972).

Filing of Petition Necessary to Perfect Appellate Jurisdiction in Superior Court. —An appeal from the passage of an annexation ordinance by a municipality having a population of less than 5,000 must be taken within 30 days following such passage by filing a petition in the superior court of the county in which the municipality is located. Compliance with this provision is a condition precedent to perfecting appellate jurisdiction in the superior court for the review of an annexation ordinance. Ingles Markets, Inc. v. Town of Black Mt., 98 N.C. App. 372, 390 S.E.2d 688, cert. denied, 327 N.C. 429, 395 S.E.2d 679 (1990).

Entry of Remand Order Divested Superior Court of Jurisdiction. — Superior court's entry of order of remand of appeal of adoption of 1988 ordinance for the limited purpose of including specific findings of fact that the area to be annexed was developed for urban purposes divested that court of appellate jurisdiction to conduct further review of those aspects of the petition brought forward, but not addressed by the order, such that petitioner was required to appeal anew from the action of the town taken pursuant to remand in adopting an amended 1989 ordinance in order to obtain the right to a review of the 1989 ordinance in the superior court. Ingles Markets, Inc. v. Town of Black Mt., 98 N.C. App. 372, 390 S.E.2d 688, cert. denied, 327 N.C. 429, 395 S.E.2d 679 (1990).

Further Appellate Review After Remand. — In order to obtain further review of an annexation ordinance after infirmities have been corrected by the municipality pursuant to an order of remand, whether such order of remand addresses all or merely some of the issues raised in the initial petition, appellate jurisdiction in the superior court must be perfected anew by filing a separate petition in accordance with the provisions of G.S. 160A-38(a). Ingles Markets, Inc. v. Town of Black Mt., 98 N.C. App. 372, 390 S.E.2d 688, cert. denied, 327 N.C. 429, 395 S.E.2d 679 (1990).

Effective date of an ordinance adopted pursuant to superior court's order of re-

mand is neither postponed nor amended absent further appeal, which must be taken within the required 30 days; i.e., the ordinance becomes an accomplished fact, subject only to further appeal. Ingles Markets, Inc. v. Town of Black Mt., 98 N.C. App. 372, 390 S.E.2d 688, cert. denied, 327 N.C. 429, 395 S.E.2d 679 (1990).

Appeal Dismissed. — Where the thirty days afforded by this section expired before plaintiff filed its petition for review of the ordinance, the trial court was within jurisdiction and properly dismissed the action. Chicora Country Club, Inc. v. Town of Erwin, 128 N.C. App. 101, 493 S.E.2d 797 (1997).

Property owners did not show that a town was unreasonable in relying upon an actual survey, as allowed by G.S. 160A-36; thus, the reviewing court did not err in concluding that one property consisted of two separate lots for the purposes of the subdivision test. Hayes v. Town of Fairmont, 167 N.C. App. 522, 605 S.E.2d 717, 2004 N.C. App. LEXIS 2383 (2004), cert. denied, 359 N.C. 410, 612 S.E.2d 320 (2005).

Substantial Compliance With Statute Shown. Trial court erred in concluding that the usage of disputed acres affected the classification of a golf course tract as a whole when the golf course was annexed by a town ordinance, because the golf course tract was properly designated as commercial by the town in its original calculations, and the entire acreage should have been included as commercial acreage for purposes of calculations under the use test; based on the new calculations, the annexation area met the 60 percent minimum required under the subdivision test of G.S. 160A-36(c)(1), and, given that the town substantially complied with the provisions of G.S. 160A-36, the ordinance was properly affirmed without amendment pursuant to G.S. 160A-38. Hayes v. Town of Fairmont, 167 N.C. App. 522, 605 S.E.2d 717, 2004 N.C. App. LEXIS 2383 (2004), cert. denied, 359 N.C. 410, 612 S.E.2d 320 (2005).

Annexation Properly Affirmed. — Trial court properly found that a village provided independent administrative, engineering, auditing, legal, and planning services to its residents, and that the village was exploring options for obtaining additional police patrol services, and had committed itself to providing its current and future levels of such services to its residents in a non-discriminatory manner; the trial court found that the village was going to provide some additional services to the area to be annexed, notwithstanding land owners' claim they would receive no additional services whatsoever, and the trial court's order affirming the annexation was proper. Nolan v. Village of Marvin, 172 N.C. App. 84, 615 S.E.2d 898, 2005 N.C. App. LEXIS 1432 (2005).

Applied in Safrit v. Costlow, 270 N.C. 680, 155 S.E.2d 252 (1967); Town of Hudson v. City of Lenoir, 279 N.C. 156, 181 S.E.2d 443 (1971); Taylor v. City of Raleigh, 290 N.C. 608, 227 S.E.2d 576 (1976); In re Dunn, 73 N.C. App. 243, 326 S.E.2d 309 (1985); Hayes v. Town of Fairmont, 130 N.C. App. 125, 502 S.E.2d 380 (1998); Town of Spencer v. Town of E. Spencer, 351 N.C. 124, 522 S.E.2d 297 (1999); Sonopress, Inc. v. Town of Weaverville, 139 N.C. App. 378, 533 S.E.2d 537, 2000 N.C. App. LEXIS 948 (2000).

Cited in Thompson v. Whitley, 344 F. Supp. 480 (E.D.N.C. 1972); Williams v. Town of Grifton, 22 N.C. App. 611, 207 S.E.2d 275 (1974); Humphries v. City of Jacksonville, 300 N.C. 186, 265 S.E.2d 189 (1980); In re Annexation Ordinance, 300 N.C. 337, 266 S.E.2d 661 (1980); Hawks v. Town of Valdese, 299 N.C. 1, 261 S.E.2d 90 (1980); Greene v. Town of Valdese, 306 N.C. 79, 291 S.E.2d 630 (1982); Lowe v. Town of Mebane, 76 N.C. App. 239, 332 S.E.2d 739 (1985); Joyner v. Town of Weaverville, 94 N.C. App. 588, 380 S.E.2d 536 (1989); Amick v. Town of Stallings, 95 N.C. App. 64, 382 S.E.2d 221 (1989); Hughes v. Town of Oak Island, 158 N.C. App. 175, 580 S.E.2d 704, 2003 N.C. App. LEXIS 1052 (2003); Nolan v. Village of Marvin, 360 N.C. 256, 624 S.E.2d 305, 2006 N.C. LEXIS 3 (2006).

§ 160A-39. Annexation recorded.

Whenever the limits of a municipality are enlarged in accordance with the provisions of this Part, it shall be the duty of the mayor of the municipality to cause an accurate map of such annexed territory, together with a copy of the ordinance duly certified, to be recorded in the office of the register of deeds of the county or counties in which such territory is situated and in the office of the Secretary of State. The documents required to be filed with the Secretary of State under this section shall be filed not later than 30 days following the effective date of the annexation ordinance. All documents shall have an identifying number affixed thereto and shall conform in size in accordance with rules prescribed by the Secretary. Failure to file within 30 days shall not affect the validity of the annexation. Any annexation shall be reported as part of the Boundary and Annexation Survey of the United States Bureau of the Census.

(1959, c. 1010, s. 7; 1973, c. 426, s. 74; 1987, c. 715, s. 7; c. 879, s. 3; 1989, c. 440, s. 8; 1991, c. 586, s. 2.)

Cross References. — As to effective date of certain annexation ordinances adopted from January 1, 1987, to August 3, 1987, see G.S. 160A-58.9.

§ 160A-40. Authorized expenditures.

Municipalities initiating annexations under the provisions of this Part are authorized to make expenditures for surveys required to describe the property under consideration or for any other purpose necessary to plan for the study and/or annexation of unincorporated territory adjacent to the municipality. In addition, following final passage of the annexation ordinance, the annexing municipality shall have authority to proceed with expenditures for construction of water and sewer lines and other capital facilities and for any other purpose calculated to bring services into the annexed area in a more effective and expeditious manner prior to the effective date of annexation. (1959, c. 1010, s. 8; 1973, c. 426, s. 74.)

§ 160A-41. Definitions.

The following terms where used in this Part shall have the following meanings, except where the context clearly indicates a different meaning:

(1) "Contiguous area" shall mean any area which, at the time annexation procedures are initiated, either abuts directly on the municipal boundary or is separated from the municipal boundary by a street or street right-of-way, a creek or river, the right-of-way of a railroad or other public service corporation, lands owned by the municipality or some other political subdivision, or lands owned by the State of North Carolina.

(2) "Used for residential purposes" shall mean any lot or tract five acres or less in size on which is constructed a habitable dwelling unit. (1959, c. 1010, s. 9; 1973, c. 426, s. 74.)

Local Modification. — Town of Atlantic Beach: 1983, c. 341.

Legal Periodicals. — For 1984 survey, "Competitive Annexation Among Municipalities: North Carolina Adopts the Prior Jurisdiction Rule," see 63 N.C.L. Rev. 1260 (1985).

CASE NOTES

Coincidence of Boundary Requirement. — In considering the coincidence of boundary requirement, the entire area proposed for annexation must be viewed as a whole, rather than as various component portions. Huyck Corp. v. Town of Wake Forest, 86 N.C. App. 13, 356 S.E.2d 599, aff'd, 321 N.C. 589, 364 S.E.2d 139 (1988).

Territory which is contiguous solely to "satellite corporate limits" is not a "contiguous area" as that term is defined in subdivision (1). Hawks v. Town of Valdese, 299 N.C. 1, 261 S.E.2d 90 (1980).

Classification of Landlocked and Fronting Lots in Single Ownership as Single Lot. — It is not unreasonable and beyond the statutory definition to classify a landlocked lot and its fronting lot in single ownership as a single lot in residential use where only the fronting lot contains "a habitable dwelling unit." Adams-Millis Corp. v. Town of Kernersville, 6 N.C. App. 78, 169 S.E.2d 496, cert. denied, 275 N.C. 681 (1969).

Annexation Proper. — Village essentially complied with the requirements of G.S. 160A-41 because the village met the literal contiguity requirements in annexing an area. Norwood v. Village of Sugar Mt., — N.C. App. —, 667 S.E.2d 524, 2008 N.C. App. LEXIS 1819 (2008).

Cited in Huntley v. Potter, 255 N.C. 619, 122 S.E.2d 681 (1961); Amick v. Town of Stallings, 95 N.C. App. 64, 382 S.E.2d 221 (1989).

§ 160A-42. Land estimates.

In determining degree of land subdivision for purposes of meeting the requirements of G.S. 160A-36, the municipality shall use methods calculated to provide reasonably accurate results. In determining whether the standards set forth in G.S. 160A-36 have been met on appeal to the superior court under G.S. 160A-38, the reviewing court shall accept the estimates of the municipality as provided in this section unless the actual total area or degree of subdivision falls below the standards in G.S. 160A-36:

(1) As to total area if the estimate is based on an actual survey, or on county tax maps or records, or on aerial photographs, or on some other reasonably reliable map used for official purposes by a governmental agency unless the petitioners on appeal demonstrate that such estimates are in error in the amount of five percent (5%) or more.

(2) As to degree of land subdivision, if the estimates are based on an actual survey, or on county tax maps or records, or on aerial photographs, or on some other reasonably reliable source, unless the petitioners on appeal show that such estimates are in error in the amount of five percent (5%) or more. (1959, c. 1010, s. 10; 1973, c. 426, s. 74; 1998-150, s. 11.)

CASE NOTES

Determining What Is a "Lot". — In making an appraisal of an area to be annexed, there are several methods which can be used in determining what is a lot. One is to count each numbered lot separately. Another is to consider a landlocked lot as part of the lot in front of it and group the two lots, i.e., the landlocked lot and the one providing it with access to a street, as being a single lot. A third method would be to consider a group of lots in single ownership and used for a single purpose as being a tract within the meaning of the statute, and count tracts rather than lots. Any one of these methods would be "calculated to provide reasonably accurate results," as required by this section. Adams-Millis Corp. v. Town of Kernersville, 6 N.C. App. 78, 169 S.E.2d 496, cert. denied, 275 N.C. 681 (1969).

Property owners did not show that a town was unreasonable in relying upon an actual survey, as allowed by G.S. 160A-36; thus, the reviewing court did not err in concluding that one property consisted of two separate lots for the purposes of the subdivision test. Hayes v. Town of Fairmont, 167 N.C. App. 522, 605 S.E.2d 717, 2004 N.C. App. LEXIS 2383 (2004), cert. denied, 359 N.C. 410, 612 S.E.2d 320 (2005).

Recorded Plat. — Recorded plat was not a "reasonably reliable" source for purposes of showing subdivision where: (1) property shown on plat had never actually been developed; (2) county tax office had exceeded its statutory authority in classifying property as "subdivision," because it was not divided into lots and there were no streets (G.S. 105-287); (3) the property had never been surveyed; and (4) no lots had ever been sold. Further, aerial photographs showed no road while recorded plat did. When accuracy of record evidence proffered by city to meet requisites for annexation is belied by evidence of actual condition of property, such records are not "reasonably reliable" for the purposes of this section. Thrash v. City of Asheville, 327 N.C. 251, 393 S.E.2d 842 (1990).

Use of Planimeter to Calculate Acreage. — See Scovill Mfg. Co. v. Town of Wake Forest, 58 N.C. App. 15, 293 S.E.2d 240, cert. denied, 306 N.C. 559, 294 S.E.2d 371 (1982).

Annexation Proper. — Village essentially complied with the requirements of G.S. 160A-42 because the village used methods calculated to provide reasonably accurate results to determine the degree of land subdivision for purposes of G.S. 160A-36. Norwood v. Village of Sugar Mt., — N.C. App. —, 667 S.E.2d 524, 2008 N.C. App. LEXIS 1819 (2008).

Applied in Huntley v. Potter, 255 N.C. 619, 122 S.E.2d 681 (1961); Thompson v. City of Salisbury, 24 N.C. App. 616, 211 S.E.2d 856 (1975); Tar Landing Villas Owners' Ass'n v. Town of Atlantic Beach, 64 N.C. App. 239, 307 S.E.2d 181 (1983); Lowe v. Town of Mebane, 76 N.C. App. 239, 332 S.E.2d 739 (1985).

Cited in Thompson v. Whitley, 344 F. Supp. 480 (E.D.N.C. 1972); Huyck Corp. v. Town of Wake Forest, 86 N.C. App. 13, 356 S.E.2d 599 (1987); Thrash v. City of Asheville, 327 N.C. 251, 393 S.E.2d 842 (1990).

§§ 160A-43, 160A-44: Repealed by Session Laws 1983, c. 636, s. 27.

Editor's Note. — Session Laws 1983, c. 636, which repealed these sections, in s. 37.1, as amended by Session Laws 1983, c. 768, s. 25, provided: "The General Assembly intends by this act to repeal all acts and provisions of acts that modify the application to particular cities and towns of Parts 2 and 3 of Article 4A of Chapter 160A of the General Statutes or that exempt particular cities or towns from the application of either or both of those two Parts. Therefore, all such acts and provisions of acts, even if not specifically listed and repealed in Sections 26 through 35.4 of this act, are repealed. Neither this section nor Sections 26 through 35.4 of this act shall affect any annexation in progress on the dates of ratification of this act under any of the repealed or amended sections."

Section 38 of Session Laws 1983, c. 636 provided: "This act shall be effective with respect to all annexations where resolutions of intent are adopted on or after the date of ratification of this act, except that Sections 36 and 37 shall become effective with respect to all annexations where resolutions of intent are adopted on or after July 1, 1984, Sections 25.1 through 35.5 and Section 37.1 are effective upon ratification and Section 25 shall become effective as provided in that section. No annexation where a resolution of intent was adopted prior to the date of ratification of this act shall be affected by this act except as provided in Section 25."

The act was ratified June 29, 1983.

Part 3. Annexation by Cities of 5,000 or More.

§ 160A-45. Declaration of policy.

It is hereby declared as a matter of State policy:

(1) That sound urban development is essential to the continued economic development of North Carolina;

(2) That municipalities are created to provide the governmental services essential for sound urban development and for the protection of health, safety and welfare in areas being intensively used for residential, commercial, industrial, institutional and governmental purposes or in areas undergoing such development;

(3) That municipal boundaries should be extended in accordance with legislative standards applicable throughout the State, to include such areas and to provide the high quality of governmental services needed therein for the public health, safety and welfare;

(4) That new urban development in and around municipalities having a population of 5,000 or more persons is more scattered than in and around smaller municipalities, and that such larger municipalities have greater difficulty in expanding municipal utility systems and other service facilities to serve such scattered development, so that the legislative standards governing annexation by larger municipalities must take these facts into account if the objectives set forth in this section are to be attained;

(5) That areas annexed to municipalities in accordance with such uniform legislative standards should receive the services provided by the annexing municipality in accordance with G.S. 160A-47(3). (1959, c. 1009, s. 1; 1973, c. 426, s. 74; 1983, c. 636, s. 9.)

Local Modification. — (As to Parts 2 and 3 of Article 4A) Cabarrus: 2000-7, s. 1 (effective until June 30, 2010); (As to Part 3) Durham: 1985, c. 435, s. 2; 1989 (Reg. Sess., 1990), c. 841, s. 4; 2000-93, s. 1; (As to Parts 2 and 3) Harnett: 1998-143, s. 4; (As to Parts 2 and 3) Rockingham: 1993, c. 418, s. 1; (As to Part 3) Wake: 1985, c. 435, s. 2; 2000-93, s. 1; (As to Part 3) city of Brevard: 1987, c. 254, s. 2; 1991 (Reg. Sess., 1992), c. 964, s. 2; city of Durham: 1987, c. 606; city of Eden: 1993, c. 418, s. 1; city of Hendersonville: 1997-188; (As to Part 3) city of New Bern: 1993 (Reg. Sess., 1994), c. 605, s. 1; (As to Parts 2 and 3 of Article 4A, for five years after incorporation) town of Butner: 2007-269, s. 1.1; town of Dobbins Heights:

1983, c. 658; Parts 2 and 3 of Article 4A) town of Hemby Bridge: 1998-143, s. 4; (As to Parts 2 and 3 of Article 4A) town of Laurel Park: 1997-188; 2000-8, s. 1; (As to Part 3) town of Stanley: 1993 (Reg. Sess., 1994), c. 713, s. 2; town of Wallace: 1989, c. 619, s. 2; (As to Part 3) community of Rock Barn: 1989, c. 27.

Cross References. — As to effective date of annexation ordinances adopted under Article 4A of Chapter 160A, see G.S. 160A-58.9A.

Editor's Note. — Sections 160A-45 through 160A-56 were originally codified as G.S. 160-453.13 through 160-453.24. They were transferred to their present position by Session Laws 1973, c. 426, s. 74.

Session Laws 1983, c. 636, which amended this section, in s. 37.1, as amended by Session Laws 1983, c. 768, s. 25, provided: "The General Assembly intends by this act to repeal all acts and provisions of acts that modify the application to particular cities and towns of Parts 2 and 3 of Article 4A of Chapter 160A of the General Statutes or that exempt particular cities or towns from the application of either or both of those two Parts. Therefore, all such acts and provisions of acts, even if not specifically listed and repealed in Sections 26 through 35.4 of this act, are repealed. Neither this section nor Sections 26 through 35.4 of this act shall affect any annexation in progress on the dates of ratification of this act under any of the repealed or amended sections."

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The act was ratified June 29, 1983.

Legal Periodicals. — For survey of 1978 administrative law, see 57 N.C.L. Rev. 831 (1979).

For survey of 1980 constitutional law, see 59 N.C.L. Rev. 1093 (1981).

For 1984 survey, "Competitive Annexation Among Municipalities: North Carolina Adopts the Prior Jurisdiction Rule," see 63 N.C.L. Rev. 1260 (1985).

For survey, "Municipal Annexation in North Carolina: A Look at the Past Decade," see 14 Campbell L. Rev. 135 (1992).

For comment, "'Caught Between a Rock and a Hard Place': Fringe Landowners 'Can't Get No Satisfaction.' Is It Time to Re-Think Annexation Policy in North Carolina?," see 24 Campbell L. Rev. 317 (2002).

For note, "Consent Not Required: Municipal Annexation in North Carolina," see 83 N.C. L. Rev. 1634 (2005).

For article, "Bargain Basement Annexation: How Municipalities Subvert the Intent of North Carolina Annexation Laws," see 29 N.C. Cent. L.J. 77 (2006).

CASE NOTES

Annexation Procedure Constitutional. — The procedure for annexation by cities of 5,000 or more, G.S. 160A-45 et seq., does not violate N.C. Const., Art. I, § 25, because it does not provide for trial by jury on issues of fact. Moody v. Town of Carrboro, 301 N.C. 318, 271 S.E.2d 265 (1980), rehearing denied, 301 N.C. 728, 274 S.E.2d 230 (1981).

The procedure for annexation by cities of 5,000 or more does not authorize a taking of private property without just compensation in violation of the due process clause of U.S. Const., Amend. V or the law of the land provision of N.C. Const., Art. I, § 19, on the alleged ground that petitioner will pay a substantial sum in ad valorem taxes to the annexing town without receiving any substantial benefits or major services he does not already receive, since petitioner may petition for a writ of mandamus pursuant to G.S. 160A-49(h) if he discovers he is not receiving services other residents are receiving, within 12 to 15 months from the effective date of the annexation, and the annexation procedure thus provides adequate due process safeguards to assure that citizens in the annexed area get municipal services on a nondiscriminatory basis. Moody v. Town of Carrboro, 301 N.C. 318, 271 S.E.2d 265 (1980), rehearing denied, 301 N.C. 728, 274 S.E.2d 230 (1981).

Provisions Not Unconstitutional as Special or Local Legislation. — Sections 160A-45 through 160A-50 are not unconstitutional as special or local legislation even though as enacted the statutes exempted certain counties from their application, because municipal annexation is not one of the subject matter areas which the Constitution requires to be accomplished by general or uniformly applicable laws. In re City of Durham Annexation Ordinance Numbered 5991 for Area A, 69 N.C. App. 77, 316 S.E.2d 649, appeal dismissed and cert. denied, 312 N.C. 493, 322 S.E.2d 553 (1984).

Sections 160A-45 et seq. do not violate N.C. Const., Art. II, § 24, which prohibits the General Assembly from enacting "any local, private, or special act or resolution" in regard to certain enumerated subjects. This constitutional provision does not apply to annexation proceedings by municipalities, since N.C. Const., Art. VII, § 1, authorizes the General Assembly "except as otherwise prohibited by this Constitution" to "give such powers and duties to counties, cities, and towns and other governmental subdivisions as it may deem advisable," and no other provision of the Constitution prohibits the General Assembly from enacting special legislation for the annexation of areas by municipalities. Campbell v. City of Greensboro, 70 N.C. App. 252, 319 S.E.2d 323, cert. denied and appeal dismissed, 312 N.C. 492, 322 S.E.2d 553 (1984).

Nor as Denial of Equal Protection. — Part 3 of Article 4A of Chapter 160A does not deny equal protection under either the state or federal Constitutions. Campbell v. City of Greensboro, 70 N.C. App. 252, 319 S.E.2d 323, cert. denied and appeal dismissed, 312 N.C. 492, 322 S.E.2d 553 (1984).

Rational Basis for Statutory Scheme. — Given the state policy, it is not difficult to conceive of a rational basis supportive of the patchwork statutory scheme governing annexation in North Carolina. Thompson v. Whitley, 344 F. Supp. 480 (E.D.N.C. 1972).

The annexation statutes are not taxation statutes, nor are they retrospective taxation statutes. Little Red School House, Ltd. v. City of Greensboro, 71 N.C. App. 332, 322 S.E.2d 195 (1984), cert. denied and appeal dismissed, 313 N.C. 514, 329 S.E.2d 392 (1985).

Legislative Intent. — To apply a strict interpretation to G.S. 160A-45, et seq., would contravene the intent of the legislature, which is to obtain a meaningful review of annexation ordinances. Southern Glove Mfg. Co. v. City of Newton, 63 N.C. App. 754, 306 S.E.2d 466 (1983).

The legislative policy expressed in this section is that municipalities remain dynamic growing entities. Quality Water Supply, Inc. v. City of Wilmington, 97 N.C. App. 400, 388 S.E.2d 608, cert. denied, 326 N.C. 597, 393 S.E.2d 881 (1990).

Central purpose behind the annexation procedure is to assure that, in return for the added financial burden of municipal taxation, the residents receive the benefits of all the major services available to municipal residents. Cockrell v. City of Raleigh, 306 N.C. 479, 293 S.E.2d 770 (1982); In re City of Durham Annexation Ordinance No. 5791, 66 N.C. App. 472, 311 S.E.2d 898 (1984).

The General Assembly has established detailed criteria and guidelines for annexation under Part 3 of this Article. McKenzie v. City of High Point, 61 N.C. App. 393, 301 S.E.2d 129, cert. denied, 308 N.C. 544, 302 S.E.2d 885 (1983).

The minimum requirements of the annexation statute are that the city provide information which is necessary to allow the public and the courts to determine whether the municipality has committed itself to provide a nondiscriminatory level of service. In re City of Durham Annexation Ordinance No. 5791, 66 N.C. App. 472, 311 S.E.2d 898 (1984).

Prima facie complete and substantial compliance with this Part is a condition precedent to annexation of territory by a municipality. In re Ordinance of Annexation No. 1977-4, 296 N.C. 1, 249 S.E.2d 698 (1978).

The provisions of this section are merely statements of policy. No procedural steps, substantive rights, or annexation requirements are contained in that statute. Humphries v. City of Jacksonville, 300 N.C. 186, 265 S.E.2d 189 (1980); In re Annexation Ordinance No. D-21927, 303 N.C. 220, 278 S.E.2d 224 (1981).

And the policies enumerated under this section are aids for statutory interpretation when other sections of Part 3 of this Article are in need of clarification, definition, and interpretation. Humphries v. City of Jacksonville, 300 N.C. 186, 265 S.E.2d 189 (1980); In re Annexation Ordinance No. D-21927, 303 N.C. 220, 278 S.E.2d 224 (1981).

Statement of Policy Not Part of § 160A-50 "Procedure". — The statement of state policy with regard to annexation set forth in this section is not part of the "procedure" of annexation under G.S. 160A-50. In re Annexation Ordinance No. D-21927, 303 N.C. 220, 278 S.E.2d 224 (1981).

It is not required that proposed sewer interceptors be included on the maps that accompany annexation reports. Trask v. City of Wilmington, 64 N.C. App. 17, 306 S.E.2d 832 (1983), cert. denied, 310 N.C. 630, 315 S.E.2d 697 (1984).

The legislature has recognized the importance of adequate water and sewer facilities to the end of quality urban development and specifically required that certain present and proposed water and sewer facilities be shown in the report. That the legislature did not include proposed sewer interceptors among those certain facilities is a matter of legislative concern. Trask v. City of Wilmington, 64 N.C. App. 17, 306 S.E.2d 832 (1983), cert. denied, 310 N.C. 630, 315 S.E.2d 697 (1984).

Prior Jurisdiction Doctrine. — Adherence to the prior jurisdiction doctrine is not only consistent with the majority rule, but is in keeping with the spirit and intent of the annexation statutes. City of Burlington v. Town of Elon College, 310 N.C. 723, 314 S.E.2d 534 (1984).

A county may not exercise jurisdiction over any part of a city located within its borders. Davidson County v. City of High Point, 321 N.C. 252, 362 S.E.2d 553 (1987).

Statutes do not give a county authority over provision of sewer services within a city, or over newly annexed areas of the city which also lie in the county. Davidson County v. City of High Point, 321 N.C. 252, 362 S.E.2d 553 (1987).

Use of City-Owned Sewage Treatment Plant Without Prior Approval of County. — Since county had no authority to restrict or regulate city's provision of sewer service to its residents, the city could use city-owned sewage treatment plant located outside the city but within the county, which was upgraded pursuant to the county's special use permit, with a condition attached to the permit requiring the county's prior approval of service to county citizens, to meet its statutory mandate to provide sewer service to residents in newly annexed areas without seeking the county's prior approval, even though the facility was located in the county. Davidson County v. City of High Point, 321 N.C. 252, 362 S.E.2d 553 (1987).

Where one municipality institutes valid annexation proceedings first, that municipality should be given priority under the prior jurisdiction rule, and subsequent annexation proceedings, of whatever nature, are of no force and effect. City of Burlington v. Town of Elon College, 310 N.C. 723, 314 S.E.2d 534 (1984).

Meaningful Benefit Provided to Annexed Residents. — Town's annexation was valid because: (1) according to the annexation report, the town would extend its municipal services on a non-discriminatory basis, thus satisfying the statutory requirements under G.S. 160A-47(3); (2) the town annexation provided police protection, a service that promoted the health, safety, and welfare of residents within the annexed area; (3) such protection provided a meaningful benefit to the annexed residents and furthered the public policies underlying the annexation statutes, under G.S. 160A-45; and (4) property owners were bound by a trial court's factual finding that the owners had not shown that the annexation area currently received police services that were comparable to those that the town would provide the annexation area after the annexation became effective. Nolan v. Town of Weddington, 182 N.C. App. 486, 642 S.E.2d 261, 2007 N.C. App. LEXIS 690 (2007).

Preference of Landowners Is of No Consequence. — For purposes of the prior jurisdiction rule, annexation proceedings, regardless of their nature, are "equivalent proceedings," and it is of no consequence which town or city the landowners prefer. In fact, it appears to be the very essence of the involuntary annexation procedures that the affected landowners have no choice, as long as the annexing body complies with the applicable statutes. City of Burlington v. Town of Elon College, 310 N.C. 723, 314 S.E.2d 534 (1984).

Discovery. — Though discovery in annexation proceedings is not altogether forbidden, its scope is necessarily limited by the nature of the proceeding. Campbell v. City of Greensboro, 70 N.C. App. 252, 319 S.E.2d 323, cert. denied and appeal dismissed, 312 N.C. 492, 322 S.E.2d 553 (1984).

Reports' Statement of Policy Objectives Held Sufficient. — A statement in an annexation plan report that the annexation was designed to promote sound urban development and assure adequate provision of government services was a sufficient statement of the policy objectives to be met by the annexation to comply with this section. Moody v. Town of Carrboro, 301 N.C. 318, 271 S.E.2d 265 (1980), rehearing denied, 301 N.C. 728, 274 S.E.2d 230 (1981).

Judicial Review. — The General Assembly has provided for limited judicial review of annexation ordinances. Section 160A-50 provides that a property owner in the annexed area may seek judicial review of the ordinance. Upon such review, the superior court may consider only whether (1) the statutory procedure was not followed, or (2) the provisions of G.S. 160A-47 were not met, or (3) the provisions of G.S. 160A-48 have not been met. Additionally, petitioner must carry the burden of showing both noncompliance with statutory requirements and procedure and material injury flowing from such noncompliance. McKenzie v. City of High Point, 61 N.C. App. 393, 301 S.E.2d 129, cert. denied, 308 N.C. 544, 302 S.E.2d 885 (1983).

Applied in In re Annexation Ordinance, 44 N.C. App. 274, 261 S.E.2d 39 (1979); Food Town Stores, Inc. v. City of Salisbury, 300 N.C. 21, 265 S.E.2d 123 (1980); In re Annexation Ordinance No. 1219, 62 N.C. App. 588, 303 S.E.2d 380 (1983); Thrash v. City of Asheville, 327 N.C. 251, 393 S.E.2d 842 (1990); Carolina Power & Light Co. v. City of Asheville, 358 N.C. 512, 597 S.E.2d 717, 2004 N.C. LEXIS 668 (2004).

Cited in Pinewild Project Ltd. P'ship v. Vill. of Pinehurst, — N.C. App. —, 679 S.E.2d 424, 2009 N.C. App. LEXIS 1180 (July 21, 2009);

In re Annexation Ordinances Nos. 866-870, 253 N.C. 637, 117 S.E.2d 795 (1961); Kritzer v. Town of Southern Pines, 33 N.C. App. 152, 234 S.E.2d 648 (1977); In re Annexation Ordinance, 300 N.C. 337, 266 S.E.2d 661 (1980); Texfi Indus., Inc. v. City of Fayetteville, 301 N.C. 1, 269 S.E.2d 142 (1980); In re Annexation Ordinance No. 300-X, 304 N.C. 549, 284 S.E.2d 470 (1981); In re Annexation Ordinance 301-X, 304 N.C. 565, 284 S.E.2d 475 (1981); Ricks v. Town of Selma, 99 N.C. App. 82, 392 S.E.2d 437 (1990); Brown v. City of Winston-Salem, 171 N.C. App. 266, 614 S.E.2d 599, 2005 N.C. App. LEXIS 1266 (2005).

§ 160A-46. Authority to annex.

The governing board of any municipality having a population of 5,000 or more persons according to the last federal decennial census may extend the corporate limits of such municipality under the procedure set forth in this Part. (1959, c. 1009, s. 2; 1973, c. 426, s. 74.)

Legal Periodicals. — For 1984 survey, "Competitive Annexation Among Municipalities: North Carolina Adopts the Prior Jurisdiction Rule," see 63 N.C.L. Rev. 1260 (1985).

For note, "Consent Not Required: Municipal Annexation in North Carolina," see 83 N.C. L. Rev. 1634 (2005).

CASE NOTES

This section is constitutional. In re Annexation Ordinances Nos. 866-870, 253 N.C. 637, 117 S.E.2d 795 (1961).

Right to Use New Annexation Method as Only Discretion Delegated to Municipalities. — By the enactment of Part 3 of this Article, the General Assembly did not delegate to the municipalities of the State having a population of 5,000 or more any discretion with respect to the provisions of the law. The guiding standards and requirements of the act are set out in great detail. The only discretion given to the governing boards of such municipalities is the permissive or discretionary right to use this new method of annexation, provided such boards conform to the procedure and meet the requirements set out in the act as a condition precedent to the right to annex. In re Annexation Ordinances Nos. 866-870, 253 N.C. 637, 117 S.E.2d 795 (1961).

A city has statutory authority to annex areas both contiguous and non-contiguous to its primary corporate limits. It must stand ready to provide sewer service (among other services) to newly annexed areas on substantially the same basis and in the same manner in which these services are provided to the rest of the city. Davidson County v. City of High Point, 321 N.C. 252, 362 S.E.2d 553 (1987).

Use of City-Owned Sewage Treatment Plant Without Prior Approval of County. — Since county had no authority to restrict or regulate city's provision of sewer service to its residents, the city could use city-owned sewage treatment plant located outside the city but within the county, which was upgraded pursuant to the county's special use permit, with a condition attached to the permit requiring the county's prior approval of service to county citizens, to meet its statutory mandate to provide sewer service to residents in newly annexed areas without seeking the county's prior approval, even though the facility was located in the county. Davidson County v. City of High Point, 321 N.C. 252, 362 S.E.2d 553 (1987).

Cited in McKenzie v. City of High Point, 61 N.C. App. 393, 301 S.E.2d 129 (1983); In re City of Durham Annexation Ordinance Numbered 5991 for Area A, 69 N.C. App. 77, 316 S.E.2d 649 (1984).

§ 160A-47. Prerequisites to annexation; ability to serve; report and plans.

A municipality exercising authority under this Part shall make plans for the extension of services to the area proposed to be annexed and shall, prior to the public hearing provided for in G.S. 160A-49, prepare a report setting forth such plans to provide services to such area. The report shall include:

(1) A map or maps of the municipality and adjacent territory to show the following information:
  a. The present and proposed boundaries of the municipality.
  b. The present major trunk water mains and sewer interceptors and outfalls, and the proposed extensions of such mains and outfalls as required in subdivision (3) of this section. The water and sewer map must bear the seal of a registered professional engineer.
  c. The general land use pattern in the area to be annexed.

(2) A statement showing that the area to be annexed meets the requirements of G.S. 160A-48.

(3) A statement setting forth the plans of the municipality for extending to the area to be annexed each major municipal service performed within the municipality at the time of annexation. Specifically, such plans shall:

a. Provide for extending police protection, fire protection, solid waste collection and street maintenance services to the area to be annexed on the date of annexation on substantially the same basis and in the same manner as such services are provided within the rest of the municipality prior to annexation. A contract with a rural fire department to provide fire protection shall be an acceptable method of providing fire protection. If a water distribution system is not available in the area to be annexed, the plans must call for reasonably effective fire protection services until such time as waterlines are made available in such area under existing municipal policies for the extension of waterlines. A contract with a private firm to provide solid waste collection services shall be an acceptable method of providing solid waste collection services.

b. Provide for extension of major trunk water mains and sewer outfall lines into the area to be annexed so that when such lines are constructed, property owners in the area to be annexed will be able to secure public water and sewer service, according to the policies in effect in such municipality for extending water and sewer lines to individual lots or subdivisions. If requested by the owner of an occupied dwelling unit or an operating commercial or industrial property in writing on a form provided by the municipality, which form acknowledges that such extension or extensions will be made according to the current financial policies of the municipality for making such extensions, and if such form is received by the city clerk no later than five days after the public hearing, provide for extension of water and sewer lines to the property or to a point on a public street or road right-of-way adjacent to the property according to the financial policies in effect in such municipality for extending water and sewer lines. If any such requests are timely made, the municipality shall at the time of adoption of the annexation ordinance amend its report and plan for services to reflect and accommodate such requests, if an amendment is necessary. In areas where the municipality is required to extend sewer service according to its policies, but the installation of sewer is not economically feasible due to the unique topography of the area, the municipality shall provide septic system maintenance and repair service until such time as sewer service is provided to properties similarly situated.

c. If extension of major trunk water mains, sewer outfall lines, sewer lines and water lines is necessary, set forth a proposed timetable for construction of such mains, outfalls and lines as soon as possible following the effective date of annexation. In any event, the plans shall call for construction to be completed within two years of the effective date of annexation.

d. Set forth the method under which the municipality plans to finance extension of services into the area to be annexed.

(4) A statement of the impact of the annexation on any rural fire department providing service in the area to be annexed and a statement of the impact of the annexation on fire protection and fire insurance rates in the area to be annexed, if the area where service is provided is in an insurance district designated under G.S. 153A-233,

a rural fire protection district under Article 3A of Chapter 69 of the General Statutes, or a fire service district under Article 16 of Chapter 153A of the General Statutes. The rural fire department shall make available to the city not later than 30 days following a written request from the city all information in its possession or control, including but not limited to operational, financial and budgetary information, necessary for preparation of a statement of impact. The rural fire department forfeits its rights under G.S. 160A-49.1 and G.S. 160A-49.2 if it fails to make a good faith response within 45 days following receipt of the written request for information from the city, provided that the city's written request so states by specific reference to this section.

(5) A statement showing how the proposed annexation will affect the city's finances and services, including city revenue change estimates. This statement shall be delivered to the clerk of the board of county commissioners at least 30 days before the date of the public informational meeting on any annexation under this Part. (1959, c. 1009, s. 3; 1973, c. 426, s. 74; 1983, c. 636, ss. 7, 10, 11, 17, 19; 1985, c. 610, ss. 2, 6, 7; 1989, c. 598, s. 8; 1991, c. 25, s. 2; c. 761, s. 31; 1998-150, s. 12.)

Local Modification. — Franklin: 1969, c. 1232.

Editor's Note. — Session Laws 1983, c. 636, which amended this section, in s. 37.1, as amended by Session Laws 1983, c. 768, s. 25, provided: "The General Assembly intends by this act to repeal all acts and provisions of acts that modify the application to particular cities and towns of Parts 2 and 3 of Article 4A of Chapter 160A of the General Statutes or that exempt particular cities or towns from the application of either or both of those two Parts. Therefore, all such acts and provisions of acts, even if not specifically listed and repealed in Sections 26 through 35.4 of this act, are repealed. Neither this section nor Sections 26 through 35.4 of this act shall affect any annexation in progress on the dates of ratification of this act under any of the repealed or amended sections."

Section 38 of Session Laws 1983, c. 636 provided: "This act shall be effective with respect to all annexations where resolutions of intent are adopted on or after the date of ratification of this act, except that Sections 36 and 37 shall become effective with respect to all annexations where resolutions of intent are adopted on or after July 1, 1984, Sections 25.1 through 35.5 and Section 37.1 are effective upon ratification and Section 25 shall become effective as provided in that section. No annexation where a resolution of intent was adopted prior to the date of ratification of this act shall be affected by this act except as provided in Section 25."

The act was ratified June 29, 1983.

Session Laws 1991, c. 25, s. 2, effective April 1, 1991, and applicable to resolutions of intent adopted on or after March 1, 1992, designated the existing language as subsection (a), and added subsection (b). However, Session Laws 1991, c. 761, s. 31, effective July 16, 1991, provided: "G.S. 160A-47(b), as enacted by Section 1 of Chapter 25 of the 1991 Session Laws, is recodified as G.S. 160A-47.1, with a catch line to read: 'Limitation on change in financial participation prior to annexation.' G.S. 160A-47(a) is redesignated as G.S. 160A-47."

Legal Periodicals. — For survey of 1981 administrative law, see 60 N.C.L. Rev. 1165 (1982).

For 1984 survey, "Competitive Annexation Among Municipalities: North Carolina Adopts the Prior Jurisdiction Rule," see 63 N.C.L. Rev. 1260 (1985).

For note, "Consent Not Required: Municipal Annexation in North Carolina," see 83 N.C. L. Rev. 1634 (2005).

CASE NOTES

I. In General.
II. Maps.
III. Plans for Extending Services.
  A. In General.
  B. Police and Fire Protection.
  C. Street Maintenance.
  D. Water and Sewer Service.
IV. Method of Financing.

I. IN GENERAL.

Purpose. — The purpose of this section is to insure that major municipal services are provided to newly annexed areas on a nondiscriminatory basis. Wallace v. Town of Chapel Hill, 93 N.C. App. 422, 378 S.E.2d 225 (1989).

The purpose of this statute is to insure that, in return for the financial burden of city taxes, annexed residents receive all major city services. Parkwood Ass'n v. City of Durham, 124 N.C. App. 603, 478 S.E.2d 204 (1996).

Section Required to Be Followed Only Where Annexation Achieved Under Chapter 160A, Art. 4A, Part 3. — This section, dealing with the submission of plans by the municipality for the extension of municipal services (including police and fire protection, solid waste collection, and street maintenance), and G.S. 160A-49.1 and 160A-49.3, dealing with contracting for fire protection and sewage services, are required to be followed by a municipality only where the annexation is to be achieved under Chapter 160A, Art. 4A, Part 3. Piedmont Ford Truck Sales, Inc. v. City of Greensboro, 90 N.C. App. 692, 370 S.E.2d 262 (1988), rev'd on other grounds, 324 N.C. 499, 380 S.E.2d 107 (1989).

The annexation statutes are not taxation statutes, nor are they retrospective taxation statutes. Little Red School House, Ltd. v. City of Greensboro, 71 N.C. App. 332, 322 S.E.2d 195 (1984), cert. denied and appeal dismissed, 313 N.C. 514, 329 S.E.2d 392 (1985).

Central purpose behind the annexation procedure is to assure that, in return for the added financial burden of municipal taxation, the residents receive the benefits of all the major services available to municipal residents. Cockrell v. City of Raleigh, 306 N.C. 479, 293 S.E.2d 770 (1982); Trask v. City of Wilmington, 64 N.C. App. 17, 306 S.E.2d 832 (1983), cert. denied, 310 N.C. 630, 315 S.E.2d 697 (1984); In re City of Durham Annexation Ordinance No. 5791, 66 N.C. App. 472, 311 S.E.2d 898 (1984).

Local act requiring city to extend municipal services, including services under this section, to newly annexed areas did not violate N.C. Const., Art. II, § 24(1)(a). Piedmont Ford Truck Sale v. Greensboro, 324 N.C. 499, 380 S.E.2d 107 (1989).

A city has statutory authority to annex areas both contiguous and non-contiguous to its primary corporate limits. It must stand ready to provide sewer service (among other services) to newly annexed areas on substantially the same basis and in the same manner in which these services are provided to the rest of the city. Davidson County v. City of High Point, 321 N.C. 252, 362 S.E.2d 553 (1987).

Use of City-Owned Sewage Treatment Plant Without Prior Approval of County. — Since county had no authority to restrict or regulate city's provision of sewer service to its residents, the city could use city-owned sewage treatment plant located outside the city but within the county, which was upgraded pursuant to the county's special use permit, with a condition attached to the permit requiring the county's prior approval of service to county citizens, to meet its statutory mandate to provide sewer service to residents in newly annexed areas without seeking the county's prior approval, even though the facility was located in the county. Davidson County v. City of High Point, 321 N.C. 252, 362 S.E.2d 553 (1987).

Discovery. — Judicial review of an annexation ordinance is a limited judicial review, with few similarities to ordinary civil actions which are initiated, tried and adjudicated in a different manner and for which the Rules of Civil Procedure were mostly devised. Nevertheless, since the court reviewing annexation proceedings is explicitly authorized to receive evidence as to the city's compliance with the various procedures prescribed, as to its annexation plan meeting the requisites of this section, and as to the area involved being eligible for annexation under G.S. 160A-48, in those instances where discovery may illuminate these issues it is authorized under the Rules of Civil Procedure. Campbell v. City of Greensboro, 70 N.C. App. 252, 319 S.E.2d 323, cert. denied and appeal dismissed, 312 N.C. 492, 322 S.E.2d 553 (1984).

Applied in Kritzer v. Town of Southern Pines, 33 N.C. App. 152, 234 S.E.2d 648 (1977); In re Annexation Ordinance, 44 N.C. App. 274, 261 S.E.2d 39 (1979); Knight v. City of Wilmington, 73 N.C. App. 254, 326 S.E.2d 376 (1985); Chapel Hill Country Club, Inc. v. Town of Chapel Hill, 97 N.C. App. 171, 388 S.E.2d 168 (1990); Brown v. City of Winston-Salem, 176 N.C. App. 497, 626 S.E.2d 747, 2006 N.C. App. LEXIS 531 (2006).

Cited in Armento v. City of Fayetteville, 32 N.C. App. 256, 231 S.E.2d 689 (1977); Humphries v. City of Jacksonville, 300 N.C. 186, 265 S.E.2d 189 (1980); In re Annexation Ordinance 301-X, 304 N.C. 565, 284 S.E.2d 475 (1981); Raintree Homeowners Ass'n v. City of Charlotte, 543 F. Supp. 625 (W.D.N.C. 1982); McKenzie v. City of High Point, 61 N.C. App. 393, 301 S.E.2d 129 (1983); Forsyth Citizens Opposing Annexation v. City of Winston-Salem, 67 N.C. App. 164, 312 S.E.2d 517 (1984); Livingston v. City of Charlotte, 68 N.C. App. 265, 314 S.E.2d 303 (1984); In re City of Durham Annexation Ordinance Numbered 5991 for Area A, 69 N.C. App. 77, 316 S.E.2d 649 (1984); Stillings v. City of Winston-Salem, 311 N.C. 689, 319 S.E.2d 233 (1984); Piedmont Ford Truck Sale, Inc. v. City of Greensboro, 324 N.C. 499, 380 S.E.2d 107 (1989); Quality Water Supply, Inc. v. City of Wilmington, 97 N.C. App.

400, 388 S.E.2d 608 (1990); Ricks v. Town of Selma, 99 N.C. App. 82, 392 S.E.2d 437 (1990); Biltmore Square Assocs. v. City of Asheville, 113 N.C. App. 459, 439 S.E.2d 211 (1994); Anthony v. City of Shelby, 152 N.C. App. 144, 567 S.E.2d 222, 2002 N.C. App. LEXIS 904 (2002).

II. MAPS.

It is not required that proposed sewer interceptors be included on the maps that accompany annexation reports. Trask v. City of Wilmington, 64 N.C. App. 17, 306 S.E.2d 832 (1983), cert. denied, 310 N.C. 630, 315 S.E.2d 697 (1984).

Maps Held Sufficient. — Maps prepared by a town as part of its revised annexation plan report substantially complied with subdivision (1) of this section, although the eastern boundary and approximately one-fifth of the town area were omitted and the map showing the general land use pattern contained several blank areas representing vacant lots which did not appear as a category on the legend of the maps, where both the entire area contiguous to the area to be annexed and that area itself were included on the map. Moody v. Town of Carrboro, 301 N.C. 318, 271 S.E.2d 265 (1980), rehearing denied, 301 N.C. 728, 274 S.E.2d 230 (1981).

III. PLANS FOR EXTENDING SERVICES.

A. In General.

Plans for Extension of Services as Condition Precedent. — The requirement of plans for extension to the area to be annexed of all major municipal services performed within the municipality at the time of annexation is a condition precedent to annexation. In re Annexation Ordinance, 255 N.C. 633, 122 S.E.2d 690 (1961).

The minimum requirements of subdivision (3) are that the city provide information which is necessary to allow the public and the courts to determine whether the municipality has committed itself to provide a nondiscriminatory level of service and to allow a reviewing court to determine after the fact whether the municipality has timely provided such services. In re Annexation Ordinance No. 300-X, 304 N.C. 549, 284 S.E.2d 470 (1981); Trask v. City of Wilmington, 64 N.C. App. 17, 306 S.E.2d 832 (1983), cert. denied, 310 N.C. 630, 315 S.E.2d 697 (1984).

The minimum requirements of the annexation statute are that the city provide information which is necessary to allow the public and the courts to determine whether the municipality has committed itself to provide a nondiscriminatory level of service and to allow a reviewing court to determine after the fact whether the municipality has timely provided such services. If such services are not provided, the residents of the annexed area would be entitled to a writ of mandamus requiring the municipality to live up to its commitments. Cockrell v. City of Raleigh, 306 N.C. 479, 293 S.E.2d 770 (1982).

The minimum requirements of the annexation statute are that the city provide information which is necessary to allow the public and the courts to determine whether the municipality has committed itself to provide a nondiscriminatory level of service. In re City of Durham Annexation Ordinance No. 5791, 66 N.C. App. 472, 311 S.E.2d 898 (1984).

Providing Forms to Property Owners. — Subdivision (3)(b) does not require the city to provide notice to the property owners that they may request a form providing for extension of lines to their property in accordance with the financial policies of the city, and in the absence of a request, the city is not required to provide forms to property owners to be used to request extensions from their property to a major main in accordance with the city financial policies for such extensions. Barnhardt v. City of Kannapolis, 116 N.C. App. 215, 447 S.E.2d 471, cert. denied, 338 N.C. 514, 452 S.E.2d 807 (1994).

Use of the word "substantially" in subdivision (3)a does not render the section vague and ambiguous. In re Annexation Ordinance No. D-21927, 303 N.C. 220, 278 S.E.2d 224 (1981).

This Article requires that services be provided on substantially the same basis and in the same manner as such services are provided within the rest of the municipality prior to annexation. When a municipality engages in supplying water to its inhabitants, it owes the duty of equal service to consumers within its corporate limits, as a general rule. In re Annexation Ordinance, 255 N.C. 633, 122 S.E.2d 690 (1961).

The city is required by law to provide waste disposal services on substantially the same basis and in the same manner as such services are provided within the municipality prior to annexation. Stillings v. City of Winston-Salem, 63 N.C. App. 618, 306 S.E.2d 489 (1983), rev'd on other grounds, 311 N.C. 689, 319 S.E.2d 233 (1984).

Subdivision (3)a of this section requires that the annexation report reflect the city's plans to provide certain enumerated services on substantially the same basis and in the same manner as in the rest of the city. In re City of Durham Annexation Ordinance No. 5791, 66 N.C. App. 472, 311 S.E.2d 898 (1984).

Nowhere in this section does the concept of equality with "average service" appear in reference to the municipal services to be supplied by the annexing municipality. No reasonable reading of the statutory language permits that inference. In re City of Durham Annexation Ordinance No. 5791, 66 N.C. App. 472, 311 S.E.2d 898 (1984).

There is no requirement that a municipality duplicate services, in an area to be annexed, which are already available in the area. In re Ordinance of Annexation No. 1977-4, 296 N.C. 1, 249 S.E.2d 698 (1978); In re Annexation Ordinance, 300 N.C. 337, 266 S.E.2d 661 (1980).

City May Not Delegate Duty of Extending Services. — The city must furnish major municipal services to areas annexed as provided by Parts 2 and 3 of this Article. The performance of this duty may not be made to depend upon a doubtful contingency, and may not be delegated to others by the city so as to relieve the city of the duty. If other parties are obligated to the city to perform such duty, the city must enforce the obligation directly against such parties and may not be otherwise relieved of its primary duty to the area which it seeks to make a part of the city for all other purposes. In re Annexation Ordinance, 255 N.C. 633, 122 S.E.2d 690 (1961).

But Plans May Provide Only for Needed Services. — Plans for extension of services may, of course, take into consideration all circumstances and provide only for services if and when needed. In re Annexation Ordinance, 255 N.C. 633, 122 S.E.2d 690 (1961).

When a village proposed to involuntarily annex an area which contained privately owned streets, owners of property on the private streets could not defeat the annexation by denying the village's employees access to the private streets, if the owners chose to keep the streets private and the area were annexed, because it was not the intent of the general assembly, in adopting G.S. 160A-47(3), to provide private communities with an avenue to defeat annexation by denying access to municipal employees, when all other statutory requirements were met, as this would create unacceptable inequities between the rights of citizens in private communities and those living on public roads. Pinewild Project Ltd. P'ship v. Vill. of Pinehurst, — N.C. App. —, 679 S.E.2d 424, 2009 N.C. App. LEXIS 1180 (July 21, 2009).

When a village proposed to involuntarily annex an area which contained privately owned streets, the village's annexation plan met the requirements of G.S. 160A-47(3) when the village proposed that, if the street's owners dedicated the street to the village, the village would provide the same level of municipal services as the village provided to residents living on public streets because these options were substantially consistent with how the village currently treated public and private streets within the village's limits. Pinewild Project Ltd. P'ship v. Vill. of Pinehurst, — N.C. App. —, 679 S.E.2d 424, 2009 N.C. App. LEXIS 1180 (July 21, 2009).

Statement of Plans for Extension of Services. — In its annexation report the city must include a statement setting forth the plans of the municipality for extending certain enumerated municipal services to the area to be annexed on the date of annexation on substantially the same basis and in the same manner as such services are provided within the rest of the municipality prior to annexation. Food Town Stores, Inc. v. City of Salisbury, 300 N.C. 21, 265 S.E.2d 123 (1980).

Only Services Listed in Subdivision (3) Must Be Described in Plan. — The annexation statute requires municipalities to include in their annexation reports plans to extend into the area proposed to be annexed only those municipal services specifically enumerated in subdivision (3) of this section: police protection, fire protection, garbage collection, street maintenance, major trunk water mains, and sewer outfall lines. Cockrell v. City of Raleigh, 306 N.C. 479, 293 S.E.2d 770 (1982).

Other Anticipated Services Need Not Be Included. — In a municipal annexation proceeding the city is not required to include in its annexation report plans for extending into the proposed annexation area municipal services other than those enumerated in subdivision (3) of this section. Cockrell v. City of Raleigh, 306 N.C. 479, 293 S.E.2d 770 (1982).

The legislative intent expressed in subdivision (3) requires extension of a variety of municipal services, all of which are required for the public health and safety. Public transportation and parks and recreational facilities do not fall within this classification of service. In re Annexation Ordinance No. 1219, 62 N.C. App. 588, 303 S.E.2d 380, cert. denied and appeal dismissed, 309 N.C. 820, 310 S.E.2d 351 (1983).

Municipal services, such as transportation, which are not specifically enumerated in subsection (3) are not required to be included in the annexation report. Parkwood Ass'n v. City of Durham, 124 N.C. App. 603, 478 S.E.2d 204 (1996).

Since plans and procedures concerning transportation are not required by law, a reviewing court has no jurisdiction to hear evidence on this issue. Parkwood Ass'n v. City of Durham, 124 N.C. App. 603, 478 S.E.2d 204 (1996).

The required information is not that of plans for extending all municipal services, but only the "major" municipal services. Cockrell v. City of Raleigh, 306 N.C. 479, 293 S.E.2d 770 (1982).

City bus service and TV service are not "major" municipal services required to be addressed in the annexation report. Cockrell v. City of Raleigh, 306 N.C. 479, 293 S.E.2d 770 (1982).

The respondent city was not required to

file a new services plan under this section although the annexation area changed during subsequent revisions to the annexation ordinance, where the only significant change to the services plan was the scope of its coverage—the services for petitioners remained the same—and where the city was bound by the terms of the services plan as amended under principles of equitable estoppel. Bowers v. City of Thomasville, 143 N.C. App. 291, 547 S.E.2d 68, 2001 N.C. App. LEXIS 277 (2001), cert. denied, 353 N.C. 723, 550 S.E.2d 769 (2001).

Contents of Report. — The report need contain only the following: (1) Information on the level of services then available in the city, (2) a commitment by the city to provide this same level of services in the annexed area within the statutory period, and (3) the method by which the city will finance the extension of these services. In re Annexation Ordinance No. 300-X, 304 N.C. 549, 284 S.E.2d 470 (1981).

The report need contain only the following: (1) information on the level of services then available in the city, (2) a commitment by the city to provide this same level of services in the annexed area within the statutory period, and (3) the method by which the city will finance the extension of these services. With this minimal information, both the city council and the public can make an informed decision of the costs and benefits of the proposed annexation, a reviewing court can determine whether the city has committed itself to a nondiscriminating level of services, and the residents and the courts have a benchmark against which to measure the level of services which the residents receive within the statutory period. Cockrell v. City of Raleigh, 306 N.C. 479, 293 S.E.2d 770 (1982).

Service Is Municipal Even If Performed by Another. — A service, such as water or sewer service, is a "municipal service" even though it is performed or furnished by an independent authority or by franchise. Cockrell v. City of Raleigh, 306 N.C. 479, 293 S.E.2d 770 (1982).

And Must Still Be Included in Plan. — If the municipal service is one enumerated in subdivision (3) of this section, it must be included in the annexation report, even though it is provided by an independent authority or under a franchise agreement. Cockrell v. City of Raleigh, 306 N.C. 479, 293 S.E.2d 770 (1982).

The requirement that the annexation report contain a statement setting forth the plans for extending each major municipal service extends to a major service "performed within the municipality," not performed by the municipality. Cockrell v. City of Raleigh, 306 N.C. 479, 293 S.E.2d 770 (1982).

Plans Should Be Stated Fully and in Detail. — The report of plans for extension of services is the cornerstone of the annexation procedure under this Part, and to be of greatest possible benefit, the plans for services should be stated as fully and in as much detail as resources of the municipality reasonably permit. Cockrell v. City of Raleigh, 306 N.C. 479, 293 S.E.2d 770 (1982).

Response time is only one of many factors that enters into the court's consideration of whether an annexation report reflects plans to provide certain required municipal services on substantially the same basis and in the same manner as in the pre-annexation city area. In re City of Durham Annexation Ordinance No. 5791, 66 N.C. App. 472, 311 S.E.2d 898 (1984).

Time for Implementing Extension of Services. — It would appear from a reading of G.S. 160A-49(h) that a city annexing territory has one year, and possibly 15 months, to implement its plan for extending services to an annexed area. In re Ordinance of Annexation No. 1977-4, 296 N.C. 1, 249 S.E.2d 698 (1978); In re Annexation Ordinance, 300 N.C. 337, 266 S.E.2d 661 (1980).

Burden of Showing Noncompliance with Subdivision (3). — The burden is on petitioner to establish, by competent and substantial evidence, the city's noncompliance with subdivision (3). In re Annexation Ordinance No. 300-X, 304 N.C. 549, 284 S.E.2d 470 (1981); Cockrell v. City of Raleigh, 306 N.C. 479, 293 S.E.2d 770 (1982).

Factors Affecting Whether a Plan Is Discriminatory. — A town's established policies for the provision of municipal services within pre-existing municipal limits should be taken into account when determining whether a proposed plan for extension of services to annexed territories is discriminatory. Matheson v. City of Asheville, 102 N.C. App. 156, 402 S.E.2d 140 (1991).

Plan Held Sufficient. — Trial court did not err in finding that city's report of plans for the extension of police protection into annexed area met the requirements of this section; the city made a prima facie showing of substantial compliance where it promised to provide a full range of police protection on the same basis and manner as in the present municipality and where the report then outlined the specific services it currently provided, to include a regular patrol division, criminal investigation, ordinance enforcement and traffic control. Thrash v. City of Asheville, 95 N.C. App. 457, 383 S.E.2d 657 (1989), rev'd on other grounds, 327 N.C. 251, 393 S.E.2d 842 (1990).

City's annexation plan which included provisions for police and fire protection and capital improvements for new water lines complied with subdivision (3)a. of this section, even though it did not include provisions for additional staff or equipment. Bali Co. v. City of Kings Mt., 134 N.C. App. 277, 517 S.E.2d 208 (1999).

When a city proposed the involuntary annexation of certain real property, it had to determine the use of that property at the time it prepared the service plan required by G.S. 160A-47, to determine if it complied with the urban usage percentages required under G.S. 160A-48(c)(3), and it was error to classify property according to its intended future use, rather than its use at the time the service plan was prepared. Ridgefield Props., L.L.C. v. City of Asheville, 159 N.C. App. 376, 583 S.E.2d 400, 2003 N.C. App. LEXIS 1523 (2003), aff'd, 358 N.C. 216, 593 S.E.2d 584 (2004).

B. Police and Fire Protection.

There are many variables that affect the level of fire protection afforded to different areas of a municipality: height and size of buildings, construction materials, proximity of buildings to one another and street pattern, among others. In re City of Durham Annexation Ordinance No. 5791, 66 N.C. App. 472, 311 S.E.2d 898 (1984).

Police Protection Provided. — Town's annexation was valid because: (1) according to the annexation report, the town would extend its municipal services on a non-discriminatory basis, thus satisfying the statutory requirements under G.S. 160A-47(3); (2) the town annexation provided police protection, a service that promoted the health, safety, and welfare of residents within the annexed area; (3) such protection provided a meaningful benefit to the annexed residents and furthered the public policies underlying the annexation statutes, under G.S. 160A-45; and (4) property owners were bound by a trial court's factual finding that the owners had not shown that the annexation area currently received police services that were comparable to those that the town would provide the annexation area after the annexation became effective. Nolan v. Town of Weddington, 182 N.C. App. 486, 642 S.E.2d 261, 2007 N.C. App. LEXIS 690 (2007).

Regardless of the level of services that county residents receive through a private contractor prior to annexation, the city is only required to provide annexed territories with substantially the same level of services as are enjoyed in other areas of the city. Matheson v. City of Asheville, 102 N.C. App. 156, 402 S.E.2d 140 (1991).

An increase in the police force proportional to the increase in the population attributable to annexation is a sufficiently sophisticated plan for the provision of services to meet the requirements of subdivision (3)a of this section. Matheson v. City of Asheville, 102 N.C. App. 156, 402 S.E.2d 140 (1991).

Where city planned to hire three additional sworn officers to maintain its current ratio of one officer for every 486 citizens, the plan was sufficient to meet the requirements of subdivision (3)a of this section. Matheson v. City of Asheville, 102 N.C. App. 156, 402 S.E.2d 140 (1991).

Full Compliance as to Police and Fire Protection Shown. — Record of annexation proceedings showed prima facie full compliance with this section in regard to extension of police and fire protection to the area to be annexed. In re Annexation Ordinance, 255 N.C. 633, 122 S.E.2d 690 (1961).

City had shown prima facie compliance with the statute by proposing to provide fire protection services to the annexed area under the same plan as such services are provided to the pre-annexation portions of the city, and similar response times should be anticipated. Matheson v. City of Asheville, 102 N.C. App. 156, 402 S.E.2d 140 (1991).

When a city proposed to annex certain land, the city's proposal for the extension of police services to the annexed land met the requirements of G.S. 160A-47 because the plan addressed the level of services currently provided in the city and committed to provide substantially the same level of services to the annexed land, and this was all that the applicable statute required. Arnold v. City of Asheville, 186 N.C. App. 542, 652 S.E.2d 40, 2007 N.C. App. LEXIS 2250 (2007).

Response time for the fire services is only one of many factors that determines whether an annexation report complies with statutory requirements for the extension of fire protection services. That an annexation report did not include an average response time did not preclude a finding of compliance with the statute. Matheson v. City of Asheville, 102 N.C. App. 156, 402 S.E.2d 140 (1991).

C. Street Maintenance.

City Must Plan to Maintain Streets. — So far as an annexation proceeding is concerned, the primary duty of street maintenance in an area after annexation is upon the city, and it must in good faith make plans to maintain the streets, whether paved or unpaved, on substantially the same basis and in the same manner as such services are provided within the rest of the municipality prior to annexation. In re Annexation Ordinance, 255 N.C. 633, 122 S.E.2d 690 (1961).

And May Not Limit Its Duty to Streets Meeting Certain Standards. — A municipality may not limit its obligations to maintain streets in the area to be annexed by it to those streets which are improved to stipulated standards by the landowners and developers in the area. Any obligation of the landowners and developers to the city to improve the streets is a matter between them and the municipality and is irrelevant to the question of the sufficiency of the annexation ordinance to meet the requirements of the statute. In re Annexation Ordinance, 255 N.C. 633, 122 S.E.2d 690 (1961).

Even if the property owners and developers in the area to be annexed are under a duty to the city to pave all streets and provide storm sewers and curbs and gutters, the city is in no position to rely on this obligation in an annexation proceeding and thereby shift to others the duty which this Article imposes on the city as a condition precedent to annexation. In re Annexation Ordinance, 255 N.C. 633, 122 S.E.2d 690 (1961).

Specificity Concerning Street Maintenance. — A revised annexation plan report was sufficiently specific with respect to extension of street maintenance services where it detailed what services were provided in the annexing town and stated that all such services would be provided in the annexed area, and was not deficient in failing to provide for the extension of water and sewer lines where this was not a service provided by the town to anyone but was a duty vested with an independent water authority. Moody v. Town of Carrboro, 301 N.C. 318, 271 S.E.2d 265 (1980), rehearing denied, 301 N.C. 728, 274 S.E.2d 230 (1981).

D. Water and Sewer Service.

City May Not Limit Water and Sewer Services to Existing Lines. — Where an annexation ordinance contains no plans for the municipality to extend water and sewer services in the area to be annexed beyond those services presently in existence in the area unless the water and sewer lines are extended by landowners and developers in the area, the ordinance fails to meet the requirements of subdivision (3)b of this section. In re Annexation Ordinance, 255 N.C. 633, 122 S.E.2d 690 (1961).

As to assessment of cost of water and sewer extensions upon lots or parcels of land abutting directly on lateral mains of water and sewer systems pursuant to former G.S. 160-241 to 160-248 and G.S. 160-255, see In re Annexation Ordinance, 255 N.C. 633, 122 S.E.2d 690 (1961).

Remedy for Failure to Implement Plan. —After an area is annexed, if the residents find that the city is not providing them with water and sewer services, they may petition the court for a writ of mandamus requiring the city to provide such services. Matheson v. City of Asheville, 102 N.C. App. 156, 402 S.E.2d 140 (1991).

Timetables for Extending Water Mains and Sewer Lines. — Since the city included in the annexation report its plans and timetables for extending the water mains and the sewer lines to the area proposed for annexation, it met the requirements of subdivisions (3)b and (3)c of this section even though no plan or associated timetables had been identified for the water supply. Matheson v. City of Asheville, 102 N.C. App. 156, 402 S.E.2d 140 (1991).

Failure to Show Extension Was a Major Water Main. — Where the plaintiffs offered no evidence from which the trial court or appellate court could ascertain in this instance that the twelve-inch water extension was a “major water main,” and the policy requiring these petitioners to pay for the cost of water line extensions to their property was consistent with the policy of water line extensions within the preexisting municipal limits, the trial court was not in error in concluding the town had substantially complied with all the relevant provisions of this section. Wallace v. Town of Chapel Hill, 93 N.C. App. 422, 378 S.E.2d 225 (1989).

Annexation Denied Because Plan Did Not Provide Statutorily Required Sewer Service. — Trial court’s judgment upholding an ordinance which the City of Asheville (North Carolina) passed to annex property was reversed because the court failed to recognize that the city’s plan for providing services to the area it proposed to annex did not provide statutorily required sewer service. Briggs v. City of Asheville, 159 N.C. App. 558, 583 S.E.2d 733, 2003 N.C. App. LEXIS 1534 (2003), cert. denied, 357 N.C. 657, 589 S.E.2d 886 (2003), cert. dismissed sub nom. Briggs v. City Asheville, 357 N.C. 657, 589 S.E.2d 887 (2003).

Remand When Protections of Section not Honored. — Where petitioners show that the degree of noncompliance with statutory requirements for annexation is so great as to eviscerate the protections provided in G.S. 160A-47, a trial court does not err in declaring an ordinance null and void. However, in order for a trial court to properly declare an ordinance null and void under G.S. 160A-50(g)(4), it must specifically find that “the ordinance cannot be corrected by remand” as opposed to finding that “the ordinance is not likely to be corrected on remand.” Because the trial court failed to make the appropriate finding, perhaps acting under a misapprehension of applicable law, the matter was remanded to the trial court for appropriate findings to support one of the statutory grounds under G.S. 160A-50(g). Fix v. City of Eden, 175 N.C. App. 1, 622 S.E.2d 647, 2005 N.C. App. LEXIS 2739 (2005).

Duties under Section. — The requirements of G.S. 160A-47 are that plans for extension to the area to be annexed of all major municipal services performed within the municipality at the time of annexation is a condition precedent to annexation. The minimum requirements of G.S. 160A-47 are that the city provide information which is necessary to allow the public and the courts to determine whether the municipality has committed itself to provide a nondiscriminatory level of service and to allow a reviewing court to determine after the fact whether the municipality has timely provided such services. A city need only substantially comply with G.S. 160A-47. A city is required to provide major municipal services under G.S. 160A-47, and its performance of that duty may not be made to depend upon a doubtful contingency. Fix v. City of Eden, 175 N.C. App. 1, 622 S.E.2d 647, 2005 N.C. App. LEXIS 2739 (2005).

IV. METHOD OF FINANCING.

Subdivision (3)d requires only that the method of financing be disclosed, not that the precise source of each dollar be pinpointed. In re Annexation Ordinance No. 300-X, 304 N.C. 549, 284 S.E.2d 470 (1981).

Use of Federal Funds to Finance Extension of Services. — Although a city's proposals with reference to the financing of the extension of services into the area to be annexed contemplated the use of certain federal funds in connection with such financing, the method set forth in plans to finance extension of the services into the areas to be annexed constituted compliance with subdivision (3)d. Dunn v. City of Charlotte, 284 N.C. 542, 201 S.E.2d 873 (1974).

Budgeting of Funds at Time of Trial Held Unnecessary. — Since subdivision (3) of this section requires only that the annexing city file a statement showing how it will provide and finance municipal services to the annexed area, and since there is no requirement that available services be duplicated, the City of Goldsboro, in annexing a federal air force base, was not required to have funds budgeted at the time of trial to provide municipal services to the base in the event the federal government ceased providing those services, where the plan of annexation was based upon sound estimates of anticipated expenditures and revenues. In re Ordinance of Annexation No. 1977-4, 296 N.C. 1, 249 S.E.2d 698 (1978).

§ 160A-47.1. Limitation on change in financial participation prior to annexation.

For purposes of the extension of water and sewer services required under G.S. 160A-47, no ordinance or policy substantially diminishing the financial participation of a municipality in the construction of water or sewer facilities required under this Article may apply to an area being annexed unless the ordinance or policy became effective at least 180 days prior to the date of adoption by the municipality of the resolution giving notice of intent to consider annexing the area under G.S. 160A-49(a). (1991, c. 25, s. 2; c. 761, s. 31; 1998-150, s. 13.)

Editor's Note. — Session Laws 1991, c. 25, s. 2, initially amended G.S. 160A-47 by adding a subsection (b). This subsection was recodified as new G.S. 160A-47.1 by Session Laws 1991, c. 761, s. 31, effective July 16, 1991, which provides: "G.S. 160A-47(b), as enacted by Section 1 of Chapter 25 of the 1991 Session Laws, is recodified as G.S. 160A-47.1, with a catchline to read: 'Limitation on change in financial participation prior to annexation.' G.S. 160A-47(a) is redesignated as G.S. 160A-47."

Section 3 of Session Laws 1991, c. 25 makes this section effective April 1, 1991, and applicable to resolutions of intent adopted on or after March 1, 1992.

§ 160A-48. Character of area to be annexed.

(a) A municipal governing board may extend the municipal corporate limits to include any area

(1) Which meets the general standards of subsection (b), and

(2) Every part of which meets the requirements of either subsection (c) or subsection (d).

(b) The total area to be annexed must meet the following standards:

(1) It must be adjacent or contiguous to the municipality's boundaries at the time the annexation proceeding is begun, except if the entire territory of a county water and sewer district created under G.S. 162A-86(b1) is being annexed, the annexation shall also include any noncontiguous pieces of the district as long as the part of the district

with the greatest land area is adjacent or contiguous to the municipality's boundaries at the time the annexation proceeding is begun.

(2) At least one eighth of the aggregate external boundaries of the area must coincide with the municipal boundary.

(3) No part of the area shall be included within the boundary of another incorporated municipality.

(c) Part or all of the area to be annexed must be developed for urban purposes at the time of approval of the report provided for in G.S. 160A-47. Area of streets and street rights-of-way shall not be used to determine total acreage under this section. An area developed for urban purposes is defined as any area which meets any one of the following standards:

(1) Has a total resident population equal to at least two and three-tenths persons for each acre of land included within its boundaries; or

(2) Has a total resident population equal to at least one person for each acre of land included within its boundaries, and is subdivided into lots and tracts such that at least sixty percent (60%) of the total acreage consists of lots and tracts three acres or less in size and such that at least sixty-five percent (65%) of the total number of lots and tracts are one acre or less in size; or

(3) Is so developed that at least sixty percent (60%) of the total number of lots and tracts in the area at the time of annexation are used for residential, commercial, industrial, institutional or governmental purposes, and is subdivided into lots and tracts such that at least sixty percent (60%) of the total acreage, not counting the acreage used at the time of annexation for commercial, industrial, governmental or institutional purposes, consists of lots and tracts three acres or less in size. For purposes of this section, a lot or tract shall not be considered in use for a commercial, industrial, institutional, or governmental purpose if the lot or tract is used only temporarily, occasionally, or on an incidental or insubstantial basis in relation to the size and character of the lot or tract. For purposes of this section, acreage in use for commercial, industrial, institutional, or governmental purposes shall include acreage actually occupied by buildings or other man-made structures together with all areas that are reasonably necessary and appurtenant to such facilities for purposes of parking, storage, ingress and egress, utilities, buffering, and other ancillary services and facilities; or

(4) Is the entire area of any county water and sewer district created under G.S. 162A-86(b1), but this subdivision only applies to annexation by a municipality if that:

a. Municipality has provided in a contract with that district that the area is developed for urban purposes; and

b. Contract provides for the municipality to operate the sewer system of that county water and sewer district;

provided that the special categorization provided by this subdivision only applies if the municipality is annexing in one proceeding the entire territory of the district not already within the corporate limits of a municipality; or

(5) Is so developed that, at the time of the approval of the annexation report, all tracts in the area to be annexed are used for commercial, industrial, governmental, or institutional purposes.

(d) In addition to areas developed for urban purposes, a governing board may include in the area to be annexed any area which does not meet the requirements of subsection (c) if such area either:

(1) Lies between the municipal boundary and an area developed for urban purposes so that the area developed for urban purposes is either not

adjacent to the municipal boundary or cannot be served by the municipality without extending services and/or water and/or sewer lines through such sparsely developed area; or

(2) Is adjacent, on at least sixty percent (60%) of its external boundary, to any combination of the municipal boundary and the boundary of an area or areas developed for urban purposes as defined in subsection (c).

The purpose of this subsection is to permit municipal governing boards to extend corporate limits to include all nearby areas developed for urban purposes and where necessary to include areas which at the time of annexation are not yet developed for urban purposes but which constitute necessary land connections between the municipality and areas developed for urban purposes or between two or more areas developed for urban purposes. For purposes of this subsection, "necessary land connection" means an area that does not exceed twenty-five percent (25%) of the total area to be annexed.

(e) In fixing new municipal boundaries, a municipal governing board shall use recorded property lines and streets as boundaries. Some or all of the boundaries of a county water and sewer district may also be used when the entire district not already within the corporate limits of a municipality is being annexed.

(f) The area of an abolished water and sewer district shall be considered to be a water and sewer district for the purpose of this section even after its abolition under G.S. 162A-87.2(b). (1959, c. 1009, s. 4; 1973, c. 426, s. 74; 1983, c. 636, s. 15; 1985, c. 757, s. 205(d); 1993 (Reg. Sess., 1994), c. 696, s. 7; c. 714, s. 7; 1998-150, s. 14.)

Local Modification. — City of Archdale: 2001-39 (for ordinances adopted before December 31, 2002); city of Durham: 1987, c. 606; 1993, c. 342, s. 1; town of Morrisville: 2007-324, s. 1 (requiring that any annexation ordinance adopted under this act be adopted before December 31, 2017).

Editor's Note. — Session Laws 1983, c. 636, which amended this section, in s. 37.1, amended by Session Laws 1983, c. 768, s. 25, provided: "The General Assembly intends by this act to repeal all acts and provisions of acts that modify the application to particular cities and towns of Parts 2 and 3 of Article 4A of Chapter 160A of the General Statutes or that exempt particular cities or towns from the application of either or both of those two Parts. Therefore, all such acts and provisions of acts, even if not specifically listed and repealed in Sections 26 through 35.4 of this act, are repealed. Neither this section nor Sections 26 through 35.4 of this act shall affect any annexation in progress on the dates of ratification of this act under any of the repealed or amended sections."

Section 38 of Session Laws 1983, c. 636 provided: "This act shall be effective with respect to all annexations where resolutions of intent are adopted on or after the date of ratification of this act, except that Sections 36 and 37 shall become effective with respect to all annexations where resolutions of intent are adopted on or after July 1, 1984, Sections 25.1 through 35.5 and Section 37.1 are effective upon ratification and Section 25 shall become effective as provided in that section. No annexation where a resolution of intent was adopted prior to the date of ratification of this act shall be affected by this act except as provided in Section 25."

The act was ratified June 29, 1983.

Legal Periodicals. — For survey of 1978 administrative law, see 57 N.C.L. Rev. 831 (1979).

For 1984 survey, "Competitive Annexation Among Municipalities: North Carolina Adopts the Prior Jurisdiction Rule," see 63 N.C.L. Rev. 1260 (1985).

See Legislative Survey, 21 Campbell L. Rev. 323 (1999).

For note, "Consent Not Required: Municipal Annexation in North Carolina," see 83 N.C. L. Rev. 1634 (2005).

For casenote, "Carolina Power & Light v. City of Asheville Municipal Annexation in North Carolina: The Pros, the Cons and the Judiciary," see 27 N.C. Cent. L.J. 224 (2005).

For article, "Bargain Basement Annexation: How Municipalities Subvert the Intent of North Carolina Annexation Laws," see 29 N.C. Cent. L.J. 77 (2006).

CASE NOTES

Constitutionality. — See In re City of Durham Annexation Ordinance No. 5791, 66 N.C. App. 472, 311 S.E.2d 898 (1984).

The annexation statutes are not taxation statutes, nor are they retrospective taxation statutes. Little Red School House, Ltd. v. City of Greensboro, 71 N.C. App. 332, 322 S.E.2d 195 (1984), cert. denied and appeal dismissed, 313 N.C. 514, 329 S.E.2d 392 (1985).

Question whether area is ripe for annexation should be addressed under statutory criteria set up in this section. Moody v. Town of Carrboro, 301 N.C. 318, 271 S.E.2d 265 (1980), rehearing denied, 301 N.C. 728, 274 S.E.2d 230 (1981).

The entire area to be annexed must meet the requirements of subsection (b) of this section. In re Annexation Ordinance, 300 N.C. 337, 266 S.E.2d 661 (1980).

Cities with 5,000 or more people may annex an outlying urban area pursuant to subsection (c) of this section and the intervening undeveloped lands pursuant to subsection (d) so long as the entire area meets the requirements of subsection (b). In re Annexation Ordinance, 300 N.C. 337, 266 S.E.2d 661 (1980).

This Section and § 160A-36 Compared. — The provisions of subsections (b), (c) and (e) of this section are virtually identical to their counterparts in subsections (b), (c) and (d) of G.S> 160A-36. Matheson v. City of Asheville, 102 N.C. App. 156, 402 S.E.2d 140 (1991).

Character of areas which may properly be annexed, etc. (i) cannot be included within the boundary of another incorporated municipality, (ii) must be adjacent to the existing boundaries of the annexing municipality, (iii) must be developed for urban purposes or must connect an outlying area developed for urban purposes with the municipality and (iv) wherever practical should use topographic features as boundaries. Matheson v. City of Asheville, 102 N.C. App. 156, 402 S.E.2d 140 (1991).

When a city proposed the annexation of a certain area, it could combine lots in single ownership used for a common purpose into a single tract, which could then be used to determine the percentage of tracts in the area used for urban purposes, under G.S. 160A-48(c)(3), but it was impermissible for the city to combine lots being developed for commercial purposes into a single tract classified as commercial because the lots had to be used for a common purpose, and these lots were in the process of development rather than in commercial use. Ridgefield Props., L.L.C. v. City of Asheville, 159 N.C. App. 376, 583 S.E.2d 400, 2003 N.C. App. LEXIS 1523 (2003), aff'd, 358 N.C. 216, 593 S.E.2d 584 (2004).

City proposing to annex certain land substantially complied with G.S. 160A-48 because land improperly classified as residential should have been classified as "non-urban," as the land met no qualifications to be classified as urban, making G.S. 160A-48(c) inapplicable, as was also true with certain other undeveloped land, and making the classification of this land under G.S. 160A-48(d) proper, which meant the land did not have to qualify under G.S. 160A-48(c), so the land was correctly excluded from calculations of land qualifying for annexation under G.S. 160A-48(c) and, as a result, the total land qualified for annexation under G.S. 160A-48(c)(3), applying the use/subdivision test. Arnold v. City of Asheville, 186 N.C. App. 542, 652 S.E.2d 40, 2007 N.C. App. LEXIS 2250 (2007).

Each sub-area must be considered as a whole and must qualify under one of the urban purposes tests set forth in subsection (c). Wallace v. Town of Chapel Hill, 93 N.C. App. 422, 378 S.E.2d 225 (1989).

Tests as to Urban Development to Be Applied to Whole Annexation Area. — Not only must the entire annexation area meet the requirements of subsection (c)(1), but even more importantly, the tests to determine whether an area is developed for urban purposes must be applied to the annexation area as a whole. In re Annexation Ordinance, 284 N.C. 442, 202 S.E.2d 143 (1974); In re City of Durham Annexation Ordinance No. 5791, 66 N.C. App. 472, 311 S.E.2d 898 (1984).

The tests to determine whether an area is developed for urban purposes must be applied to the annexation area as a whole. In re Ordinance of Annexation No. 1977-4, 296 N.C. 1, 249 S.E.2d 698 (1978).

Division into Sub-Areas or Study Areas Improper. — The urban area that a city seeks to qualify for annexation under one of the urban purposes tests set forth in subdivisions (c)(1) through (c)(3) of this section must be considered as a whole, i.e., as one area, and may not be divided into sub-areas or study areas. In re Annexation Ordinance, 300 N.C. 337, 266 S.E.2d 661 (1980).

City acted under a misapprehension of the law, and misapplied the statutory standard in subdivision (c)(1), in deciding that population credits should be applied only in the "study area" in which such credits were accumulated, rather than applied uniformly to the whole area to be annexed. In re Annexation Ordinance, 284 N.C. 442, 202 S.E.2d 143 (1974).

Alternative Standards in Subdivisions (c)(1) and (c)(2). — This section's requirement that the area to be annexed must be developed for urban purposes is satisfied if either the standard of subdivision (c)(1) or the standard of subdivision (c)(2) is met. It is not required that both standards be satisfied. In re Annexation Ordinance 301-X, 304 N.C. 565, 284 S.E.2d 475 (1981).

To perform the computations required by the "subdivision test" under subdivision (c)(2) of this section, two figures are needed: the total acreage and the subdivided acreage. In re Annexation Ordinance 301-X, 304 N.C. 565, 284 S.E.2d 475 (1981).

Use of Different Standards Upheld. — The trial court did not err in concluding the town complied with subsection (c) of this section in annexing three noncontiguous sub-areas using different standards for qualifying each of the three sub-areas as urban property. Wallace v. Town of Chapel Hill, 93 N.C. App. 422, 378 S.E.2d 225 (1989).

Applicability of Error Margins of § 160A-54 to Calculations Under Subsection (c). — The five percent error margins allowed in subdivisions (2) and (3) of G.S. 160A-54 apply exclusively to calculations made by the municipality for purposes of establishing compliance with the population and subdivision tests contained within the alternative standards prescribed by subsection (c) of this section. Food Town Stores, Inc. v. City of Salisbury, 300 N.C. 21, 265 S.E.2d 123 (1980).

The language of G.S. 160A-54 is free from ambiguity and represents a legislative determination that margins of error should be allowed with respect to the calculations made by a municipality to establish compliance with the population and subdivision tests of subsection (c) of this section, but not with respect to the calculations made to establish compliance with the use test of subsection (c). Food Town Stores, Inc. v. City of Salisbury, 300 N.C. 21, 265 S.E.2d 123 (1980).

Counting "Total Resident Population". — A person is properly counted as a member of the "total resident population" under this section if such person would have been counted as an inhabitant of the proposed area of annexation under rules governing the last preceding decennial census. In re Ordinance of Annexation No. 1977-4, 296 N.C. 1, 249 S.E.2d 698 (1978).

Finding of Domicile Not Required. — The annexing unit is not required to make a finding that a person is actually domiciled within the proposed area of annexation before counting that person for the purpose of making the population estimate required by this section. In re Ordinance of Annexation No. 1977-4, 296 N.C. 1, 249 S.E.2d 698 (1978).

Military Personnel Properly Counted in Estimating Annexed Population. — In an annexation proceeding the military personnel on an air force base in the area to be annexed were properly counted in determining the population estimate required by this section, since in accordance with census practice dating back to 1790, persons enumerated in the 1970 census who lived on military bases as members of the armed forces were counted as residents of the states, counties, and minor civil divisions in which their installations were located. In re Ordinance of Annexation No. 1977-4, 296 N.C. 1, 249 S.E.2d 698 (1978).

The purpose of subsection (d) is to permit municipal governing boards to extend corporate limits to include all nearby areas developed for urban purposes and, where necessary, to include areas which at the time of annexation are not yet developed for urban purposes but which constitute necessary land connections between the municipality and areas developed for urban purposes or between two or more areas developed for urban purposes. Wallace v. Town of Chapel Hill, 93 N.C. App. 422, 378 S.E.2d 225 (1989).

Annexation of Intervening Undeveloped Land under Subsection (d). — The requirement that the urban area that a city seeks to qualify for annexation be considered as a whole does not preclude annexation of intervening undeveloped land pursuant to subsection (d) of this section. In re Annexation Ordinance, 300 N.C. 337, 266 S.E.2d 661 (1980).

Where the area proposed to be annexed by a municipality, when considered as a whole, meets the requirements of subsections (b) and (c) of this section, the fact that a part of the area is an undeveloped tract which does not comply with the standards set out in the statute does not require that such part be excluded from annexation. In re Annexation Ordinance, 255 N.C. 633, 122 S.E.2d 690 (1961).

The language of this section simply means that where a developed tract and an undeveloped tract are included in an area to be annexed, and the developed tract complies with subsection (c), but when the undeveloped tract is added, the area as a whole does not so comply, then the undeveloped tract must be excluded unless it complies with one of the requirements of subsection (d). In re Annexation Ordinance, 255 N.C. 633, 122 S.E.2d 690 (1961).

A city properly annexed land which was not developed for urban purposes, under G.S. 160A-48(d)(2), along with its annexation of land which was developed for urban purposes, even though the undeveloped land was not contiguous with the city's pre-annexation boundaries, because at least 60 percent of the land's external boundaries were contiguous with the developed land which was being annexed. Carolina Power & Light Co. v. City of Asheville, 161 N.C. App. 1, 587 S.E.2d 490, 2003 N.C. App. LEXIS 1995 (2003).

Plain language of G.S. 160A-48(d)(2), regarding the annexation of areas not developed for urban used, included all possible combinations which made the following equation work: the amount of border which the non-urban area shared with the municipality combined with the amount of border that the non-urban area shared with an area or areas developed for urban purposes equaled 60 percent of the border of the non-urban area, and one workable combination existed where a non-urban area touched, on at least 60 percent of its external border, only an area or areas developed for urban purposes. Carolina Power & Light Co. v. City of Asheville, 161 N.C. App. 1, 587 S.E.2d 490, 2003 N.C. App. LEXIS 1995 (2003).

Cities with 5,000 or more people could annex an outlying urban area pursuant to G.S. 160A-48(c) and the intervening undeveloped lands pursuant to G.S. 160A-48(d) so long as the entire area met the requirements of G.S. 160A-48(b). Carolina Power & Light Co. v. City of Asheville, 161 N.C. App. 1, 587 S.E.2d 490, 2003 N.C. App. LEXIS 1995 (2003).

Compliance with Subsection (d). — In defining areas not developed for urban purposes that nevertheless may be annexed, G.S. 160A-48(d)(2) clearly specifies a combination of two things, in "any" variation or quantities of these two entities: the municipal boundary and the boundary of the urban developed area. To totally exclude one entity from the equation fails to yield a true "combination." Carolina Power & Light Co. v. City of Asheville, 358 N.C. 512, 597 S.E.2d 717, 2004 N.C. LEXIS 668 (2004).

Plain meaning of G.S. 160A-48(d)(2) states that there must be a "combination" of adjacency to a municipality and adjacency to areas developed for urban purposes in order for a city to annex land under § 160A-48(d). Carolina Power & Light Co. v. City of Asheville, 358 N.C. 512, 597 S.E.2d 717, 2004 N.C. LEXIS 668 (2004).

Pursuant to G.S. 160A-48(d)(1) and (d)(2), a city could not annex a landowner's parcel of land, where the parcel was not developed for urban use and where the parcel was adjacent to areas developed for urban purposes but was not also adjacent to the city's boundary. Carolina Power & Light Co. v. City of Asheville, 358 N.C. 512, 597 S.E.2d 717, 2004 N.C. LEXIS 668 (2004).

Sub-area under subsection (d) may consist entirely of tracts of five acres or less. Southern Glove Mfg. Co. v. City of Newton, 75 N.C. App. 574, 331 S.E.2d 180, cert. denied, 314 N.C. 669, 336 S.E.2d 401 (1985).

Two lots, 60 percent of external boundaries of which were contiguous to city limits or to a part of other land which the city proposed to annex, qualified as sub-areas under subsection (d)(2), although they allegedly did not constitute "necessary land connections," as mentioned in the unnumbered paragraph at the end of subsection (d). The unnumbered paragraph had to be read as describing the sub-areas specifically allowed by subsection (d). Southern Glove Mfg. Co. v. City of Newton, 75 N.C. App. 574, 331 S.E.2d 180, cert. denied, 314 N.C. 669, 336 S.E.2d 401 (1985).

In order to establish noncompliance with subsection (e) of this section, it must be shown: (1) that the boundary of the annexed area does not follow topographic features, and (2) that it would have been practical for the boundary to follow such features. In re City of Durham Annexation Ordinance Numbered 5991 for Area A, 69 N.C. App. 77, 316 S.E.2d 649, appeal dismissed and cert. denied, 312 N.C. 493, 322 S.E.2d 553 (1984).

Annexation of Water and Sewer District. — Even though a water and sewer district under Chapter 162A is termed a municipal corporation, a water and sewer district is a municipal corporation organized for a special purpose, which does not qualify as a municipal corporation for purposes of this Chapter. Thrash v. City of Asheville, 95 N.C. App. 457, 383 S.E.2d 657 (1989), rev'd on other grounds, 327 N.C. 251, 393 S.E.2d 842 (1990).

Annexation of Air Force Base. — A federal air force base was subject to annexation by the City of Goldsboro where the annexation was not for the sole purpose of generating revenue, and it did not interfere with federal jurisdiction. In re Ordinance of Annexation No. 1977-4, 296 N.C. 1, 249 S.E.2d 698 (1978).

The annexation of a federal air force base by the City of Goldsboro did not create unconstitutional tax classes. In re Ordinance of Annexation No. 1977-4, 296 N.C. 1, 249 S.E.2d 698 (1978).

Tract Classified as Residential Despite Growing of Grass Thereon for Cattle Feed. — A city could classify a 1.83 acre tract with a rented house located on it as one lot used for residential purposes, despite the fact that on two separate parts of the lot fescue and sudex grass was grown and a person living in the neighborhood had been allowed to mow this grass, bale it and feed it to his cows. Southern Glove Mfg. Co. v. City of Newton, 75 N.C. App. 574, 331 S.E.2d 180, cert. denied, 314 N.C. 669, 336 S.E.2d 401 (1985).

Record of annexation proceedings showed prima facie full compliance with requirements of this section as to the character of the area to be annexed. In re Annexation Ordinance, 255 N.C. 633, 122 S.E.2d 690 (1961).

Discovery. — Judicial review of an annexation ordinance is a limited judicial review, with few similarities to ordinary civil actions which are initiated, tried and adjudicated in a different manner and for which the Rules of Civil Procedure were mostly devised. Nevertheless, since the court reviewing annexation proceedings is explicitly authorized to receive evidence as to the city's compliance with the various procedures prescribed, as to its annexation plan meeting the requisites of G.S. 160A-47, and as to the area involved being eligible for annexation under this section, in those instances where discovery may illuminate these issues that it is authorized under the Rules of Civil Procedure. Campbell v. City of Greensboro, 70 N.C. App. 252, 319 S.E.2d 323, cert. denied and appeal dismissed, 312 N.C. 492, 322 S.E.2d 553 (1984).

Commercial Classification Upheld. — Two parcels of six and over 41 acres were properly classified as commercial where the tracts had been consolidated for development and tax purposes, all but 19.75 acres had recently been developed as a commercial shopping center, and the remaining 19.75 acres, contiguous to the shopping center, had been cleared and graded, and indirectly served the shopping center as a dumping ground. Thrash v. City of Asheville, 95 N.C. App. 457, 383 S.E.2d 657 (1989), rev'd on other grounds, 327 N.C. 251, 393 S.E.2d 842 (1990).

Institutional Classification Upheld. — Tract of 5.92 acres owned by local school board was properly classified as being in institutional use, where the evidence tended to show that only because of the unusual circumstance that high school was in the process of relocating was property not used for agriculture class as it has been for most summers since 1973; since the property was consistently used for institutional purposes for about 13 years prior to the trial, the property's disuse was merely a brief hiatus which did not disqualify the property from being in urban use. Thrash v. City of Asheville, 95 N.C. App. 457, 383 S.E.2d 657 (1989), rev'd on other grounds, 327 N.C. 251, 393 S.E.2d 842 (1990).

Trial court properly classified property as industrial in use rather than as vacant; where the record supported the trial court's finding that a large part of its 17.7 acres consisted of a creek and that property owner pumped water from the creek for industrial use and also discharged effluent into the creek. Thrash v. City of Asheville, 95 N.C. App. 457, 383 S.E.2d 657 (1989), rev'd on other grounds, 327 N.C. 251, 393 S.E.2d 842 (1990).

Substantial Compliance with Subdivision (c)(3) Shown. — Petitioners/property owners failed to overcome the presumption that the City substantially complied with subdivision (c)(3) of this section when it moved to annex disputed areas; mobile homes used to meet the "urban purposes" percentage requirement were "constructed" on the lots pursuant to "residential purposes" defined by G.S. 160A-53(2), and the deletion of a condemned home, originally included as a "habitable" residence, did not affect the calculations or the city's compliance. Bali Co. v. City of Kings Mt., 134 N.C. App. 277, 517 S.E.2d 208 (1999).

It was error to include certain property among the acreage counted as subdivided and used for residential purposes under subdivision (c)(3) of this section where such classification did not reflect the factual characteristics of the property. Even though recorded plat indicated land was subdivided, the property had never been surveyed and divided on the ground, no lots had been sold, and no roads had been constructed and opened for traffic. Such land was not subdivided within the meaning of subdivision (c)(3) of this section. Thrash v. City of Asheville, 327 N.C. 251, 393 S.E.2d 842 (1990).

Collateral Estoppel Barred Reclassification of Land Previously Classified as "Vacant." — Original trial court decision that divided the landowner's property into commercial and "vacant" portions and the order that only the commercial portion be used on remand to determine compliance with G.S. 160A-48(c)(3) could not be construed as a license to attempt to re-classify the vacant acres. United States Cold Storage v. City of Lumberton, 156 N.C. App. 327, 576 S.E.2d 415, 2003 N.C. App. LEXIS 124 (2003).

Collateral estoppel applied where a second trial court decision permitted a city to reclassify a landowner's vacant acres for purposes of involuntary annexation because the original decision included an adjudication that the subject area was vacant. United States Cold Storage v. City of Lumberton, 156 N.C. App. 327, 576 S.E.2d 415, 2003 N.C. App. LEXIS 124 (2003).

Actual Minimum Urbanization Is An Essential Requirement of the Annexation Act. — "Sound urban development" does not mean a territory may be annexed whenever some documentation of record supports its assessment as urban; it means a territory may be annexed when its character reflects some actual minimum urbanization. Thrash v. City of Asheville, 327 N.C. 251, 393 S.E.2d 842 (1990).

Some actual, minimum urbanization of a proposed annexation area is required for annexation Shackelford v. City of Wilmington, 127 N.C. App. 449, 490 S.E.2d 578 (1997), aff'd, 349 N.C. 222, 505 S.E.2d 80 (1998).

When a city proposed to annex certain property, including certain lots which were being developed for commercial purposes, it was error to classify those lots as being used for a commercial purpose, for purposes of determining compliance with G.S. 160A-48(c)(3), because the property's actual use at the time of the city's service plan was the relevant consideration, rather than a proposed future use. Ridgefield Props., L.L.C. v. City of Asheville, 159 N.C. App. 376, 583 S.E.2d 400, 2003 N.C. App. LEXIS 1523 (2003), aff'd, 358 N.C. 216, 593 S.E.2d 584 (2004).

Topographic Features Requirement. —

In addressing the division between urban and non-urban areas, this section requires the use of topographic features to fix exterior boundaries of the municipality as annexed, but does not speak to interior boundaries. Bali Co. v. City of Kings Mt., 134 N.C. App. 277, 517 S.E.2d 208 (1999).

While this section does not provide "mandatory standards or requirements for annexation," the provision itself is mandatory in light of the N.C. Supreme Court's holding in Greene v. Town of Valdese, 306 N.C. 79, 291 S.E.2d 630 that a boundary "must" follow topographic features unless to do so would defeat the annexation. Arquilla v. City of Salisbury, 136 N.C. App. 24, 523 S.E.2d 155, 1999 N.C. App. LEXIS 1294 (1999), cert. denied, 351 N.C. 350, 543 S.E.2d 122 (2000).

Landowners met their burden of showing that the boundary of an involuntarily annexed area failed to follow natural topographic features, and that it would have been practical for the boundary to follow such features. Arquilla v. City of Salisbury, 136 N.C. App. 24, 523 S.E.2d 155, 1999 N.C. App. LEXIS 1294 (1999), cert. denied, 351 N.C. 350, 543 S.E.2d 122 (2000).

Micro Approach Calculations Meet Urbanization Test. — Town met the urbanization test for annexation, where the town used a "micro approach" whereby it determined the number of dwelling units in each census block within the area to be annexed, then determined the average family size therein, then multiplied the number of dwelling units in each census block by the average family size to calculate the estimated population of each block, and finally added the block numbers together to produce the population estimate. Williams v. Town of Kernersville, 129 N.C. App. 734, 500 S.E.2d 770, 1998 N.C. App. LEXIS 757 (1998), cert. denied, 349 N.C. 241, 516 S.E.2d 611 (1998).

Governmental Use. — Involuntary annexation was improper where there was insufficient evidence of governmental use on four disputed tracts; while the evidence supported a finding of common ownership, there was insufficient evidence that the lots served a common purpose, and the court, therefore, erred in relying on a plan of future development to classify the entire tract as under governmental use. Arquilla v. City of Salisbury, 136 N.C. App. 24, 523 S.E.2d 155, 1999 N.C. App. LEXIS 1294 (1999), cert. denied, 351 N.C. 350, 543 S.E.2d 122 (2000).

Characterization of Property Held Proper. — Town could properly classify country club's property as being used for commercial or institutional purposes, even though much of the property was used as a golf course. Chapel Hill Country Club, Inc. v. Town of Chapel Hill, 97 N.C. App. 171, 388 S.E.2d 168 (1990).

When a power company asserted that certain parts of its land which a city proposed to annex were not developed for industrial use, and, thus, not subject to annexation, there was sufficient evidence from which the trial court could find each tract was used in support of the company's power plant, as there was testimony that two tracts were a buffer for a cooling pond, and that two other tracts were buffers for ash ponds on the property. Carolina Power & Light Co. v. City of Asheville, 161 N.C. App. 1, 587 S.E.2d 490, 2003 N.C. App. LEXIS 1995 (2003).

In addition to topographic features, the statute explicitly permits the use of streets as boundaries. In order to establish non-compliance with subdivision (e) of this section, petitioners must show two things: (1) that the boundary of the annexed area does not follow topographic features, and (2) that it would have been practical for the boundary to follow such features. Matheson v. City of Asheville, 102 N.C. App. 156, 402 S.E.2d 140 (1991).

City Not Required to Extend Annexation to Areas in Conflict with Mandatory Statute Provisions. — The city was not required to extend the boundaries of the proposed annexation area to include ridge lines where to do so would have defeated the city's compliance with the other mandatory portions of the annexation statute. Matheson v. City of Asheville, 102 N.C. App. 156, 402 S.E.2d 140 (1991).

Shoestring Annexation Not Shown. — The area to be annexed by the town was not a prohibited ribbon, balloon or "shoestring" annexation, where the annexation area was a rectangle, with the easternmost side solidly abutted against the existing corporate limits. Williams v. Town of Kernersville, 129 N.C. App. 734, 500 S.E.2d 770, 1998 N.C. App. LEXIS 757 (1998), cert. denied, 349 N.C. 241, 516 S.E.2d 611 (1998).

Contiguity Requirement Met. — Town's annexation ordinance met the contiguity requirement of this subsection, where more than one-eighth of the area to be annexed coincided with the municipal boundary. Williams v. Town of Kernersville, 129 N.C. App. 734, 500 S.E.2d 770, 1998 N.C. App. LEXIS 757 (1998), cert. denied, 349 N.C. 241, 516 S.E.2d 611 (1998).

Annexation areas that were at least one-eighth contiguous with the municipal boundary and whose portions were connected by street right-of-way corridors, complied with the requirements of G.S. 160A-48(b). Anthony v. City of Shelby, 152 N.C. App. 144, 567 S.E.2d 222, 2002 N.C. App. LEXIS 904 (2002).

City's division of an annexation area into sub-areas did not result in the improper annexation of an "island" not contiguous with the city limits as of the date of the original resolution of intent, although the boundaries of the sub-area, if considered in isolation, rather than as a sub-part of the area originally identified and eventually annexed, were not contiguous with the city limits on the date of the initial resolution. U.S. Cold Storage, Inc. v. City of Lumberton, 170 N.C. App. 411, 612 S.E.2d 415, 2005 N.C. App. LEXIS 1014 (2005).

Compliance with Subsection (e). — Sufficient evidence supported a finding that the city substantially complied with this section, where the city's Planning Director testified that the city first examined the area to be annexed for natural topographic features, and in the absence of such features, used a 200 foot setback requirement. Blackwell v. City of Reidsville, 129 N.C. App. 759, 502 S.E.2d 371 (1998), cert. denied, 349 N.C. 352, 517 S.E.2d 886 (1998).

Classification of Condominium Common Areas. — Common areas belonging to people who owned condominium units is residential property, and must be recognized in the city's plan for providing services to the area the City proposed to annex to provide statutorily required sewer service. Briggs v. City of Asheville, 159 N.C. App. 558, 583 S.E.2d 733, 2003 N.C. App. LEXIS 1534 (2003), cert. denied, 357 N.C. 657, 589 S.E.2d 886 (2003), cert. dismissed sub nom. Briggs v. City Asheville, 357 N.C. 657, 589 S.E.2d 887 (2003).

Section 160A-48(c)(3) contained two mandatory tests for determining the availability of an area for annexation: (1) the use test — that not less than 60 percent of the lots and tracts in the area had to be in actual use, other than for agriculture, and (2) the subdivision test — not less than 60 percent of the acreage which was in residential use, if any, and was vacant had to consist of lots and tracts of five (now three) acres or less in size. Carolina Power & Light Co. v. City of Asheville, 161 N.C. App. 1, 587 S.E.2d 490, 2003 N.C. App. LEXIS 1995 (2003).

Acreage in use for an industrial purpose was excluded from the subdivision test of the availability of acreage for annexation. Carolina Power & Light Co. v. City of Asheville, 161 N.C. App. 1, 587 S.E.2d 490, 2003 N.C. App. LEXIS 1995 (2003).

Purpose of G.S. 160A-48(d) was to permit municipal governing boards to extend corporate limits to include all nearby areas developed for urban purposes and where necessary to include areas which at the time of annexation were not yet developed for urban purposes but which constituted necessary land connections between the municipality and areas developed for urban purposes or between two or more areas developed for urban purposes, and for purposes of this subsection, "necessary land connection" meant an area that did not exceed 25 percent of the total area to be annexed. Carolina Power & Light Co. v. City of Asheville, 161 N.C. App. 1, 587 S.E.2d 490, 2003 N.C. App. LEXIS 1995 (2003).

Judicial Review. — Annexation ordinance could be challenged in a trial court on the basis that the provisions of G.S. 160A-48 had not been met, under G.S. 160A-50(f)(3), and judicial review of an annexation ordinance was limited to determining whether the annexation proceedings substantially complied with the requirements of the applicable annexation statute. Carolina Power & Light Co. v. City of Asheville, 161 N.C. App. 1, 587 S.E.2d 490, 2003 N.C. App. LEXIS 1995 (2003).

Petitioners challenging a city's annexation ordinances failed to show the city misclassified the lots to be annexed or that the county tax maps it relied on were inaccurate. As petitioners offered no reliable evidence that the city's methodology was inaccurate and not calculated to provide reasonably accurate results, as required by G.S. 106A-54, the ordinances were properly deemed valid. Brown v. City of Winston-Salem, 176 N.C. App. 497, 626 S.E.2d 747, 2006 N.C. App. LEXIS 531 (2006).

Applied in Food Town Stores, Inc. v. City of Salisbury, 303 N.C. 539, 279 S.E.2d 557 (1981); Garland v. City of Asheville, 63 N.C. App. 490, 305 S.E.2d 66 (1983); Trask v. City of Wilmington, 64 N.C. App. 17, 306 S.E.2d 832 (1983); Baldwin v. City of Winston-Salem, 710 F.2d 132 (4th Cir. 1983); Knight v. City of Wilmington, 73 N.C. App. 254, 326 S.E.2d 376 (1985); Thrash v. City of Asheville, 327 N.C. 251, 393 S.E.2d 842 (1990); Asheville Indus., Inc. v. City of Asheville, 112 N.C. App. 713, 436 S.E.2d 873 (1993); Biltmore Square Assocs. v. City of Asheville, 113 N.C. App. 459, 439 S.E.2d 211 (1994); Thrash v. City of Asheville, 115 N.C. App. 310, 444 S.E.2d 482 (1994); Fix v. City of Eden, 175 N.C. App. 1, 622 S.E.2d 647, 2005 N.C. App. LEXIS 2739 (2005).

Cited in Pinewild Project Ltd. P'ship v. Vill. of Pinehurst, — N.C. App. —, 679 S.E.2d 424, 2009 N.C. App. LEXIS 1180 (July 21, 2009);

Armento v. City of Fayetteville, 32 N.C. App. 256, 231 S.E.2d 689 (1977); Hawks v. Town of Valdese, 299 N.C. 1, 261 S.E.2d 90 (1980); Humphries v. City of Jacksonville, 300 N.C. 186, 265 S.E.2d 189 (1980); In re Annexation Ordinance No. 300-X, 304 N.C. 549, 284 S.E.2d 470 (1981); Cockrell v. City of Raleigh, 306 N.C. 479, 293 S.E.2d 770 (1982); Raintree Homeowners Ass'n v. City of Charlotte, 543 F. Supp. 625 (W.D.N.C. 1982); McKenzie v. City of High Point, 61 N.C. App. 393, 301 S.E.2d 129 (1983); Livingston v. City of Charlotte, 68 N.C. App. 265, 314 S.E.2d 303 (1984); Forsyth Citizens Opposing Annexation v. City of Winston-Salem, 67 N.C. App. 164, 312 S.E.2d 517 (1984); Bowers v. City of Thomasville, 143 N.C. App. 291, 547 S.E.2d 68, 2001 N.C. App. LEXIS 277 (2001).

§ 160A-49. Procedure for annexation.

(a) Notice of Intent. — Any municipal governing board desiring to annex territory under the provisions of this Part shall first pass a resolution stating the intent of the municipality to consider annexation. Such resolution shall describe the boundaries of the area under consideration, fix a date for a public informational meeting, and fix a date for a public hearing on the question of annexation. The date for the public informational meeting shall be not less than 45 days and not more than 55 days following passage of the resolution. The date for the public hearing to be not less than 60 days and not more than 90 days following passage of the resolution.

(b) Notice of Public Hearing. — The notice of public hearing shall:

(1) Fix the date, hour and place of the public informational meeting and the date, hour, and place of the public hearing.

(2) Describe clearly the boundaries of the area under consideration, and include a legible map of the area.

(3) State that the report required in G.S. 160A-47 will be available at the office of the municipal clerk at least 30 days prior to the date of the public informational meeting.

(4) Include a notice of a property owner's rights to request water and sewer service in accordance with G.S. 160A-47.

(5) Include an explanation of a property owner's rights pursuant to subsections (f1) and (f2) of this section.

Such notice shall be given by publication once a week for at least two successive weeks prior to the date of the informational meeting in a newspaper having general circulation in the municipality and, in addition thereto, if the area to be annexed lies in a county containing less than fifty percent (50%) of the land area of the municipality, in a newspaper having general circulation in the area of proposed annexation. The period from the date of the first publication to the date of the last publication, both dates inclusive, shall be not less than eight days including Sundays, and the date of the last publication shall be not more than seven days preceding the date of public informational meeting. If there be no such newspaper, the municipality shall post the notice in at least five public places within the municipality and at least five public places in the area to be annexed for 30 days prior to the date of public informational meeting. In addition, notice shall be mailed at least four weeks prior to date of the informational meeting by first class mail, postage prepaid to the owners as shown by the tax records of the county of all freehold interests in real property located within the area to be annexed. The person or persons mailing such notices shall certify to the governing board that fact, and such certificate shall become a part of the record of the annexation proceeding and shall be deemed conclusive in the absence of fraud. If the notice is returned to the city by the postal service by the tenth day before the informational meeting, a copy of the notice shall be sent by certified mail, return receipt requested, at least seven days before the informational meeting. Failure to comply with the mailing requirements of this subsection shall not invalidate the annexation unless it is shown that the requirements were not substantially complied with. If the governing board by resolution finds that the tax records are not adequate to identify the owners of some or all of the parcels of real property within the area it may in lieu of the mail procedure as to those parcels where the owners could not be so identified, post the notice at least 30 days prior to the date of public informational meeting on all buildings on such parcels, and in at least five other places within the area to be annexed. In any case where notices are placed on property, the person placing the notices shall certify that fact to the governing board.

(c) Action Prior to Informational Meeting. — At least 30 days before the date of the public informational meeting, the governing board shall approve the report provided for in G.S. 160A-47, and shall make it available to the public at the office of the municipal clerk. In addition, the municipality may prepare a summary of the full report for public distribution. In addition, the city shall post in the office of the city clerk, at least 30 days before the public informational meeting, a legible map of the area to be annexed and a list of persons holding freehold interests in property in the area to be annexed that it has identified.

(c1) Public Informational Meeting. — At the public informational meeting a representative of the municipality shall first make an explanation of the report required in G.S. 160A-47. Following such explanation, all persons resident or owning property in the territory described in the notice of public hearing, and all residents of the municipality, shall be given the opportunity to ask questions and receive answers regarding the proposed annexation.

(d) Public Hearing. — At the public hearing a representative of the municipality shall first make an explanation of the report required in G.S. 160A-47. Following such explanation, all persons resident or owning property in the territory described in the notice of public hearing, and all residents of the municipality, shall be given an opportunity to be heard.

(e) Passage of the Annexation Ordinance. — The municipal governing board shall take into consideration facts presented at the public hearing and shall have authority to amend the report required by G.S. 160A-47 to make changes in the plans for serving the area proposed to be annexed so long as such changes meet the requirements of G.S. 160A-47, provided that if the annexation report is amended to show additional subsections of G.S. 160A-48(c) or (d) under which the annexation qualifies that were not listed in the original report, the city must hold an additional public hearing on the annexation not less than 30 nor more than 90 days after the date the report is amended, and notice of such new hearing shall be given at the first public hearing. At any regular or special meeting held no sooner than the tenth day following the public hearing and not later than 90 days following such public hearing, the governing board shall have authority to adopt an ordinance extending the corporate limits of the municipality to include all, or such part, of the area described in the notice of public hearing which meets the requirements of G.S. 160A-48 and which the governing board has concluded should be annexed. The ordinance shall:

(1) Contain specific findings showing that the area to be annexed meets the requirements of G.S. 160A-48. The external boundaries of the area to be annexed shall be described by metes and bounds. In showing the application of G.S. 160A-48(c) and (d) to the area, the governing board may refer to boundaries set forth on a map of the area and incorporate same by reference as a part of the ordinance.

(2) A statement of the intent of the municipality to provide services to the area being annexed as set forth in the report required by G.S. 160A-47.

(3) A specific finding that on the effective date of annexation the municipality will have funds appropriated in sufficient amount to finance construction of any major trunk water mains and sewer outfalls and such water and sewer lines as required in G.S. 160A-47(3)b found necessary in the report required by G.S. 160A-47 to extend the basic water and/or sewer system of the municipality into the area to be annexed, or that on the effective date of annexation the municipality will have authority to issue bonds in an amount sufficient to finance such construction. If authority to issue such bonds must be secured from the electorate of the municipality prior to the effective date of annexation, then the effective date of annexation shall be no earlier than the day following the statement of the successful result of the bond election.

(4) Fix the effective date for annexation. The effective date of annexation may be fixed for any date not less than 70 days nor more than 400 days from the date of passage of the ordinance.

(f) Effect of Annexation Ordinance. — Except as provided in subsection (f1) of this section, from and after the effective date of the annexation ordinance, the territory and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in such municipality and shall be entitled to the same privileges and benefits as other parts of such municipality. Real and personal property in the newly annexed territory on the January 1 immediately preceding the beginning of the fiscal year in which the annexation becomes effective is subject to municipal taxes as provided in G.S. 160A-58.10. Provided that annexed property which is a part of a sanitary district, which has installed water and sewer lines, paid for by the residents of said district, shall not be subject to that part of the municipal taxes levied for debt service for the first five years after the effective date of annexation. If this proviso should be declared by a court of competent jurisdiction to be in violation of any provision of the federal or State Constitution, the same shall not affect the remaining provisions of this Part. If the effective date of annexation falls between June 1 and June 30, and the effective date of the privilege license tax ordinance of the annexing municipality is June 1, then businesses in the area to be annexed shall be liable for taxes imposed in such ordinances from and after the effective date of annexation.

(f1) Property Subject to Present-Use Value Appraisal. — If an area described in an annexation ordinance includes agricultural land, horticultural land, or forestland that on the effective date of annexation is:

(1) Land that is being taxed at present-use value pursuant to G.S. 105-277.4; or

(2) Land that:

a. Was on the date of the resolution of intent for annexation being used for actual production and is eligible for present-use value taxation under G.S. 105-277.4, but the land has not been in use for actual production for the required time under G.S. 105-277.3; and

b. The assessor for the county where the land subject to annexation is located has certified to the city that the land meets the requirements of this subdivision

the annexation becomes effective as to that property pursuant to subsection (f2) of this section.

(f2) Effective Date of Annexation for Certain Property. — Annexation of property subject to annexation under subsection (f1) of this section shall become effective:

(1) Upon the effective date of the annexation ordinance, the property is considered part of the city only (i) for the purpose of establishing city boundaries for additional annexations pursuant to this Article and (ii) for the exercise of city authority pursuant to Article 19 of this Chapter.

(2) For all other purposes, the annexation becomes effective as to each tract of such property or part thereof on the last day of the month in which that tract or part thereof becomes ineligible for classification pursuant to G.S. 105-277.4 or no longer meets the requirements of subdivision (f1)(2) of this section. Until annexation of a tract or a part of a tract becomes effective pursuant to this subdivision, the tract or part of a tract is not subject to taxation by the city under Article 12 of Chapter 105 of the General Statutes nor is the tract or part of a tract entitled to services provided by the city.

(g) Simultaneous Annexation Proceedings. — If a municipality is considering the annexation of two or more areas which are all adjacent to the municipal boundary but are not adjacent to one another, it may undertake simultaneous proceedings under authority of this Part for the annexation of such areas.

(h) Remedies for Failure to Provide Services. — If, not earlier than one year from the effective date of annexation, and not later than 15 months from the effective date of annexation, any person owning property in the annexed territory shall believe that the municipality has not followed through on its service plans adopted under the provisions of G.S. 160A-47(3) and 160A-49(e), for any required service other than water and sewer services such person may apply for a writ of mandamus under the provisions of Article 40, Chapter 1 of the General Statutes. Relief may be granted by the judge of superior court

(1) If the municipality has not provided the services set forth in its plan submitted under the provisions of G.S. 160A-47(3)a on substantially the same basis and in the same manner as such services were provided within the rest of the municipality prior to the effective date of annexation, and

(2) If at the time the writ is sought such services set forth in the plan submitted under the provisions of G.S. 160A-47(3)a are still being provided on substantially the same basis and in the same manner as on the date of annexation of the municipality.

If, not earlier than 24 months from the effective date of the annexation, and not later than 27 months from the effective date of the annexation, any person owning property in the annexed area can show that the plans submitted under the provisions of G.S. 160A-47(3)c require the construction of major trunk water mains and sewer outfall lines and if construction has not been completed within two years of the effective date of the annexation, relief may also be granted by the superior court by an order to the municipality to complete such lines and outfalls within a certain time. Similar relief may be granted by the superior court to any owner of property who made a timely request for a water or sewer line, or both, pursuant to G.S. 160A-47(3)b and such lines have not been completed within two years from the effective date of annexation in accordance with applicable city policies and through no fault of the owner, if such owner petitions for such relief not earlier than 24 months following the effective date of annexation and not later than 27 months following the effective date of annexation.

If a writ is issued, costs in the action, including a reasonable attorney's fee for such aggrieved person, shall be charged to the municipality.

(i) No resolution of intent may be adopted under subsection (a) of this section unless the city council (or planning agency created or designated under either G.S. 160A-361 or the charter) has, by resolution adopted at least one year prior to adoption of the resolution of intent, identified the area as being under consideration for annexation and included a statement in the resolution notifying persons subject to the annexation of their rights under subsections (f1) and (f2) of this section; provided, adoption of such resolution of consideration shall not confer prior jurisdiction over the area as to any other city. The area described under the resolution of intent may comprise a smaller area than that identified by the resolution of consideration. The resolution of consideration may have a metes and bounds description or a map and shall remain effective for two years after adoption, and shall be filed with the city clerk. A new resolution of consideration adopted before expiration of the two-year period for a previously adopted resolution covering the same area shall relate back to the date of the previous resolution.

(j) Subsection (i) of this section shall not apply to the annexation of any area if the resolution of intent describing the area and the ordinance annexing the area both provide that the effective date of the annexation shall be at least one year from the date of passage of the annexation ordinance.

(k) If a valid request for extension of a water or sewer line has been made under G.S. 160A-47(3)b, and the extension is not complete at the end of two years after the effective date of the annexation ordinance, the owner of the property may petition the Local Government Commission for abatement of taxes to be paid to the city which have not been levied as of the expiration date of the two-year period, if such petition is filed not more than 60 days after the expiration of the two-year period. If the Local Government Commission finds that the extension to the property was not complete by the end of the two-year period, it shall enter an order directing the city not to levy any further ad valorem taxes on the property until the fiscal year commencing after completion of the extension. In addition, if the Local Government Commission found that the extension to the property was not completed by the end of the two-year period, and if it finds that for any fiscal year during the period beginning with the first day of the fiscal year in which the annexation ordinance became effective and ending the last day of the fiscal year in which the two-year period expired, the city made an appropriation for construction, operation or maintenance of a water or sewer system (other than payments the city made as a customer of the system) from the fund or funds for which ad valorem taxes are levied, then the Local Government Commission shall order the city to release or refund an amount of the petitioner's property taxes for that year in question in proportion to the percentage of appropriations in the fund made for water and sewer services. By way of illustration, if a net amount of one hundred thousand dollars ($100,000) was appropriated for water or sewer construction, operation or maintenance from a fund which had total expenditures of ten million dollars ($10,000,000) and the petitioner's tax levy was one thousand dollars ($1,000), the amount of release or refund shall be ten dollars ($10.00).

(*l*) If a city fails to deliver police protection, fire protection, solid waste or street maintenance services as provided for in G.S. 160A-47(3)a. within 60 days after the effective date of the annexation, the owner of the property may petition the Local Government Commission for abatement of taxes to be paid to the city for taxes that have been levied as of the end of the 60-day period, if the petition is filed not more than 90 days after the expiration of the 60-day period. If the Local Government Commission finds that services were not extended by the end of the 60-day period, it shall enter an order directing the city not to levy any further ad valorem taxes on the property until the fiscal year commencing after extension of the municipal services. (1959, c. 1009, s. 5; 1973, c. 426, s. 74; 1975, c. 576, s. 4; 1977, c. 517, s. 6; 1983, c. 636, ss. 1, 3, 5, 6, 12-14, 37; c. 768, s. 25; 1985, c. 384, s. 1; 1987, c. 44, s. 2; 1989, c. 598, s. 12; 1998-150, s. 15; 2006-162, s. 21; 2006-264, s. 18(a).)

Local Modification. — City of Durham: 1993, c. 342, s. 1; city of Raleigh: 1977, c. 351; city of Reidsville: 1997-343; town of Matthews: 2000-100, s. 4.1. Town of Matthews: 2000-100, s. 4.1.

Cross References. — As to effective date of certain annexation ordinances adopted from January 1, 1987, to August 3, 1987, see G.S. 160A-58.9.

Editor's Note. — Session Laws 1983, c. 636, which amended this section, in s. 37.1, as amended by Session Laws 1983, c. 768, s. 25, provided: "The General Assembly intends by this act to repeal all acts and provisions of acts that modify the application to particular cities and towns of Parts 2 and 3 of Article 4A of Chapter 160A of the General Statutes or that exempt particular cities or towns from the application of either or both of those two Parts. Therefore, all such acts and provisions of acts, even if not specifically listed and repealed in Sections 26 through 35.4 of this act, are repealed. Neither this section nor Sections 26 through 35.4 of this act shall affect any annexation in progress on the dates of ratification of this act under any of the repealed or amended sections."

Section 38 of Session Laws 1983, c. 636 provided: "This act shall be effective with respect to all annexations where resolutions of intent are adopted on or after the date of ratification of this act, except that Sections 36 and 37 shall become effective with respect to all annexations where resolutions of intent are adopted on or after July 1, 1984, Sections 25.1 through 35.5 and Section 37.1 are effective upon ratification and Section 25 shall become effective as provided in that section. No annexation where a resolution of intent was adopted prior to the date of ratification of this act shall be affected by this act except as provided in Section 25."

The act was ratified June 29, 1983.

Article 40, Chapter 1, referred to in the first sentence of subsection (h), was repealed by Session Laws 1967, c. 954, s. 4.

Session Laws 2006-264, s. 18(a), which made identical changes as those in Session Laws 2006-162, s. 21, was repealed upon the passage of Session Laws 2006-162, pursuant to the terms of Session Laws 2006-264, s. 18(b).

Legal Periodicals. — For survey of 1977 law on property, see 56 N.C.L. Rev. 1111 (1978).

For survey of 1982 law on administrative law, see 61 N.C.L. Rev. 961 (1983).

For 1984 survey, "Competitive Annexation Among Municipalities: North Carolina Adopts the Prior Jurisdiction Rule," see 63 N.C.L. Rev. 1260 (1985).

See Legislative Survey, 21 Campbell L. Rev. 323 (1999).

For note, "Consent Not Required: Municipal Annexation in North Carolina," see 83 N.C. L. Rev. 1634 (2005).

For casenote, "Carolina Power & Light v. City of Asheville Municipal Annexation in North Carolina: The Pros, the Cons and the Judiciary," see 27 N.C. Cent. L.J. 224 (2005).

CASE NOTES

The annexation statutes are not taxation statutes, nor are they retrospective taxation statutes. Little Red School House, Ltd. v. City of Greensboro, 71 N.C. App. 332, 322 S.E.2d 195 (1984), cert. denied and appeal dismissed, 313 N.C. 514, 329 S.E.2d 392 (1985).

Challenges to annexations generally are not actionable under U.S. Const., Amend. XIV. Raintree Homeowners Ass'n v. City of Charlotte, 543 F. Supp. 625 (W.D.N.C. 1982), aff'd sub nom. Baldwin v. City of Winston-Salem, 710 F.2d 132 (4th Cir. 1983).

Absolute and literal compliance with this section is unnecessary; only substantial compliance is required. McKenzie v. City of High Point, 61 N.C. App. 393, 301 S.E.2d 129, cert. denied, 308 N.C. 544, 302 S.E.2d 885 (1983).

The respondent city was not required to file a new services plan under this section although the annexation area changed during subsequent revisions to the annexation ordinance, where the only significant change to the services plan was the scope of its coverage—the services for petitioners remained the same—and where the city was bound by the terms of the services plan as amended under principles of equitable estoppel. Bowers v. City of Thomasville, 143 N.C. App. 291, 547 S.E.2d 68, 2001 N.C. App. LEXIS 277 (2001), cert. denied, 353 N.C. 723, 550 S.E.2d 769 (2001).

Metes and Bounds Description. — Property descriptions in annexation ordinances were not metes and bounds descriptions, where the property descriptions did not include courses and distances but made reference to "lots" that were not identified in the property descriptions. Blackwell v. City of Reidsville, 129 N.C. App. 759, 502 S.E.2d 371 (1998), cert. denied, 349 N.C. 352, 517 S.E.2d 886 (1998).

Identification. — Annexation resolution which identified the area under consideration for annexation as a certain township by the official mapping of the county fulfilled the requirement of G.S. 160A-49(i) to identify the area under consideration for annexation. Anthony v. City of Shelby, 152 N.C. App. 144, 567 S.E.2d 222, 2002 N.C. App. LEXIS 904 (2002).

Minimum requirements of the annexation statute are that the city provide information which is necessary to allow the public and the courts to determine whether the municipality has committed itself to provide a nondiscriminatory level of service and to allow a reviewing court to determine after the fact whether the municipality has timely provided such services. If such services are not provided, the residents of the annexed area would be entitled to a writ of mandamus requiring the municipality to live up to its commitments. Cockrell v. City of Raleigh, 306 N.C. 479, 293 S.E.2d 770 (1982).

Purpose of subsection (a), requiring resolution stating intent to consider annexation, is to record the town board's decision and to mark the formal beginning of the municipality's actions. This resolution expresses the intent of the governing board and it has little significance to the public. Kritzer v. Town of Southern Pines, 33 N.C. App. 152, 234 S.E.2d 648 (1977).

Subsection (a) does not specifically require a written resolution, nor is such requirement implicit in the fact that the resolution must describe the land under consideration. Kritzer v. Town of Southern Pines, 33 N.C. App. 152, 234 S.E.2d 648 (1977).

Form for Extension. — This section, which specifically describes the procedure of annexation and the information that is required to be provided to residents of an area to be annexed, does not require that the city furnish the form described in G.S. 160A-47 without a request. Barnhardt v. City of Kannapolis, 116 N.C. App. 215, 447 S.E.2d 471, cert. denied, 338 N.C. 514, 452 S.E.2d 807 (1994).

Reading Report at Public Hearing in Compliance with Subsection (d). — Reading report of proposed annexation in its entirety at a public hearing is a more detailed explanation of the report than a shorter summary explanation prepared by a representative of the municipality would have been. In this manner, those who attend the meeting are made aware of each and every provision and statement in the report and are then given an opportunity to be heard. This is sufficient compliance with the requirements of subsection (d) of this section. In re Annexation Ordinance, 300 N.C. 337, 266 S.E.2d 661 (1980).

The proper forum for attacking the accuracy of projected costs and other items in the report not required by statute is the hearing before the city council provided under this section. Parkwood Ass'n v. City of Durham, 124 N.C. App. 603, 478 S.E.2d 204 (1996).

Right of the general public to sufficient notice of proposed annexation is protected by subsections (b) and (e). Kritzer v. Town of Southern Pines, 33 N.C. App. 152, 234 S.E.2d 648 (1977).

The notice of the public hearing must be published in a newspaper, or by other means, and must contain a clear description of the land under consideration. Kritzer v. Town of Southern Pines, 33 N.C. App. 152, 234 S.E.2d 648 (1977).

Where materials delivered to the court did not include a certificate that notice of the public hearing was mailed to all the property owners in the affected area as required by subsection (b), but there was ample evidence that the notices were actually mailed and no contention that the property owners did not receive the mailed notices, this irregularity was so slight that it could not have prejudiced petitioner, and it did not require remand of the ordinance. Thrash v. City of Asheville, 115 N.C. App. 310, 444 S.E.2d 482 (1994).

Public Informational Meeting. — City substantially complied with the requirement of G.S. 160A-49(c1) that property owners be given the opportunity to ask questions and receive answers regarding a proposed annexation, when the trial court found all persons attending a public informational meeting were given the opportunity to ask one or more questions to which city representatives responded. Anthony v. City of Shelby, 152 N.C. App. 144, 567 S.E.2d 222, 2002 N.C. App. LEXIS 904 (2002).

When a city proposing a certain annexation amended the annexation ordinance by excluding a certain parcel from the ordinance, no second public hearing was required, under G.S. 160A-49(e), because, with the only change to the ordinance being the deletion of one lot and no change in the subsections of G.S. 160A-48 under which the city sought annexation, there was no substantial change to the ordinance, necessitating notice. Arnold v. City of Asheville, 186 N.C. App. 542, 652 S.E.2d 40, 2007 N.C. App. LEXIS 2250 (2007).

Extension of Fire and Police Service. — Although city did not need to provide the details of how it intended to extend fire and police service to the annexed area, the city did provide this information to petitioners at the hearing; further, if the city failed to provide the services as promised within the statutory time limits, petitioners could apply for a writ of mandamus. Parkwood Ass'n v. City of Durham, 124 N.C. App. 603, 478 S.E.2d 204 (1996).

By virtue of subsection (e), the governing board is prohibited from annexing any land except that described in the notice of the public hearing. Kritzer v. Town of Southern Pines, 33 N.C. App. 152, 234 S.E.2d 648 (1977).

Sections 160A-37(e), 160A-31(d) and subsection (e) of this section are in pari materia. Conover v. Newton, 297 N.C. 506, 256 S.E.2d 216 (1979).

Remand Was Appropriate Remedy for Alleged Notice Irregularity. — Trial court did not err in refusing to declare an involuntary annexation ordinance null and void where, assuming arguendo that any alleged procedural irregularities pursuant to G.S. 160A-49(b)(3) had prejudiced a landowner, the remedy under G.S. 160A-50(g)(1) was a remand to the municipal governing board for further proceedings. United States Cold Storage v. City of Lumberton, 156 N.C. App. 327, 576 S.E.2d 415, 2003 N.C. App. LEXIS 124 (2003).

Extension of sewer lines and other services into the annexed area, pursuant to the plan of annexation, is not a condition precedent to annexation, the statutory remedy for failure to extend such services being an application, by a person owning property in the annexed territory, for a writ of mandamus to compel such performance of the plan. Dale v. City of Morganton, 270 N.C. 567, 155 S.E.2d 136 (1967).

In reviewing the procedure followed by a municipal governing board in an annexation proceeding, the question whether the municipality is then providing services pursuant to the plan of annexation is not before the court, and the extension of services into an annexed area in accordance with the promulgated plan is not a condition precedent to annexation. In re City of New Bern, 278 N.C. 641, 180 S.E.2d 851 (1971).

Time for Implementing Extension of Services. — It would appear from a reading of subsection (h) of this section that a city annexing territory has one year, and possibly 15 months, to implement its plan for extending services to an annexed area. In re Ordinance of Annexation No. 1977-4, 296 N.C. 1, 249 S.E.2d 698 (1978).

Increase in Voters Through Annexation Requires Preclearance Under 42 U.S.C. § 1973c. — The increase in the number of voters in the municipality resulting from annexation is a charge of a voting qualification, prerequisite, standard, practice, or procedure requiring preclearance as contemplated by 42

U.S.C. § 1973c. Moore v. Swinson, 58 N.C. App. 714, 294 S.E.2d 381 (1982).

Elections Held Before Preclearance Under 42 U.S.C. § 1973c. — Until the city obtains clearance of its annexations in accordance with 42 U.S.C. § 1973c, all future elections must be conducted on the basis of the city boundaries as they existed before the unprecleared annexations were made, and citizens residing in such annexed areas may not participate in future municipal elections, either as electors or as candidates. This relief applies only to the right to vote and be a candidate. It does not, of course, constitute de-annexation, and it does not affect the rights of citizens residing in the annexed areas in any other way. Moore v. Swinson, 58 N.C. App. 714, 294 S.E.2d 381 (1982).

Persons in Annexed Areas May Be Denied Vote During 60-Day Approval Period. — Although those in annexed areas become citizens of the annexing jurisdiction upon annexation, under 42 U.S.C. § 1973c, it is proper to deny such persons the right to vote on a bond referendum held within 60 days of the annexation since that section gives the United States Attorney General 60 days within which to approve an annexation expanding the number of voters. 42 U.S.C. § 1973c was designed, in part, to enforce U.S. Const., Amend. XV, and it preempts all other provisions regarding the right to vote in such referenda. Moore v. Swinson, 58 N.C. App. 714, 294 S.E.2d 381 (1982).

Failure of Resolution of Intent to State Effective Date. — City's failure to state effective date of annexation in its resolution of intent was not an omission of an essential requirement of the statute but was only a "slight irregularity," which would not invalidate annexation proceedings if there has been substantial compliance with all essential elements of the law. City of Kannapolis v. City of Concord, 326 N.C. 512, 391 S.E.2d 493 (1990).

Subsection (g) — "Simultaneous Annexation Proceedings." — North Carolina annexation statutes do not permit municipality to annex by voluntary means tract of land that is contiguous with its municipal boundaries only by virtue of second tract of land being annexed simultaneously. City of Kannapolis v. City of Concord, 326 N.C. 512, 391 S.E.2d 493 (1990).

City Charter Superseded by State Statute. — Summary judgment was properly awarded to a city and its officials in an action by property owners challenging an annexation because, pursuant to G.S. 160A-3(c), the statutory provision establishing involuntary annexations, G.S. 160A-49, superseded a city charter provision permitting only voluntary annexations. Brown v. City of Winston-Salem, 171 N.C. App. 266, 614 S.E.2d 599, 2005 N.C. App. LEXIS 1266 (2005).

Applied in In re Annexation Ordinance, 44 N.C. App. 274, 261 S.E.2d 39 (1979); In re Annexation Ordinance No. 1219, 62 N.C. App. 588, 303 S.E.2d 380 (1983); Garland v. City of Asheville, 63 N.C. App. 490, 305 S.E.2d 66 (1983); In re City of Durham Annexation Ordinance Numbered 5991 for Area A, 69 N.C. App. 77, 316 S.E.2d 649 (1984); Knight v. City of Wilmington, 73 N.C. App. 254, 326 S.E.2d 376 (1985); Thrash v. City of Asheville, 95 N.C. App. 457, 383 S.E.2d 657 (1989); Chapel Hill Country Club, Inc. v. Town of Chapel Hill, 97 N.C. App. 171, 388 S.E.2d 168 (1990).

Cited in Pinewild Project Ltd. P'ship v. Vill. of Pinehurst, — N.C. App. —, 679 S.E.2d 424, 2009 N.C. App. LEXIS 1180 (July 21, 2009);

Upchurch v. City of Raleigh, 252 N.C. 676, 114 S.E.2d 772 (1960); Armento v. City of Fayetteville, 32 N.C. App. 256, 231 S.E.2d 689 (1977); Humphries v. City of Jacksonville, 300 N.C. 186, 265 S.E.2d 189 (1980); In re City of Durham Annexation Ordinance No. 5791, 66 N.C. App. 472, 311 S.E.2d 898 (1984); Forsyth Citizens Opposing Annexation v. City of Winston-Salem, 67 N.C. App. 164, 312 S.E.2d 517 (1984); Town of Hazelwood v. Town of Waynesville, 83 N.C. App. 670, 351 S.E.2d 558 (1987); Town of Hazelwood v. Town of Waynesville, 320 N.C. App. 89, 357 S.E.2d 686 (1987); Matheson v. City of Asheville, 102 N.C. App. 156, 402 S.E.2d 140 (1991); Asheville Indus., Inc. v. City of Asheville, 112 N.C. App. 713, 436 S.E.2d 873 (1993); Biltmore Square Assocs. v. City of Asheville, 113 N.C. App. 459, 439 S.E.2d 211 (1994); Williams v. Town of Kernersville, 129 N.C. App. 734, 500 S.E.2d 770, 1998 N.C. App. LEXIS 757 (1998).

OPINIONS OF ATTORNEY GENERAL

As to the application of municipal privilege license taxes to newly annexed territory, see opinion of the Attorney General to Mr. Edwin C. Ipock, Goldsboro City Attorney, 40 N.C.A.G. 863 (1970).

§ 160A-49.1. Contract with rural fire department.

(a) If the area to be annexed described in a resolution of intent passed under G.S. 160A-49(a) includes an area in an insurance district defined under G.S.

153A-233, a rural fire protection district under Article 3A of Chapter 69 of the General Statutes, or a fire service district under Article 16 of Chapter 153A of the General Statutes, and a rural fire department was on the date of adoption of the resolution of intent providing fire protection in the area to be annexed, then the city (if the rural fire department makes a written request for a good faith offer, and the request is signed by the chief officer of the fire department and delivered to the city clerk no later than 15 days before the public hearing) is required to make a good faith effort to negotiate a five-year contract with the rural fire department to provide fire protection in the area to be annexed.

(b) If the area is a rural fire protection district or a fire service district, then an offer to pay annually for the term of the contract the amount of money that the tax rate in the district in effect on the date of adoption of the resolution of intent would generate based on property values on January 1 of each year in the area to be annexed which is in such a district is deemed to be a good faith offer of consideration for the contract.

(c) If the area is an insurance district but not a rural fire protection district or fire service district, then an offer to pay annually over the term of the contract the amount of money which is determined to be the equivalent of the amount which would be generated by multiplying the fraction of the city's general fund budget in that current fiscal year which is proposed to be expended for fire protection times the tax rate for the city in the current year, and multiplying that result by the property valuation in the area to be annexed which is served by the rural fire department is deemed to be a good faith offer of consideration for the contract; Provided that the payment shall not exceed the equivalent of fifteen cents (15¢) on one hundred dollars ($100.00) valuation of annexed property in the district according to county valuations for the current fiscal year.

(d) Any offer by a city to a rural fire department which would compensate the rural fire department for revenue loss directly attributable to the annexation by paying such amount annually for five years, is deemed to be a good faith offer of consideration for the contract.

(e) Under subsections (b), (c), or (d) of this section, if the good faith offer is for first responder service, an offer of one-half the calculated amount under those subsections is deemed to be a good faith offer.

(f) This section does not obligate the city or rural fire department to enter into any contract.

(g) The rural fire department may, if it feels that no good faith offer has been made, appeal to the Local Government Commission within 30 days following the passage of an annexation ordinance. The rural fire department may apply to the Local Government Commission for an order staying the operation of the annexation ordinance pending the outcome of the review. The Commission may grant or deny the stay in its discretion upon such terms as it deems proper, and it may permit annexation of any part of the area described in the ordinance concerning which no question for review has been raised, provided that no other appeal under G.S. 160A-50 is pending.

(h) The Local Government Commission may affirm the ordinance, or if the Local Government Commission finds that no good faith offer has been made, it shall remand the ordinance to the municipal governing board for further proceedings, and the ordinance shall then not become effective unless the Local Government Commission finds that a good faith offer has been made.

(i) Any party to the review under subsection (h) may obtain judicial review in accordance with Chapter 150B of the General Statutes. (1983, c. 636, s. 21; 1987, c. 827, s. 1.)

Cross References. — As to effective date of annexation ordinances adopted under Article 4A of Chapter 160A, see G.S. 160A-58.9A.

Editor's Note. — Session Laws 1983, c. 636, which amended this section, in s. 37.1, as amended by Session Laws 1983, c. 768, s. 25, provided: "The General Assembly intends by this act to repeal all acts and provisions of acts that modify the application to particular cities and towns of Parts 2 and 3 of Article 4A of Chapter 160A of the General Statutes or that exempt particular cities or towns from the application of either or both of those two Parts. Therefore, all such acts and provisions of acts, even if not specifically listed and repealed in Sections 26 through 35.4 of this act, are repealed. Neither this section nor Sections 26 through 35.4 of this act shall affect any annexation in progress on the dates of ratification of this act under any of the repealed or amended sections."

Section 38 of Session Laws 1983, c. 636 provided: "This act shall be effective with respect to all annexations where resolutions of intent are adopted on or after the date of ratification of this act, except that Sections 36 and 37 shall become effective with respect to all annexations where resolutions of intent are adopted on or after July 1, 1984, Sections 25.1 through 35.5 and Section 37.1 are effective upon ratification and Section 25 shall become effective as provided in that section. No annexation where a resolution of intent was adopted prior to the date of ratification of this act shall be affected by this act except as provided in Section 25."

The act was ratified June 29, 1983.

CASE NOTES

Section Required to Be Followed Only Where Annexation Achieved Under Chapter 160A, Art. 4A, Part 3. — Section 160A-47, dealing with the submission of plans by the municipality for the extension of municipal services (including police and fire protection, solid waste collection, and street maintenance), this section and G.S. 160A-49.3, dealing with contracting for fire protection and sewage services, are required to be followed by a municipality only where the annexation is to be achieved under Chapter 160A, Art. 4A, Part 3. Piedmont Ford Truck Sales, Inc. v. City of Greensboro, 90 N.C. App. 692, 370 S.E.2d 262 (1988), rev'd on other grounds, 324 N.C. 499, 380 S.E.2d 107 (1989).

Local act requiring city to extend municipal services, including services relating to health and sanitation, in a manner not authorized except when annexation is accomplished under general law was in contravention of N.C. Const., Art. II, § 24(a), and therefore void. Piedmont Ford Truck Sales, Inc. v. City of Greensboro, 90 N.C. App. 692, 370 S.E.2d 262 (1988), rev'd on other grounds, 324 N.C. 499, 380 S.E.2d 107 (1989).

Cited in Piedmont Ford Truck Sale, Inc. v. City of Greensboro, 324 N.C. 499, 380 S.E.2d 107 (1989); Chapel Hill Country Club, Inc. v. Town of Chapel Hill, 97 N.C. App. 171, 388 S.E.2d 168 (1990).

§ 160A-49.2. Assumption of debt.

(a) If the city has annexed any area which is served by a rural fire department and which is in an insurance district defined under G.S. 153A-233, a rural fire protection district under Article 3A of Chapter 69 of the General Statutes or a fire service district under Article 16 of Chapter 153A of the General Statutes, then upon the effective date of annexation if the city has not contracted with the rural fire department for fire protection, or when the rural fire department ceases to provide fire protection under contract, then the city shall pay annually a proportionate share of any payments due on any debt (including principal and interest) relating to facilities or equipment of the rural fire department, if the debt was existing at the time of adoption of the resolution of intent, with the payments in the same proportion that the assessed valuation of the area of the district annexed bears to the assessed valuation of the entire district on the date the annexation ordinance becomes effective or another date for valuation mutually agreed upon by the city and the fire department.

(b) The city and rural fire department shall jointly present a payment schedule to the Local Government Commission for approval and no payment may be made until such schedule is approved. (1983, c. 636, s. 23; 1998-150, s. 16.)

Editor's Note. — Session Laws 1983, c. 636, which amended this section, in s. 37.1, as amended by Session Laws 1983, c. 768, s. 25, provided: "The General Assembly intends by this act to repeal all acts and provisions of acts that modify the application to particular cities and towns of Parts 2 and 3 of Article 4A of Chapter 160A of the General Statutes or that exempt particular cities or towns from the application of either or both of those two Parts. Therefore, all such acts and provisions of acts, even if not specifically listed and repealed in Sections 26 through 35.4 of this act, are repealed. Neither this section nor Sections 26 through 35.4 of this act shall affect any annexation in progress on the dates of ratification of this act under any of the repealed or amended sections."

Section 38 of Session Laws 1983, c. 636 provided: "This act shall be effective with respect to all annexations where resolutions of intent are adopted on or after the date of ratification of this act, except that Sections 36 and 37 shall become effective with respect to all annexations where resolutions of intent are adopted on or after July 1, 1984, Sections 25.1 through 35.5 and Section 37.1 are effective upon ratification and Section 25 shall become effective as provided in that section. No annexation where a resolution of intent was adopted prior to the date of ratification of this act shall be affected by this act except as provided in Section 25."

The act was ratified June 29, 1983.

§ 160A-49.3. Contract with private solid waste collection firms.

(a) If the area to be annexed described in a resolution of intent passed under G.S. 160A-49(a) includes an area where a firm (i) meets the requirements of subsection (a1) of this section, (ii) on the ninetieth day preceding the date of adoption of the resolution of intent or resolution of consideration was providing solid waste collection services in the area to be annexed, (iii) on the date of adoption of the resolution of intent is still providing such services, and (iv) by reason of the annexation the firm's franchise with a county or arrangements with third parties for solid waste collection will be terminated, the city shall do one of the following:

(1) Contract with the firm for a period of two years after the effective date of the annexation ordinance to allow the firm to provide collection services to the city in the area to be annexed for sums determined under subsection (d) of this section.

(2) Pay the firm for the firm's economic loss, with one-third of the economic loss to be paid within 30 days of the termination and the balance paid in 12 equal monthly installments during the next succeeding 12 months. Any remaining economic loss payment is forfeited if the firm terminates service to customers in the annexation area prior to the effective date of the annexation.

(3) Make other arrangements satisfactory to the parties.

(a1) To qualify for the options set forth in subsection (a) of this section, a firm must have done one of the following:

(1) Subsequent to receiving notice of the annexation in accordance with subsection (b) of this section, filed with the city clerk at least 10 days prior to the public hearing a written request to contract with the city to provide solid waste collection services containing a certification, signed by an officer or owner of the firm, that the firm serves at least 50 customers within the county at that time.

(2) Contacted the city clerk pursuant to public notice published by the city, pursuant to G.S. 160A-49(b), at least 10 days before the hearing and provided to the city clerk a written request to contract with the city to provide solid waste collection services. The request must contain a certification signed by an officer or owner of the firm that the firm serves at least 50 customers within the county at that time.

(a2) Firms shall file notice of provision of solid waste collection service with the city clerk of all cities located in the firm's collection area or within five miles thereof.

(b) At least four weeks prior to the date of the informational meeting, the city shall provide written notice of the resolution of intent to all firms serving the area to be annexed. The notice shall be sent to all firms that filed notice in accordance with subsection (a2) of this section by certified mail, return receipt requested, to the address provided by the firm under subsection (a2) of this section.

(c) The city may require that the contract contain:

(1) A requirement that the firm post a performance bond and maintain public liability insurance coverage;

(2) A requirement that the firm agree to service customers in the annexed area that were not served by that firm on the effective date of annexation;

(3) A provision that divides the annexed area into service areas if there were more than one firm being contracted within the area, such that the entire area is served by the firms, or by the city as to customers not served by the firms;

(4) A provision that the city may serve customers not served by the firm on the effective date of annexation;

(5) A provision that the contract can be cancelled in writing, delivered by certified mail to the firm in question with 30 days to cure substantial violations of the contract, but no contract may be cancelled on these grounds unless the Local Government Commission finds that substantial violations have occurred, except that the city may suspend the contract for up to 30 days if it finds substantial violation of health laws;

(6) Performance standards, not exceeding city standards existing at the time of notice published pursuant to G.S. 160A-49(b) with provision that the contract may be cancelled for substantial violations of those standards, but no contract may be cancelled on those grounds unless the Local Government Commission finds that substantial violations have occurred;

(7) A provision for monetary damages if there are violations of the contract or of performance standards.

(d) If the services to be provided to the city by reason of the annexation are substantially the same as rendered under the franchise with the county or arrangements with the parties, the amount paid by the city shall be at least ninety percent (90%) of the amount paid or required under the existing franchise or arrangements. If such services are required to be adjusted to conform to city standards or as a result of changes in the number of customers and as a result there are changes in disposal costs (including mileage and landfill charges), requirements for storage capacity (dumpsters and/or residential carts), and/or frequency of collection, the amount paid by the city for the service shall be increased or decreased to reflect the value of such adjusted services as if computed under the existing franchise or arrangements. In the event agreement cannot be reached between the city and the firm under this subsection, the matters shall be determined by the Local Government Commission.

(e), (f) Repealed by Session Laws 2006-193, s. 1, applicable to annexations for which a resolution of intent is adopted on or after January 1, 2007.

(g) The firm may, if it contends that no contract has been offered, appeal to the Local Government Commission within 30 days following passage of an annexation ordinance. The firm may appeal to the Local Government Commission for an order staying the operation of the annexation ordinance pending the outcome of the review. The Commission may grant or deny the stay upon such terms as it deems proper. If the Local Government Commission finds that the city has not made an offer which complies with this section, it shall remand the ordinance to the municipal governing board for further proceedings, and the ordinance shall not become effective until the Local Government Commission finds that such an offer has been made. Either the firm or the city may obtain judicial review in accordance with Chapter 150B of the General Statutes.

(h) A firm which has given notice under subsection (a) of this section that it desires to contract, and any firm that the city believes is eligible to give such notice, shall make available to the city not later than 30 days following a written request of the city, sent by certified mail return receipt requested, all information in its possession or control, including but not limited to operational, financial and budgetary information, necessary for the city to determine if the firm qualifies for the benefits of this section and to determine the nature and scope of the potential contract and/or economic loss. The firm forfeits its rights under this section if it fails to make a good faith response within 30 days following receipt of the written request for information from the city, provided that the city's written request so states by specific reference to this section.

(i) As used in this section, the following terms mean:

(1) Economic loss. — A sum equal to 15 times the average gross monthly revenue for the three months prior to the passage of the resolution of intent or resolution of consideration, as applicable under subsection (a) of this section, collected or due the firm for residential, commercial, and industrial collection service in the area annexed or to be annexed; provided that revenues shall be included in calculations under this subdivision only if policies of the city will provide solid waste collection to those customers such that arrangements between the firm and the customers will be terminated.

(2) Firm. — A private solid waste collection firm. (1985, c. 610, s. 4; 1987, c. 827, s. 1; 1989, c. 598, s. 9; 1998-150, s. 17; 2006-193, s. 2; 2006-259, s. 53.)

Cross References. — As to effective date of annexation ordinances adopted under Article 4A of Chapter 160A, see G.S. 160A-58.9A.

Editor's Note. — Session Laws 2006-193, s. 2, which rewrote the section, was made applicable to annexations for which a resolution of intent was adopted on or after January 1, 2007.

CASE NOTES

Section Required to Be Followed Only Where Annexation Achieved Under Chapter 160A, Art. 4A, Part 3. — Section 160A-47, dealing with the submission of plans by the municipality for the extension of municipal services (including police and fire protection, solid waste collection, and street maintenance), and G.S. 160A-49.1 and this section, dealing with contracting for fire protection and sewage services, are required to be followed by a municipality only where the annexation is to be achieved under Chapter 160A, Art. 4A, Part 3. Piedmont Ford Truck Sales, Inc. v. City of Greensboro, 90 N.C. App. 692, 370 S.E.2d 262 (1988), rev'd on other grounds, 324 N.C. 499, 380 S.E.2d 107 (1989).

Local act requiring city to extend municipal services, including services relating to health and sanitation, in a manner not authorized except when annexation is accomplished under general law was in contravention of N.C. Const., Art. II, § 24(a), and therefore void. Piedmont Ford Truck Sales, Inc. v. City of Greensboro, 90 N.C. App. 692, 370 S.E.2d 262 (1988), rev'd on other grounds, 324 N.C. 499, 380 S.E.2d 107 (1989).

Cited in Piedmont Ford Truck Sale, Inc. v. City of Greensboro, 324 N.C. 499, 380 S.E.2d 107 (1989).

§ 160A-50. Appeal.

(a) Within 60 days following the passage of an annexation ordinance under authority of this Part, any person owning property in the annexed territory who shall believe that he will suffer material injury by reason of the failure of the municipal governing board to comply with the procedure set forth in this Part or to meet the requirements set forth in G.S. 160A-48 as they apply to his property may file a petition in the superior court of the county in which the municipality is located seeking review of the action of the governing board.

(b) Such petition shall explicitly state what exceptions are taken to the action of the governing board and what relief the petitioner seeks. Within 10 days after the petition is filed with the court, the person seeking review shall serve copies of the petition by registered mail, return receipt requested, upon the municipality.

(c) Within 15 days after receipt of the copy of the petition for review, or within such additional time as the court may allow, the municipality shall transmit to the reviewing court

(1) A transcript of the portions of the municipal journal or minute book in which the procedure for annexation has been set forth and

(2) A copy of the report setting forth the plans for extending services to the annexed area as required in G.S. 160A-47.

(d) If two or more petitions for review are submitted to the court, the court may consolidate all such petitions for review at a single hearing, and the municipality shall be required to submit only one set of minutes and one report as required in subsection (c).

(e) At any time before or during the review proceeding, any petitioner or petitioners may apply to the reviewing court for an order staying the operation of the annexation ordinance pending the outcome of the review. The court may grant or deny the stay in its discretion upon such terms as it deems proper, and it may permit annexation of any part of the area described in the ordinance concerning which no question for review has been raised.

(f) The court shall fix the date for review of annexation proceedings under this Part, which review date shall preferably be within 30 days following the last day for receiving petitions to the end that review shall be expeditious and without unnecessary delays. The review shall be conducted by the court without a jury. The court may hear oral arguments and receive written briefs, and may take evidence intended to show either

(1) That the statutory procedure was not followed, or

(2) That the provisions of G.S. 160A-47 were not met, or

(3) That the provisions of G.S. 160A-48 have not been met.

(g) The court may affirm the action of the governing board without change, or it may

(1) Remand the ordinance to the municipal governing board for further proceedings if procedural irregularities are found to have materially prejudiced the substantive rights of any of the petitioners.

(2) Remand the ordinance to the municipal governing board for amendment of the boundaries to conform to the provisions of G.S. 160A-48 if it finds that the provisions of G.S. 160A-48 have not been met; provided, that the court cannot remand the ordinance to the municipal governing board with directions to add area to the municipality which was not included in the notice of public hearing and not provided for in plans for service.

(3) Remand the report to the municipal governing board for amendment of the plans for providing services to the end that the provisions of G.S. 160A-47 are satisfied.

(4) Declare the ordinance null and void, if the court finds that the ordinance cannot be corrected by remand as provided in subdivisions (1), (2), or (3) of this subsection.

If any municipality shall fail to take action in accordance with the court's instructions upon remand within 90 days following entry of the order embodying the court's instructions, the annexation proceeding shall be deemed null and void.

(h) Any party to the review proceedings, including the municipality, may appeal to the Court of Appeals from the final judgment of the superior court under rules of procedure applicable in other civil cases. The superior court may, with the agreement of the municipality, permit annexation to be effective with respect to any part of the area concerning which no appeal is being made and which can be incorporated into the city without regard to any part of the area concerning which an appeal is being made.

(i) If part or all of the area annexed under the terms of an annexation ordinance is the subject of an appeal to the superior court, Court of Appeals or Supreme Court on the effective date of the ordinance, then the ordinance shall be deemed amended to make the effective date with respect to such area the last day of the next full calendar month following the date of the final judgment of the superior court or appellate division, whichever is appropriate, or the date the municipal governing board completes action to make the ordinance conform to the court's instructions in the event of remand. For the purposes of this subsection, a denial of a petition for rehearing or for discretionary review shall be treated as a final judgment.

(j) If a petition for review is filed under subsection (a) of this section or an appeal is filed under G.S. 160A-49.1(g) or G.S. 160A-49.3(g), and a stay is granted, then the time periods of two years, 24 months or 27 months provided in G.S. 160A-47(3)c, 160A-49(h), or 160A-49(j) are each extended by the lesser of the length of the stay or one year for that annexation.

(k) The provisions of subsection (i) of this section shall apply to any judicial review authorized in whole or in part by G.S. 160A-49.1(i) or G.S. 160A-49.3(g).

(*l*) In any proceeding related to an annexation ordinance appeal under this section, a city shall not state a claim for lost property tax revenue caused by the appeal. Nothing in this Article shall be construed to mean that as a result of an appeal a municipality may assert a claim for property tax revenue lost during the pendency of the appeal.

(m) Any settlement reached by all parties in an appeal under this section may be presented to the superior court in the county in which the municipality is located. If the superior court, in its discretion, approves the settlement, it shall be binding on all parties without the need for approval by the General Assembly. (1959, c. 1009, s. 6; 1973, c. 426, s. 74; 1981, c. 682, ss. 20, 21; 1983, c. 636, s. 14.1; 1989, c. 598, s. 10; 1995 (Reg. Sess., 1996), c. 746, s. 3; 1998-150, s. 18; 1999-148, s. 1; 2009-570, s. 27.)

Cross References. — As to effective date of annexation ordinances adopted under Article 4A of Chapter 160A, see G.S. 160A-58.9A.

Editor's Note. — Session Laws 1983, c. 636, which amended this section, in s. 37.1, as amended by Session Laws 1983, c. 768, s. 25, provided: "The General Assembly intends by this act to repeal all acts and provisions of acts that modify the application to particular cities and towns of Parts 2 and 3 of Article 4A of Chapter 160A of the General Statutes or that exempt particular cities or towns from the application of either or both of those two Parts. Therefore, all such acts and provisions of acts, even if not specifically listed and repealed in Sections 26 through 35.4 of this act, are repealed. Neither this section nor Sections 26 through 35.4 of this act shall affect any annexation in progress on the dates of ratification of this act under any of the repealed or amended sections."

Section 38 of Session Laws 1983, c. 636 provided: "This act shall be effective with respect to all annexations where resolutions of intent are adopted on or after the date of ratification of this act, except that Sections 36 and 37 shall become effective with respect to all annexations where resolutions of intent are adopted on or after July 1, 1984, Sections 25.1 through 35.5 and Section 37.1 are effective upon ratification and Section 25 shall become effective as provided in that section. No annexation where a resolution of intent was adopted prior to the date of ratification of this act shall be affected by this act except as provided in Section 25."

The act was ratified June 29, 1983.

The subsection designation (*l*) was assigned by the Revisor of Statutes, the subsection designation in Session Laws 1995 (Reg. Sess., 1996), c. 746, s. 3, having been (m).

Effect of Amendments. — Session Laws 2009-570, s. 27, effective August 28, 2009, substituted "judgment" for "judgement" in the last sentence of subsection (i).

Legal Periodicals. — For survey of 1981 administrative law, see 60 N.C.L. Rev. 1165 (1982).

For survey of 1982 law on administrative law, see 61 N.C.L. Rev. 961 (1983).

See Legislative Survey, 21 Campbell L. Rev. 323 (1999).

For note, "Consent Not Required: Municipal Annexation in North Carolina," see 83 N.C. L. Rev. 1634 (2005).

For casenote, "Carolina Power & Light v. City of Asheville Municipal Annexation in North Carolina: The Pros, the Cons and the Judiciary," see 27 N.C. Cent. L.J. 224 (2005).

CASE NOTES

I. In General.
II. Review by Superior Court.
III. Review by Court of Appeals.
IV. Effective Date.

I. IN GENERAL.

Limited Scope of Review. — Section 160A-38(f) and subsection (f) of this section limit the court's inquiry on review of an annexation ordinance to a determination of whether applicable annexation statutes have been substantially complied with. Huyck Corp. v. Town of Wake Forest, 86 N.C. App. 13, 356 S.E.2d 599, aff'd, 321 N.C. 589, 364 S.E.2d 139 (1988).

In determining the validity of an annexation ordinance, the court's review is limited to the following inquiries: (1) Did the municipality comply with the statutory procedures? (2) If not, will the petitioner suffer material injury thereby? (3) Does the area to be annexed meet the requirements of G.S. 160A-36 or G.S. 160A-48? Huyck Corp. v. Town of Wake Forest, 86 N.C. App. 13, 356 S.E.2d 599, aff'd, 321 N.C. 589, 364 S.E.2d 139 (1988).

Supreme Court Appeals Not Included. — There is no evidence to support a conclusion that the General Assembly intended the automatic stay of an annexation ordinance to include appeals to the United States Supreme Court. Biltmore Square Assocs. v. City of Asheville, 129 N.C. App. 101, 497 S.E.2d 121 (1998).

If a party desires to stay the effective date of an annexation while a petition for certiorari is pending before the United States Supreme Court, a stay can be requested from the Court pursuant to a motion under Rule 23 of the Rules of the Supreme Court of the United States. Biltmore Square Assocs. v. City of Asheville, 129 N.C. App. 101, 497 S.E.2d 121 (1998).

The annexation statutes are not taxation statutes, nor are they retrospective taxation statutes. Little Red School House, Ltd. v. City of Greensboro, 71 N.C. App. 332, 322 S.E.2d 195 (1984), cert. denied and appeal dismissed, 313 N.C. 514, 329 S.E.2d 392 (1985).

The central purpose behind the annexation procedure is to assure that, in return for the added financial burden of municipal taxation, the residents of the annexed area receive the benefits of all the major services available to municipal residents. In re City of Durham Annexation Ordinance No. 5791, 66 N.C. App. 472, 311 S.E.2d 898 (1984).

The minimum requirements of the annexation statute are that the city provide information which is necessary to allow the public and the courts to determine whether the municipality has committed itself to provide a nondiscriminatory level of service. In re City of Durham Annexation Ordinance No. 5791, 66 N.C. App. 472, 311 S.E.2d 898 (1984).

Subsection (g) Time Requirement. — A city annexation ordinance was valid where the city complied with the 3-month requirement of subsection (g) although it acted more than six months after the Court of Appeals' opinion was filed; the city could act only after the case was remanded two times; first to the superior court, and then to the city council because only then did the city have the power to revise the annexation ordinance. Bowers v. City of Thomasville, 143 N.C. App. 291, 547 S.E.2d 68, 2001 N.C. App. LEXIS 277 (2001), cert. denied, 353 N.C. 723, 550 S.E.2d 769 (2001).

As to the different appellate forums formerly prescribed for appeals under this section and § 160A-38(h), see In re Annexation Ordinance, 300 N.C. 337, 266 S.E.2d 661 (1980), decided prior to the 1981 amendment to this section.

Who May Challenge Annexation Ordinance. — The only persons given the authority by this chapter to challenge an annexation ordinance are those who own property in the annexed area. Davis v. City of Archdale, 81 N.C. App. 505, 344 S.E.2d 369 (1986).

Where the record of the annexation proceedings showed substantial compliance with the requirements of Chapter 160A, the burden was on petitioners to prove failure to meet those requirements or an irregularity in the proceedings which materially prejudiced their substantive rights. Thrash v. City of Asheville, 115 N.C. App. 310, 444 S.E.2d 482 (1994).

Plaintiff town had no standing to challenge annexations of contiguous properties by nearby village. Town of Seven Devils v. Village of Sugar Mt., 125 N.C. App. 692, 482 S.E.2d 39 (1997), cert. denied, 346 N.C. 185, 486 S.E.2d 219 (1997).

Denial of Motion to Intervene Was Proper. — Denial of a corporation's motion to intervene in a case seeking review of an annexation ordinance was proper, since the corporation failed to comply with G.S. 160A-50 procedures by moving to intervene six months after the ordinance was adopted; intervention was also improper under G.S. 1A-1-24, due to the facts that the motion was filed after judgment approving a settlement was entered and that the proposed intervention would have prejudiced the original parties by destroying their settlement. Gates Four Homeowners Ass'n v. City of Fayetteville, 170 N.C. App. 688, 613 S.E.2d 55, 2005 N.C. App. LEXIS 1088 (2005).

No Jurisdiction Over Plans Concerning Transportation. — Since plans and procedures concerning transportation are not required by law, a reviewing court has no jurisdiction to hear evidence on this issue. Parkwood Ass'n v. City of Durham, 124 N.C. App. 603, 478 S.E.2d 204 (1996).

Order compelling discovery was generally not immediately appealable; while G.S. 160A-50 contemplated an expedited hearing procedure, where the challengers in an annexation case did not appear concerned with an expedited hearing, and the most significant portion of the delay in the matter was due to the challengers' refusal to answer discovery, and in getting the matter before the appellate court, the challengers failed to show that a substantial right was affected, and an order compelling discovery was not immediately appealable. Arnold v. City of Asheville, 169 N.C. App. 451, 610 S.E.2d 280, 2005 N.C. App. LEXIS 616 (2005).

Applied in Taylor v. City of Raleigh, 290 N.C. 608, 227 S.E.2d 576 (1976); In re City of Durham Annexation Ordinance Numbered 5991 for Area A, 69 N.C. App. 77, 316 S.E.2d 649 (1984); In re Dunn, 73 N.C. App. 243, 326 S.E.2d 309 (1985); Chapel Hill Country Club, Inc. v. Town of Chapel Hill, 97 N.C. App. 171, 388 S.E.2d 168 (1990); Briggs v. City of Asheville, 159 N.C. App. 558, 583 S.E.2d 733, 2003 N.C. App. LEXIS 1534 (2003); Brown v. City of Winston-Salem, 176 N.C. App. 497, 626 S.E.2d 747, 2006 N.C. App. LEXIS 531 (2006).

Cited in Barnhardt v. City of Kannapolis, 116 N.C. App. 215, 447 S.E.2d 471; Kritzer v. Town of Southern Pines, 33 N.C. App. 152, 234 S.E.2d 648 (1977); Food Town Stores, Inc. v. City of Salisbury, 303 N.C. 539, 279 S.E.2d 557 (1981); Piedmont Ford Truck Sales, Inc. v. City of Greensboro, 90 N.C. App. 692, 370 S.E.2d 262 (1988); Joyner v. Town of Weaverville, 94 N.C. App. 588, 380 S.E.2d 536 (1989); Ingles Markets, Inc. v. Town of Black Mt., 98 N.C. App. 372, 390 S.E.2d 688 (1990); Thrash v. City of Asheville, 327 N.C. 251, 393 S.E.2d 842 (1990); Thrash v. City of Asheville, 115 N.C. App. 310, 444 S.E.2d 482 (1994); Williams v. Town of Kernersville, 129 N.C. App. 734, 500 S.E.2d 770, 1998 N.C. App. LEXIS 757 (1998); Anthony v. City of Shelby, 152 N.C. App. 144, 567 S.E.2d 222, 2002 N.C. App. LEXIS 904 (2002); Nolan v. Town of Weddington, 182 N.C. App. 486, 642 S.E.2d 261, 2007 N.C. App. LEXIS 690 (2007); In re Summons Issued to Ernst & Young, LLP, 191 N.C. App. 668, 663 S.E.2d 921, 2008 N.C. App. LEXIS 1472 (2008).

II. REVIEW BY SUPERIOR COURT.

Annexation statutes are not unconstitutional in providing that review by the superior court is without a jury. In re Annexation Ordinance No. D-21927, 303 N.C. 220, 278 S.E.2d 224 (1981).

Provisions for Nonjury Trial in Subsection (f) Not Superseded by Rules of Civil Procedure. — The provisions of subsection (f) authorizing review of annexation proceedings by the court without a jury have not been superseded by the N.C. Rules of Civil Procedure. In re Annexation Ordinance, 284 N.C. 442, 202 S.E.2d 143 (1974).

This section specifies the inquiries to which the courts are limited. In re Annexation Ordinance, 284 N.C. 442, 202 S.E.2d 143 (1974).

Constitutional Challenges Restricted. — Attacks on state annexation procedures on either due process or equal protection grounds are specifically foreclosed. Baldwin v. City of Winston-Salem, 544 F. Supp. 123 (M.D.N.C. 1982), aff'd, 710 F.2d 132 (4th Cir. 1983).

Challenges to annexations generally are not actionable under U.S. Const., Amend. XIV. Raintree Homeowners Ass'n v. City of Charlotte, 543 F. Supp. 625 (W.D.N.C. 1982), aff'd sub nom. Baldwin v. City of Winston-Salem, 710 F.2d 132 (4th Cir.)

Limited Scope of Review. — The judicial review afforded in annexation proceedings is limited in scope and serves as a safeguard against unreasonable and arbitrary action by the annexing municipality. Moody v. Town of Carrboro, 301 N.C. 318, 271 S.E.2d 265 (1980), rehearing denied, 301 N.C. 728, 274 S.E.2d 230 (1981).

Judicial review of an annexation ordinance is limited to determination of whether the annexation proceedings substantially comply with the requirements of the applicable annexation statute. Food Town Stores, Inc. v. City of Salisbury, 300 N.C. 21, 265 S.E.2d 123 (1980).

The clear intent of the legislature under this section was to provide an expedited judicial review, limited in scope, and avoiding unnecessary procedural delays. In re City of Durham Annexation Ordinance No. 5791, 66 N.C. App. 472, 311 S.E.2d 898 (1984).

Section 160A-38(f) and subsection (f) of this section limit the court's inquiry on review of an annexation ordinance to a determination of whether applicable annexation statutes have been substantially complied with. Huyck Corp. v. Town of Wake Forest, 86 N.C. App. 13, 356 S.E.2d 599, aff'd, 321 N.C. 589, 364 S.E.2d 139 (1988).

In determining the validity of an annexation ordinance, the court's review is limited to the following inquiries: (1) Did the municipality comply with the statutory procedures? (2) If not, will the petitioner suffer material injury thereby? (3) Does the area to be annexed meet the requirements of G.S. 160A-36 or G.S. 160A-48? Huyck Corp. v. Town of Wake Forest, 86 N.C. App. 13, 356 S.E.2d 599, aff'd, 321 N.C. 589, 364 S.E.2d 139 (1988).

A court's review of an annexation ordinance is limited to the following inquiries: (1) Did the municipality comply with the statutory procedures? (2) If not, will the petitioners "suffer material injury" by reason of the municipality's failure to comply? (3) Does the character of the area specified for annexation meet the requirement of G.S. 160A-48 as applied to petitioners' property? In re Annexation Ordinance No. 1219, 62 N.C. App. 588, 303 S.E.2d 380, cert. denied and appeal dismissed, 309 N.C. 820, 310 S.E.2d 351 (1983).

There is no test of "reasonableness" which must be considered upon judicial review of an annexation proceeding. In re Annexation Ordinance No. D-21927, 303 N.C. 220, 278 S.E.2d 224 (1981).

On review of an annexation, a superior court may only hear claims based upon the grounds set out in subsection (f) of this section. There is no separate test of "reasonableness" within the limited scope of judicial review permitted in annexation cases. Raintree Homeowners Ass'n v. City of Charlotte, 543 F. Supp. 625 (W.D.N.C. 1982), aff'd sub nom. Baldwin v. City of Winston-Salem, 710 F.2d 132 (4th Cir. 1983).

But Reasonableness Is Considered under Subsection (f). — A separate test of the reasonableness of an annexation is not included within the limited scope of judicial review; however, subsection (f) of this section and the provisions incorporated therein amount to a requirement that the courts determine whether an annexation is reasonable. Forsyth Citizens Opposing Annexation v. City of Winston-Salem, 67 N.C. App. 164, 312 S.E.2d 517, cert. denied and appeal dismissed, 310 N.C. 743, 315 S.E.2d 701, appeal dismissed, 469 U.S. 802, 105 S. Ct. 57, 83 L. Ed. 2d 8 (1984).

Subsection (f) of this section and the provisions incorporated therein amount to a requirement that the superior court determine whether an annexation is reasonable. The language of the provisions does not speak in terms of arbitrariness, capriciousness or unreasonableness, but, the effect of the statute is to give substantial protection against arbitrary, capricious and unreasonable acts by the city. Raintree Homeowners Ass'n v. City of Charlotte, 543 F. Supp. 625 (W.D.N.C. 1982), aff'd sub nom. Baldwin v. City of Winston-Salem, 710 F.2d 132 (4th Cir.)

Statutory procedure referred to in subdivision (f)(1) is set out in § 160A-49. Raintree Homeowners Ass'n v. City of Charlotte, 543 F. Supp. 625 (W.D.N.C. 1982), aff'd sub nom. Baldwin v. City of Winston-Salem, 710 F.2d 132 (4th Cir.)

Section 160A-45 Policy Not Part of "Procedure". — The statement of state policy with regard to annexation set forth in G.S. 160A-45 is not part of the "procedure" of annexation under subsection (a) and subdivision (f)(1) of this section. In re Annexation Ordinance No. D-21927, 303 N.C. 220, 278 S.E.2d 224 (1981).

Issue on Review Is Substantial Compliance. — The basic question presented by a petition for review under this section is whether the procedure followed in adopting the ordinance was in substantial compliance with the applicable statutes. In re City of Durham Annexation Ordinance No. 5791, 66 N.C. App. 472, 311 S.E.2d 898 (1984); Forsyth Citizens Opposing Annexation v. City of Winston-Salem, 67 N.C. App. 164, 312 S.E.2d 517, cert. denied and appeal dismissed, 310 N.C. 743, 315 S.E.2d 701, appeal dismissed, 469 U.S. 802, 105 S. Ct. 57, 83 L. Ed. 2d 8 (1984).

And Record Must Show Prima Facie Compliance. — Upon review in the superior court of a municipal annexation ordinance enacted pursuant to this Article, the record of the proceedings, including the report and annexation ordinance, must show prima facie complete and substantial compliance with this Article as a condition precedent to the right of the municipality to annex the territory. In re Annexation Ordinance, 255 N.C. 633, 122 S.E.2d 690 (1961).

When a power company challenged the annexation of certain of its land, pursuant to G.S. 160A-50, the city properly annexed land which was not developed for urban purposes, under G.S. 160A-48(d)(2), along with its annexation of land which was developed for urban purposes, even though the undeveloped land was not contiguous with the city's pre-annexation boundaries, because at least 60 percent of the land's external boundaries were contiguous with the developed land which was being annexed. Carolina Power & Light Co. v. City of Asheville, 161 N.C. App. 1, 587 S.E.2d 490, 2003 N.C. App. LEXIS 1995 (2003).

Burden on Petitioners to Prove Noncompliance or Irregularity. — The burden is upon plaintiffs who appeal from annexation ordinance to show by competent evidence that city in fact failed to meet the statutory requirements or that there was irregularity in the proceedings which materially prejudiced their substantive rights. In re City of New Bern, 278 N.C. 641, 180 S.E.2d 851 (1971).

The party challenging the annexation has the burden of showing error. In re Ordinance of Annexation No. 1977-4, 296 N.C. 1, 249 S.E.2d 698 (1978).

Where appeal is taken from an annexation ordinance and a petition has been filed requesting review of the annexation proceedings, and the proceedings show prima facie that there has been substantial compliance with the requirements and provisions of this Article, the burden is upon the petitioners to show, by competent evidence, failure on the part of the municipality to comply with the statutory requirements as a matter of fact or irregularity in the proceedings which materially prejudice their substantive rights. In re Annexation Ordinance, 255 N.C. 633, 122 S.E.2d 690 (1961); Food Town Stores, Inc. v. City of Salisbury, 300 N.C. 21, 265 S.E.2d 123 (1980).

Where the record of the annexation proceedings demonstrates prima facie substantial compliance with the applicable statutes, the burden is on the petitioner to show by competent evidence that the city has failed to meet the statutory requirements or that there was some irregularity in the proceedings that resulted in material prejudice to petitioners' rights. In re City of Durham Annexation Ordinance No. 5791, 66 N.C. App. 472, 311 S.E.2d 898 (1984); Huyck Corp. v. Town of Wake Forest, 86 N.C. App. 13, 356 S.E.2d 599, aff'd, 321 N.C. 589, 364 S.E.2d 139 (1988).

Under subsection (f) of this section, a party challenging an annexation action of a governing body must show (1) that the statutory procedure was not followed, or (2) that the provisions of G.S. 160A-47 were not met, or (3) that the provisions of G.S. 160A-48 were not met. The party challenging the ordinance has the burden of showing error. Knight v. City of Wilmington, 73 N.C. App. 254, 326 S.E.2d 376 (1985).

Slight irregularities will not invalidate annexation proceedings if there has been substantial compliance with all essential provisions of the law. In re City of New Bern, 278 N.C. 641, 180 S.E.2d 851 (1971).

Absolute and literal compliance with a statute describing the conditions of annexation is unnecessary; substantial compliance only is required, because absolute and literal compliance with the statute would result in defeating the purpose of the statute in situations where no one has been or could be misled. In re City of New Bern, 278 N.C. 641, 180 S.E.2d 851 (1971); McKenzie v. City of High Point, 61 N.C. App. 393, 301 S.E.2d 129, cert. denied, 308 N.C. 544, 302 S.E.2d 885 (1983).

Adverse Effect upon Financial Interests Not Grounds for Attacking Annexation Proceedings. — A property owner can attack annexation proceedings only upon the grounds specified in the statutes; he cannot successfully resist annexation because a city ordinance will adversely affect his financial interest. In re City of New Bern, 278 N.C. 641, 180 S.E.2d 851 (1971); Cockrell v. City of Raleigh, 306 N.C. 479, 293 S.E.2d 770 (1982).

Time Limit for Seeking Review Not Extended by Settlement Agreement. — As petitioners failed to seek judicial review of an annexation ordinance within 60 days as required by G.S. 160A-50(a), their action was time-barred. A prior settlement between the city and another party that did timely file for review did not require a remand to city council or allow petitioners a new 60-day period to seek review. Home Builders Ass'n of Fayetteville N.C., Inc. v. City of Fayetteville, 170 N.C. App. 625, 613 S.E.2d 521, 2005 N.C. App. LEXIS 1072 (2005).

Remand for Amendment of Record. — If the record of annexation proceedings on its face fails to show substantial compliance with any essential provision of the statute, the superior court upon review must remand to the governing board for amendment with respect to such noncompliance. The court itself is without authority to amend the report, ordinance or other part of the record, even if evidence is presented which justifies amendment. Huntley v. Potter, 255 N.C. 619, 122 S.E.2d 681 (1961); Food Town Stores, Inc. v. City of Salisbury, 300 N.C. 21, 265 S.E.2d 123 (1980).

Remand on City's Motion. — While this section does not explicitly empower a superior court judge to remand an annexation ordinance upon a city's motion to exclude a landowner who originally was covered by it, such remand occasioned no material injury to the petitioners, where the end result was that petitioners were not made part of the city by the ordinance at issue. Southern Glove Mfg. Co. v. City of Newton, 63 N.C. App. 754, 306 S.E.2d 466 (1983).

Remand Appropriate Remedy. — Trial court did not err in refusing to declare an involuntary annexation ordinance null and void where, assuming arguendo that any alleged procedural irregularities had prejudiced a landowner, the remedy under the G.S. 160A-50(g)(1) was a remand to the municipal governing board for further proceedings. United States Cold Storage v. City of Lumberton, 156 N.C. App. 327, 576 S.E.2d 415, 2003 N.C. App. LEXIS 124 (2003).

Applicability of Rules of Civil Procedure. — Since judicial review of an annexation ordinance is manifestly a "proceeding of a civil nature," the Rules of Civil Procedure clearly apply to it, unless a different procedure is provided by statute, but only to the extent necessary to process the proceeding according to its nature. A different procedure for this proceeding from that provided in the Rules of Civil Procedure is provided to some extent by this section. Campbell v. City of Greensboro, 70 N.C. App. 252, 319 S.E.2d 323, cert. denied and appeal dismissed, 312 N.C. 492, 322 S.E.2d 553 (1984).

Intervention in Petition for Review. — Petitioners' motion under G.S. 1A-1-24(a) to intervene in another party's petition for review of an annexation ordinance was properly denied, because G.S. 1A-1-24(a) does not apply to appeals of annexation ordinances under G.S. 160A-50(a). Home Builders Ass'n of Fayetteville N.C., Inc. v. City of Fayetteville, 170 N.C. App. 625, 613 S.E.2d 521, 2005 N.C. App. LEXIS 1072 (2005).

Appellants' motion to intervene in another party's petition for review of an annexation ordinance was properly denied because, even assuming G.S. 1A-1-24(a) applied to appeals of annexation ordinances under G.S. 160A-50(a), judgment had already entered, intervention would have prejudiced the city and the other party, and appellants did not offer a legitimate reason for the delay. Home Builders Ass'n of Fayetteville N.C., Inc. v. City of Fayetteville, 170 N.C. App. 625, 613 S.E.2d 521, 2005 N.C. App. LEXIS 1072 (2005).

Discovery. — Judicial review of an annexation ordinance is a limited judicial review, with few similarities to ordinary civil actions which are initiated, tried and adjudicated in a different manner and for which the Rules of Civil Procedure were mostly devised. Nevertheless, since the court reviewing annexation proceedings is explicitly authorized to receive evidence as to the city's compliance with the various procedures prescribed, as to its annexation plan meeting the requisites of G.S. 160A-47, and as to the area involved being eligible for annexation under G.S. 160A-48, in those instances where discovery may illuminate these issues that it is authorized under the Rules of Civil Procedure. Campbell v. City of Greensboro, 70 N.C. App. 252, 319 S.E.2d 323, cert. denied and appeal dismissed, 312 N.C. 492, 322 S.E.2d 553 (1984).

Power to Require Production of Evidence. — Absent an explicit statutory restriction to the contrary, a judge having the duty to receive evidence on and decide certain issues has the power, within his discretion, to require that evidence on those issues be produced. In the exercise of that power other factors require consideration, however, including the information already available through the documents required by subsection (c) of this section and the mandate contained in this section that these reviews be accomplished expeditiously and without unnecessary delays. Campbell v. City of Greensboro, 70 N.C. App. 252, 319 S.E.2d 323, cert. denied and appeal dismissed, 312 N.C. 492, 322 S.E.2d 553 (1984).

Settlement of Annexation Disputes. — Settlements of annexation disputes under G.S. 160A-50(m) are not "actions having the effect of an ordinance" under G.S. 160A-75, but are a method of dispute resolution in the annexation process; therefore, there is no need to send the matter back to city council after a settlement is reached. Home Builders Ass'n of Fayetteville N.C., Inc. v. City of Fayetteville, 170 N.C. App. 625, 613 S.E.2d 521, 2005 N.C. App. LEXIS 1072 (2005).

III. REVIEW BY COURT OF APPEALS.

On appeal, the findings of fact made below are binding on the Supreme Court (now the Court of Appeals) if supported by the evidence, even when there may be evidence to the contrary. Humphries v. City of Jacksonville, 300 N.C. 186, 265 S.E.2d 189 (1980).

But Conclusions of Law Are Reviewable De Novo. — Conclusions of law drawn by the trial judge from the findings of fact are reviewable de novo on appeal. Humphries v. City of Jacksonville, 300 N.C. 186, 265 S.E.2d 189 (1980).

Right to Appeal. — When a city proposed the involuntary annexation of certain real property, the owners of that property were entitled to seek review of the annexation ordinance passed by the city in the superior court and in the Court of Appeals. Ridgefield Props., L.L.C. v. City of Asheville, 159 N.C. App. 376, 583 S.E.2d 400, 2003 N.C. App. LEXIS 1523 (2003), aff'd, 358 N.C. 216, 593 S.E.2d 584 (2004).

Trial court properly granted the city's motion to dismiss the military servicemembers' challenge to the annexation of approximately 28 square miles of land and over 40,000 residents as time-barred because the federal Servicemembers Civil Relief Act, specifically 50 U.S.C.S. app. § 525, did not contain a plain statement showing an unmistakably clear intent to intrude upon North Carolina's state sovereignty in the area of annexations, where: (1) the word "annexation" appeared nowhere in the statute; (2) the Act's fundamental purpose was to address personal financial claims, not large-scale government action; and (3) the servicemembers failed to cite a single case which applied the Act to non-personal claims challenging large-scale government action. Kegley v. City of Fayetteville, 170 N.C. App. 656, 613 S.E.2d 696, 2005 N.C. App. LEXIS 1073 (2005), review denied, — N.C. —, 619 S.E.2d 508 (2005), cert. denied, — U.S. —, 126 S. Ct. 1147, 163 L. Ed. 2d 1001 (2006).

Remand Required. — Because a trial court failed to make the appropriate finding that a city's annexation ordinance was not subject to correction upon remand before declaring it null and void, an appellate court remanded the case to the trial court for it to make the appropriate findings to support one of the statutory grounds under G.S. 160A-50(g). Fix v. City of Eden, 175 N.C. App. 1, 622 S.E.2d 647, 2005 N.C. App. LEXIS 2739 (2005).

Improper Purpose and Public Policy Arguments. — When the owners of property which a village proposed to involuntarily annex contested the village's annexation ordinance, pursuant to G.S. 160A-50(f), and appealed a trial court's judgment in favor of the village, the court of appeals could not consider the owners' arguments that the village's annexation plan revealed an improper purpose for the annexation or that the annexation was contrary to public policy because these were not issues the court of appeals could consider, under the statutory limits of the court of appeals' review. Pinewild Project Ltd. P'ship v. Vill. of Pinehurst, — N.C. App. —, 679 S.E.2d 424, 2009 N.C. App. LEXIS 1180 (July 21, 2009).

IV. EFFECTIVE DATE.

Effect of Appeal. — Where petitioner appealed an annexation ordinance to the superior court within the time limits of subsection (a) of this section, but not before the ordinance's effective date of December 31, 1979, and the superior court on February 18, 1980, remanded the annexation plan report to the town board for a more specific statement of the services to be provided and the sources of revenues to finance such services, and where the infirmities in the report were cured by a revised plan adopted on February 26, 1980, this date became the effective date of the annexation ordinance, subject to further appeal to the superior court. Where such appeal was taken and the superior court entered an order on March 4, 1980, approving the revised annexation plan report and affirming the annexation, the effective date of the annexation became March 4, 1980, subject to further appeal to the North Carolina Supreme Court (now to the Court of Appeals). When petitioner appealed from that judgment to the Supreme Court, the effective date of the ordinance was again postponed by the language of subsection (i) of this section, until the date the final judgment of the Supreme Court was certified to the clerk of the superior court. Moody v. Town of Carrboro, 301 N.C. 318, 271 S.E.2d 265 (1980), rehearing denied, 301 N.C. 728, 274 S.E.2d 230 (1981).

The effective date of annexation ordinance was July 11, 1983, the date the judgment of the Court of Appeals holding the ordinance to be valid was certified, and not December 6, 1983, the date of the Supreme Court's order dismissing plaintiffs' appeal and denying discretionary review of the judgment of the Court of Appeals, as the final judgment in the annexation case was the judgment of the Court of Appeals. Hunter v. City of Asheville, 80 N.C. App. 325, 341 S.E.2d 743 (1986).

Act which decreased the corporate boundaries of town was constitutional and plaintiffs were time-barred from asserting any further challenges. Bethania Town Lot Comm. v. City of Winston-Salem, 126 N.C. App. 783, 486 S.E.2d 729 (1997).

§ 160A-51. Annexation recorded.

Whenever the limits of a municipality are enlarged in accordance with the provisions of this Part, it shall be the duty of the mayor of the municipality to cause an accurate map of such annexed territory, together with a copy of the ordinance duly certified, to be recorded in the office of the register of deeds of the county or counties in which such territory is situated and in the office of the Secretary of State. The documents required to be filed with the Secretary of State under this section shall be filed not later than 30 days following the effective date of the annexation ordinance. All documents shall have an identifying number affixed thereto and shall conform in size in accordance with rules prescribed by the Secretary. Failure to file within 30 days shall not affect the validity of the annexation. Any annexation shall be reported as part of the Boundary and Annexation Survey of the United States Bureau of the Census. (1959, c. 1009, s. 7; 1973, c. 426, s. 74; 1987, c. 715, s. 8; c. 879, s. 3; 1989, c. 440, s. 9; 1991, c. 586, s. 3.)

Cross References. — As to effective date of certain annexation ordinances adopted from January 1, 1987, to August 3, 1987, see G.S. 160A-58.9.

CASE NOTES

Recordation of Map and Ordinance Not Condition Precedent to Annexation. — The requirement in this section that a map of the annexed territory, together with a certified copy of the ordinance, be recorded in the office of the register of deeds and in the office of the Secretary of State is not a condition precedent to the effective annexation of the territory, but is the imposition of a duty to be performed after the annexation is complete. Dale v. City of Morganton, 270 N.C. 567, 155 S.E.2d 136 (1967).

§ 160A-52. Authorized expenditures.

Municipalities initiating annexations under the provisions of this Part are authorized to make expenditures for surveys required to describe the property under consideration or for any other purpose necessary to plan for the study and/or annexation of unincorporated territory adjacent to the municipality. In addition, following final passage of the annexation ordinance, the annexing municipality shall have authority to proceed with expenditures for construction of water and sewer lines and other capital facilities and for any other purpose calculated to bring services into the annexed area in a more effective and expeditious manner prior to the effective date of annexation. (1959, c. 1009, s. 8; 1973, c. 426, s. 74.)

§ 160A-53. Definitions.

The following terms where used in this Part shall have the following meanings, except where the context clearly indicates a different meaning:

(1) "Contiguous area" shall mean any area which, at the time annexation procedures are initiated, either abuts directly on the municipal boundary or is separated from the municipal boundary by a street or street right-of-way, a creek or river, the right-of-way of a railroad or other public service corporation, lands owned by the city or some other political subdivision, or lands owned by the State of North Carolina.

(2) "Used for residential purposes" shall mean any lot or tract five acres or less in size on which is constructed a habitable dwelling unit. (1959, c. 1009, s. 9; 1973, c. 426, s. 74.)

CASE NOTES

"Used for Residential Purposes." — Under G.S. 160A-53(2), "used for residential purposes" means any lot or tract five acres or less in size on which is constructed a habitable dwelling unit, for purposes of an annexation ordinance. Arnold v. City of Asheville, 186 N.C. App. 542, 652 S.E.2d 40, 2007 N.C. App. LEXIS 2250 (2007).

Mobile Homes as "Constructed" for "Residential Purposes" Requirement. — Petitioners/property owners failed to overcome the presumption that the City substantially complied with G.S. 160A-48(c)(3) when it moved to annex disputed areas; mobile homes used to meet the "urban purposes" percentage requirement were "constructed" on the lots pursuant to "residential purposes" as defined by subdivision (2) of this section, and the deletion of a condemned home, originally included as a "habitable" residence, did not affect the calculations or the city's compliance. Bali Co. v. City of Kings Mt., 134 N.C. App. 277, 517 S.E.2d 208 (1999).

Tract Classified as Residential Despite Growing of Grass Thereon for Cattle Feed. — A city could classify a 1.83 acre tract with a rented house located on it as one lot used for residential purposes, despite the fact that on two separate parts of the lot fescue and sudex grass was grown and a person living in the neighborhood had been allowed to mow this grass, bale it and feed it to his cows. Southern Glove Mfg. Co. v. City of Newton, 75 N.C. App. 574, 331 S.E.2d 180, cert. denied, 314 N.C. 669, 336 S.E.2d 401 (1985).

Cited in Hawks v. Town of Valdese, 299 N.C.

1, 261 S.E.2d 90 (1980); Livingston v. City of Charlotte, 68 N.C. App. 265, 314 S.E.2d 303 (1984).

§ 160A-54. Population and land estimates.

In determining population and degree of land subdivision for purposes of meeting the requirements of G.S. 160A-48, the municipality shall use methods calculated to provide reasonably accurate results. In determining whether the standards set forth in G.S. 160A-48 have been met on appeal to the superior court under G.S. 160A-50, the reviewing court shall accept the estimates of the municipality unless the actual population, total area, or degree of land subdivision falls below the standards in G.S. 160A-48:

(1) As to population, if the estimate is based on the number of dwelling units in the area multiplied by the average family size in such area, or in the township or townships of which such area is a part, as determined by the last preceding federal decennial census; or if it is based on a new enumeration carried out under reasonable rules and regulations by the annexing municipality; provided, that the court shall not accept such estimates if the petitioners demonstrate that such estimates are in error in the amount of ten percent (10%) or more.

(2) As to total area if the estimate is based on an actual survey, or on county tax maps or records, or on aerial photographs, or on some other reasonably reliable map used for official purposes by a governmental agency, unless the petitioners on appeal demonstrate that such estimates are in error in the amount of five percent (5%) or more.

(3) As to degree of land subdivision, if the estimates are based on an actual survey, or on county tax maps or records, or on aerial photographs, or on some other reasonably reliable source, unless the petitioners on appeal show that such estimates are in error in the amount of five percent (5%) or more. (1959, c. 1009, s. 10; 1973, c. 426, s. 74; 1998-150, s. 19.)

CASE NOTES

The annexation statutes are not taxation statutes, nor are they retrospective taxation statutes. Little Red School House, Ltd. v. City of Greensboro, 71 N.C. App. 332, 322 S.E.2d 195 (1984), cert. denied and appeal dismissed, 313 N.C. 514, 329 S.E.2d 392 (1985).

Tests as to Urban Development to Be Applied to Whole Annexation Area. — The tests to determine whether an area is developed for urban purposes must be applied to the annexation area as a whole. In re Ordinance of Annexation No. 1977-4, 296 N.C. 1, 249 S.E.2d 698 (1978).

Micro Approach Calculations Meet Urbanization Test. — Town met the urbanization test for annexation, where the town used a "micro approach" whereby it determined the number of dwelling units in each census block within the area to be annexed, then determined the average family size therein, then multiplied the number of dwelling units in each census block by the average family size to calculate the estimated population of each block, and finally added the block numbers together to produce the population estimate. Williams v. Town of Kernersville, 129 N.C. App. 734, 500 S.E.2d 770, 1998 N.C. App. LEXIS 757 (1998), cert. denied, 349 N.C. 241, 516 S.E.2d 611 (1998).

Evidence Not Admissible to Challenge City's Methodology. — Where petitioners challenged a city annexation ordinances, the trial court properly ruled that their spreadsheets could not be offered to show that the city's methodology was not calculated to provide reasonably accurate results, as required by G.S. 160A-54, because they presented no expert testimony about the spreadsheets, and testimony of the city's principal planner was insufficient to establish a foundation for their admissibility. Brown v. City of Winston-Salem, 176 N.C. App. 497, 626 S.E.2d 747, 2006 N.C. App. LEXIS 531 (2006).

Census figures are more reliable than any formula that alters the figures by arbitrarily assuming vacancy rates and adjusting for dwelling unit size. In re City of

Durham Annexation Ordinance No. 5791, 66 N.C. App. 472, 311 S.E.2d 898 (1984).

This section contains no requirement regarding the use of final census data and there is no judicially imposed requirement. In re City of Durham Annexation Ordinance No. 5791, 66 N.C. App. 472, 311 S.E.2d 898 (1984).

Although this statute specifies the use of federal census data, it does not require the use of final rather than preliminary census data. In re City of Durham Annexation Ordinance No. 5791, 66 N.C. App. 472, 311 S.E.2d 898 (1984).

Applicability of Error Margins to Calculations Under § 160A-48(c). — The five percent error margins allowed in subdivisions (2) and (3) of this section apply exclusively to calculations made by the municipality for purposes of establishing compliance with the population and subdivision tests contained within the alternative standards prescribed by G.S. 160A-48(c). Food Town Stores, Inc. v. City of Salisbury, 300 N.C. 21, 265 S.E.2d 123 (1980).

The language of this section is free from ambiguity and represents a legislative determination that margins of error should be allowed with respect to the calculations made by a municipality to establish compliance with the population and subdivision tests of G.S. 160A-48(c), but not with respect to the calculations made to establish compliance with the use test of G.S. 160A-48(c). Food Town Stores, Inc. v. City of Salisbury, 300 N.C. 21, 265 S.E.2d 123 (1980).

Method of Calculating Number of Lots. — A municipality is not tied to any particular method of calculating the number of lots so long as the method utilized is calculated to provide reasonably accurate results. Food Town Stores, Inc. v. City of Salisbury, 300 N.C. 21, 265 S.E.2d 123 (1980).

The fact that different methods of lot calculation have been used by the city in past annexations is of no import where the record establishes that the method utilized in the annexation under scrutiny complies with the requirements of this section. Food Town Stores, Inc. v. City of Salisbury, 300 N.C. 21, 265 S.E.2d 123 (1980).

It is eminently reasonable for the city to follow actual use and ownership patterns instead of artificial patterns of subdivision in determining the number of lots in the area to be annexed. Such method of lot counting was calculated to provide reasonably accurate results as required by this section. Food Town Stores, Inc. v. City of Salisbury, 300 N.C. 21, 265 S.E.2d 123 (1980).

Petitioners Failed to Meet Burden to Show Inaccuracy of City's Methodology. — Petitioners challenging a city's annexation ordinances failed to show the city misclassified the lots to be annexed or that the county tax maps it relied on were inaccurate. As they offered no reliable evidence that the city's methodology was inaccurate and not calculated to provide reasonably accurate results, as required by G.S. 106A-54, the ordinances were properly deemed valid. Brown v. City of Winston-Salem, 176 N.C. App. 497, 626 S.E.2d 747, 2006 N.C. App. LEXIS 531 (2006).

Applied in Thrash v. City of Asheville, 327 N.C. 251, 393 S.E.2d 842 (1990); Fix v. City of Eden, 175 N.C. App. 1, 622 S.E.2d 647, 2005 N.C. App. LEXIS 2739 (2005).

Cited in Asheville Indus., Inc. v. City of Asheville, 112 N.C. App. 713, 436 S.E.2d 873 (1993); Shackelford v. City of Wilmington, 127 N.C. App. 449, 490 S.E.2d 578 (1997).

§§ 160A-55, 160A-56: Repealed by Session Laws 1983, c. 636.

Editor's Note. — Session Laws 1983, c. 636, which repealed these sections, in s. 37.1, as amended by Session Laws 1983, c. 768, s. 25, provided: "The General Assembly intends by this act to repeal all acts and provisions of acts that modify the application to particular cities and towns of Parts 2 and 3 of Article 4A of Chapter 160A of the General Statutes or that exempt particular cities or towns from the application of either or both of those two Parts. Therefore, all such acts and provisions of acts, even if not specifically listed and repealed in Sections 26 through 35.4 of this act, are repealed. Neither this section nor Sections 26 through 35.4 of this act shall affect any annexation in progress on the dates of ratification of this act under any of the repealed or amended sections."

Section 38 of Session Laws 1983, c. 636 provided: "This act shall be effective with respect to all annexations where resolutions of intent are adopted on or after the date of ratification of this act, except that Sections 36 and 37 shall become effective with respect to all annexations where resolutions of intent are adopted on or after July 1, 1984, Sections 25.1 through 35.5 and Section 37.1 are effective upon ratification and Section 25 shall become effective as provided in that section. No annexation where a resolution of intent was adopted prior to the date of ratification of this act shall be affected by this act except as provided in Section 25."

Session Laws 1983, c. 636 was ratified June 29, 1983.

§ 160A-57: Reserved for future codification purposes.

Part 4. Annexation of Noncontiguous Areas.

§ 160A-58. Definitions.

The words and phrases defined in this section have the meanings indicated when used in this Part unless the context clearly requires another meaning:

(1) "City" means any city, town, or village without regard to population, except cities not qualified to receive gasoline tax allocations under G.S. 136-41.2.

(2) "Primary corporate limits" means the corporate limits of a city as defined in its charter, enlarged or diminished by subsequent annexations or exclusions of contiguous territory pursuant to Parts 1, 2, and 3 of this Article or local acts of the General Assembly.

(3) "Satellite corporate limits" means the corporate limits of a noncontiguous area annexed pursuant to this Part or a local act authorizing or effecting noncontiguous annexations. (1973, c. 1173, s. 2.)

Local Modification. — (As to Part 4) Iredell and municipalities located therein: 1989, c. 598, s. 12.1; Union: 2003-321, s. 1; (as to Part 4) town of Dobbins Heights: 1983, c. 658; town of Moorehead City and Newport: 1997-219, s. 1; 1997-363, s. 1.1; (as to Part 4) city of Sanford: 2007-43, s. 2 (shall not annex areas located within Chatham County).

Cross References. — As to effective date of annexation ordinances adopted under Article 4A of Chapter 160A, see G.S. 160A-58.9A.

Legal Periodicals. — For 1984 survey, "Competitive Annexation Among Municipalities: North Carolina Adopts the Prior Jurisdiction Rule," see 63 N.C.L. Rev. 1260 (1985).

CASE NOTES

Satellite corporate limits are not "municipal boundaries" as that term is used in G.S. 160A-36. Hawks v. Town of Valdese, 299 N.C. 1, 261 S.E.2d 90 (1980).

Satellite Corporate Limits. — A corporate limit is defined as a satellite only when there is no connection whatsoever between the municipality and the satellite. Williams v. Town of Kernersville, 129 N.C. App. 734, 500 S.E.2d 770, 1998 N.C. App. LEXIS 757 (1998), cert. denied, 349 N.C. 241, 516 S.E.2d 611 (1998).

Cited in Taylor v. City of Raleigh, 290 N.C. 608, 227 S.E.2d 576 (1976); Texfi Indus., Inc. v. City of Fayetteville, 301 N.C. 1, 269 S.E.2d 142 (1980).

§ 160A-58.1. Petition for annexation; standards.

(a) Upon receipt of a valid petition signed by all of the owners of real property in the area described therein, a city may annex an area not contiguous to its primary corporate limits when the area meets the standards set out in subsection (b) of this section. The petition need not be signed by the owners of real property that is wholly exempt from property taxation under the Constitution and laws of North Carolina, nor by railroad companies, public utilities as defined in G.S. 62-3(23), or electric or telephone membership corporations.

(b) A noncontiguous area proposed for annexation must meet all of the following standards:

(1) The nearest point on the proposed satellite corporate limits must be not more than three miles from the primary corporate limits of the annexing city.

(2) No point on the proposed satellite corporate limits may be closer to the primary corporate limits of another city than to the primary corporate

limits of the annexing city, except as set forth in subsection (b2) of this section.

(3) The area must be so situated that the annexing city will be able to provide the same services within the proposed satellite corporate limits that it provides within its primary corporate limits.

(4) If the area proposed for annexation, or any portion thereof, is a subdivision as defined in G.S. 160A-376, all of the subdivision must be included.

(5) The area within the proposed satellite corporate limits, when added to the area within all other satellite corporate limits, may not exceed ten percent (10%) of the area within the primary corporate limits of the annexing city.

This subdivision does not apply to the Cities of Belmont, Claremont, Concord, Conover, Durham, Elizabeth City, Gastonia, Greenville, Hickory, Kannapolis, Locust, Marion, Mount Airy, Mount Holly, New Bern, Newton, Oxford, Randleman, Roanoke Rapids, Rockingham, Sanford, Salisbury, Southport, Statesville, and Washington and the Towns of Ahoskie, Angier, Apex, Ayden, Benson, Bladenboro, Bridgeton, Burgaw, Calabash, Catawba, Clayton, Columbia, Columbus, Cramerton, Creswell, Dallas, Dobson, Four Oaks, Fuquay-Varina, Garner, Godwin, Granite Quarry, Green Level, Grimesland, Holly Ridge, Holly Springs, Huntersville, Jamestown, Kenansville, Kenly, Knightdale, Landis, Leland, Lillington, Louisburg, Maggie Valley, Maiden, Mayodan, Middlesex, Midland, Mocksville, Morrisville, Mount Pleasant, Nashville, Oak Island, Pembroke, Pine Level, Princeton, Ranlo, Richlands, Rolesville, Rutherfordton, Shallotte, Smithfield, Spencer, Stem, Stovall, Surf City, Swansboro, Taylorsville, Troutman, Troy, Wallace, Warsaw, Watha, Waynesville, Weldon, Wendell, Windsor, Yadkinville, and Zebulon.

(b1) Repealed by Session Laws 2004-203, ss. 13(a) and 13(d), effective August 17, 2004.

(b2) A city may annex a noncontiguous area that does not meet the standard set out in subdivision (b)(2) of this section if the city has entered into an annexation agreement pursuant to Part 6 of this Article with the city to which a point on the proposed satellite corporate limits is closer and the agreement states that the other city will not annex the area but does not say that the annexing city will not annex the area. The annexing city shall comply with all other requirements of this section.

(c) The petition shall contain the names, addresses, and signatures of all owners of real property within the proposed satellite corporate limits (except owners not required to sign by subsection (a)), shall describe the area proposed for annexation by metes and bounds, and shall have attached thereto a map showing the area proposed for annexation with relation to the primary corporate limits of the annexing city. When there is any substantial question as to whether the area may be closer to another city than to the annexing city, the map shall also show the area proposed for annexation with relation to the primary corporate limits of the other city. The city council may prescribe the form of the petition.

(d) A city council which receives a petition for annexation under this section may by ordinance require that the petitioners file a signed statement declaring whether or not vested rights with respect to the properties subject to the petition have been established under G.S. 160A-385.1 or G.S. 153A-344.1. If the statement declares that such rights have been established, the city may require petitioners to provide proof of such rights. A statement which declares that no vested rights have been established under G.S. 160A-385.1 or G.S. 153A-344.1 shall be binding on the landowner and any such vested rights shall be terminated. (1973, c. 1173, s. 2; 1989 (Reg. Sess., 1990), c. 996, s. 4; 1997-2, s. 1; 2001-37, s. 1; 2001-72, s. 1; 2001-438, s. 1; 2002-121, s. 1; 2003-30, s. 1; 2004-203, s. 13(a), (c); 2004-57, s. 1; 2004-99, s. 1; 2004-203, ss. 13(a)-(d); 2005-52, s. 1; 2005-71, s. 1; 2005-79, s. 1; 2005-173, s. 1; 2005-433, s. 9; 2006-62, s. 1; 2006-122, s. 1; 2006-130, s. 1; 2007-17, s. 1; 2007-26, ss. 1, 2(a); 2007-62, s. 1; 2007-225, s. 1; 2007-311, s. 1; 2007-342, s. 1; 2008-24, s. 1; 2008-30, s. 1; 2009-40, s. 2; 2009-53, s. 1; 2009-111, s. 1; 2009-156, s. 1; 2009-298, s. 1; 2009-323, s. 1.)

Local Modification. — Brunswick: 2001-478, s. 1 (as to subdivision (b)(2)); Municipalities located wholly or partly in Guilford: 1987 (Reg. Sess., 1988), c. 1009, s. 6; Union: 2003-321, s. 1; city of Asheboro: 1998-203, s. 1; city of Asheville: 2005-139, s. 3 (applicable to petitions for annexation received on or after June 30, 2005); city of Brevard: 1987, c. 254, s. 2; 2001-105, s. 2 (as to subdivision (b)(5)) city of Durham: 1987, c. 606; 2007-269, s. 1.1 (as to subdivision (b)(2)); city of Greensboro: 1997-344, s. 1; city of Greensville: 1999-283, s. 1; city of Henderson: 1996, 2nd Ex. Sess., c. 3, s. 1; city of Hickory: 1987, c. 179; 1999-208, s. 1; 1999-456, s. 49; city of Kannapolis: 2007-344, ss. 1, 3 (as to subdivision (b), and applicable only to annexations in the area of Cabarrus County bound by the existing city of Kannapolis corporate limits to the east, Mecklenburg County/Cabarrus County line to the west, the Cabarrus County/Rowan County/Iredell County lines to the north, and N.C. Highway 73 to the south); city of King's Mountain: 2003-241, s. 1; city of Mooresville, 1995, c. 82, s. 1; city of Mount Airy: 1999-232, s. 1; 2003-281, s. 1; city of Mount Holly: 1985, c. 110; city of New Bern: 1989, c. 382, s. 1; 1993 (Reg. Sess., 1994), c. 605, s. 3; city of Newton: 2002-50, s. 1 (as to subdivision (b)(2)); city of Raleigh: 1998-200, s. 1; city of Reidsville: 1997-343; city of Rockingham: 1995 (Reg. Sess., 1996), c. 654, s. 1; city of Sanford: 2007-43, s. 1 (as to subdivision (b)(1)); city of Statesville: 1989 (Reg. Sess., 1990), c. 882, s. 1; city of Winston-Salem: 2004-37, s. 1 (as to subdivision (b)(2)); town of Andrews: 2003-243, s. 1 (as to certain locations); town of Apex: 1993, c. 312, s. 3; 1995, c. 82, s. 1; town of Banner Elk: 1998-77; town of Beaufort: 1995, c. 82, s. 1, 1997-432, s. 1, 2003-204, s. 1 (as to subsection (b)); town of Brookford: 1999-208, s. 1; 1999-456, s. 49; town of Butner: 2007-269, s. 1.1 (as precleared under Section 5 of the Voting Rights Act); town of Canton: 1983, c. 301; 1985 (Reg. Sess., 1986), c. 979; 1997-2, s. 1; town of Clayton: 1993, c. 63, s. 1; 1999-10, s. 1; 2007-327, s. 2 (as to subdivision (b)(1)); town of Cornelius: 1999-103, s. 1; town of Davidson: 1999-85, s. 1; town of Eastover: 2007-267, s. 1 (as to subdivision (b)(2), contingent on preclearance under section 5 of the Voting Rights Act); town of Edenton: 1995 (Reg. Sess., 1996), c. 707; town of Fuquay-Varina: 1999-304, s. 1; town of Holly Springs: 1991, c. 243 (as to annexation ordinances adopted before July 1, 1993); town of Hope Mills: 1997-151, s. 1; town of Huntersville: 1999-24, s. 1; town of Kenly; 1987, c. 67; town of Kernersville: 2004-37, s. 1 (as to subdivision (b)(2)): town of Knightdale: 1987, c. 234; town of Madison (subdivision (b)(2) does not apply to Madison): 1997-251, s. 2; town of Maggie Valley: 2005-79 (as to subdivision (b)(4)); and 2008-28 (as to subdivision (b)(1), and applicable to annexations in certain area in Haywood county); town of Mayodan: 2001-405 (as to subdivisions (b)(4) and (b)(5)); town of Mooresville: 1997-219, ss. 2, 3; town of Morehead City: 1998-42; town of Norwood: 2007-71, s. 1, as amended by 2009-256 (as to subdivisions (b)(1) and (5)); town of Oak Island: 2007-26, s. 2 (as to subdivision (b)(2) and notification requirement to the town of St. James); town of Oak Ridge: 1998-113; town of Pittsboro: 1987 (Reg. Sess., 1988), c. 1023, s. 4.1; town of Pleasant Garden: 1997-344, s. 1; towns of Summerfield and Leland: 1997-249; town of Trent Woods: 1989, c. 382, s. 1; town of Troy: 1993, c. 159, s. 2; town of Wallace: 1995 (Reg. Sess., 1996), c. 692, s. 1; town of Wake Forest: 1989 (Reg. Sess., 1990), c. 882, s. 2(a); 1997-432, s. 1(a), (b); town of Waxhaw: 2003-273, s. 2(b); town of Weaverville: 1989, c. 181, s. 1 (applicable with respect to annexation ordinances adopted on or before June 30, 1990); 1997-151, s. 2; town of Winterville: 2001-77, s. 1 (as to subdivision (b)(2)); village of Marvin: 2002-140, s. 1 (as to subdivision (b)(5)).

Editor's Note. — Session Laws 2001-37, s. 1, amended subsection (b) by deleting subdivision (b)(5), regarding limitations on the area within the proposed satellite corporate limits. Section 2 of the act made this amendment applicable to the Cities of Marion, Oxford, and Rockingham and the Towns of Calabash, Catawba, Dallas, Godwin, Louisburg, Mocksville, Pembroke, Rutherfordton, and Waynesville only. Session Laws 2001-37, ss. 1 and 2, have been codified as subsection (b1) at the direction of the Revisor of Statutes. Session Laws 2001-438, s. 1, also enacted a subsection (b1), which has been recodified as subsection (b2) at the direction of the Revisor of Statutes.

Session Laws 2002-121, s. 1, provides that subdivision (b)(5) does not apply to the cities of Claremont, Concord, Conover, Newton, Sanford, and Southport, and the Towns of Maiden, Midland, Swansboro, and Warsaw. Session Laws 1997-2, s. 1, provided that subdivision (b)(5) did not apply to the town of Catawba, and Session Laws 2001-72, s. 1 provided the subdivision did not apply to the city of Salisbury. Since subdivision (b)(5) does not apply to more than 10 jurisdictions, the second paragraph of that subdivision has been added at the direction of the Revisor of Statutes.

Session Laws 2007-26, s. 2(a), contained a local modification as to G.S. 160A-58.1(b)(2) and (b)(5). The local modification as to subdivision (b)(5) adds to a local modification that affects ten or more localities. It was codified at this section at the direction of the Revisor of Statutes by inserting "Oak Island" in the second paragraph of subdivision (b)(5).

Pursuant to Session Laws 2009-298, s. 1, and at the direction of the Revisor of Statutes, the town of Huntersville has been added to the list of localities in subdivision (b)(5) to which that subdivision is inapplicable.

Effect of Amendments. — Session Laws 2008-24, s. 1, effective June 30, 2008, inserted "Middlesex" and "Nashville" in the second paragraph of subdivision (b)(5).

Session Laws 2008-30, s. 1, effective June 30, 2008, inserted "Granite Quarry," "Kenansville," "Lillington," "Nashville" and "Troutman" in the second paragraph of subdivision (b)(5).

Session Laws 2009-40, s. 2, effective May 27, 2009, inserted "Richlands" in the second paragraph of subdivision (b)(5).

Session Laws 2009-53, s. 1, effective June 2, 2009, inserted "Apex" in the second paragraph of subdivision (b)(5).

Session Laws 2009-111, s. 1, effective June 16, 2009, inserted "Belmont" in the second paragraph of subdivision (b)(5).

Session Laws 2009-156, s. 1, effective June 23, 2009, inserted "Bridgeton" in the second paragraph of subdivision (b)(5).

Session Laws 2009-323, s. 1, effective July 22, 2009, inserted "Jamestown" in the second paragraph of subdivision (b)(5).

CASE NOTES

A city has statutory authority to annex areas both contiguous and noncontiguous to its primary corporate limits. It must stand ready to provide sewer service (among other services) to newly annexed areas on substantially the same basis and in the same manner in which these services are provided to the rest of the city. Davidson County v. City of High Point, 321 N.C. 252, 362 S.E.2d 553 (1987).

Use of City-Owned Sewage Treatment Plant Without Prior Approval of County. — Since county had no authority to restrict or regulate city's provision of sewer service to its residents, the city could use the city-owned sewage treatment plant located outside the city but within the county, which was upgraded pursuant to the county's special use permit, with a condition attached to the permit requiring the county's prior approval of service to county citizens to meet its statutory mandate to provide sewer service to residents in newly annexed areas without seeking the county's prior approval, even though the facility was located in the county. Davidson County v. City of High Point, 321 N.C. 252, 362 S.E.2d 553 (1987).

Town Had No Standing to Challenge Annexations. — Plaintiff town had no standing to challenge annexations of contiguous properties by nearby village. Town of Seven Devils v. Village of Sugar Mt., 125 N.C. App. 692, 482 S.E.2d 39 (1997), cert. denied, 346 N.C. 185, 486 S.E.2d 219 (1997).

Residents and Property Owners Without Standing to Challenge Voluntary Annexation of Noncontiguous Property. — Residents and property owners in town, who instituted an action in which they sought to enjoin town from placing into effect an ordinance annexing into the corporate limits of the town 89.68 acres of noncontiguous property belonging to intervenor company, residents and property owners did not have standing; no judicial review is provided for annexations of noncontiguous territory, since such annexations are, by statute, the result of voluntary petitions by the property owners. Joyner v. Town of Weaverville, 94 N.C. App. 588, 380 S.E.2d 536 (1989).

Cited in Town of Valdese v. Burke, Inc., 125 N.C. App. 688, 482 S.E.2d 24 (1997).

§ 160A-58.2. Public hearing.

Upon receipt of a petition for annexation under this Part, the city council shall cause the city clerk to investigate the petition, and to certify the results of his investigation. If the clerk certifies that upon investigation the petition appears to be valid, the council shall fix a date for a public hearing on the annexation. Notice of the hearing shall be published once at least 10 days before the date of hearing.

At the hearing, any person residing in or owning property in the area proposed for annexation and any resident of the annexing city may appear and be heard on the questions of the sufficiency of the petition and the desirability of the annexation. If the council then finds and determines that (i) the area described in the petition meets all of the standards set out in G.S. 160A-58.1(b), (ii) the petition bears the signatures of all of the owners of real property within the area proposed for annexation (except those not required to sign by G.S. 160A-58.1(a)), (iii) the petition is otherwise valid, and (iv) the public health, safety and welfare of the inhabitants of the city and of the area proposed for annexation will be best served by the annexation, the council may adopt an ordinance annexing the area described in the petition. The ordinance may be made effective immediately or on any specified date within six months from the date of passage. (1973, c. 1173, s. 2.)

Local Modification. — City of Durham: 1993, c. 342, s. 1; city of Reidsville: 1997-343; town of Pittsboro: 1987 (Reg. Sess., 1988), c. 1023, s. 4.1.

CASE NOTES

Cited in Taylor v. City of Raleigh, 290 N.C. 608, 227 S.E.2d 576 (1976); Hawks v. Town of Valdese, 299 N.C. 1, 261 S.E.2d 90 (1980); Joyner v. Town of Weaverville, 94 N.C. App. 588, 380 S.E.2d 536 (1989).

§ 160A-58.2A. Assumption of debt.

(a) If the city has annexed under this Part any area which is served by a rural fire department and which is in:

(1) An insurance district defined under G.S. 153A-233;

(2) A rural fire protection district under Article 3A of Chapter 69 of the General Statutes; or

(3) A fire service district under Article 16 of Chapter 153A of the General Statutes,

then beginning with the effective date of annexation the city shall pay annually a proportionate share of any payments due on any debt (including principal and interest) relating to facilities or equipment of the rural fire department, if the debt was existing at the time of submission of the petition for annexation to the city under this Part. The rural fire department shall make available to the city not later than 30 days following a written request from the city, information concerning such debt. The rural fire department forfeits its rights under this section if it fails to make a good faith response within 45 days following receipt of the written request for information from the city, provided that the city's written request so states by specific reference to this section.

(b) The annual payments from the city to the rural fire department on such shared debt service shall be calculated as follows:

(1) The rural fire department shall certify to the city each year the amount that will be expended for debt service subject to be shared by the city as provided by subsection (a) of this section; and

(2) The amount determined under subdivision (1) of this subsection shall be multiplied by the percentage determined by dividing the assessed valuation of the area of the district annexed by the assessed valuation of the entire district, each such valuation to be fixed as of the date the annexation ordinance becomes effective.

(c) This section does not apply in any year as to any annexed area(s) for which the payment calculated under this section as to all annexation ordinances adopted under this Part by a city during a particular calendar year does not exceed one hundred dollars ($100.00).

(d) The city and rural fire department shall jointly present a payment schedule to the Local Government Commission for approval and no payment may be made until such schedule is approved. The Local Government Commission shall approve a payment schedule agreed upon between the city and the rural fire department in cases where the assessed valuation of the district may not readily be determined, if there is a reasonable basis for the agreement. (1989, c. 598, s. 3.)

§ 160A-58.3. Annexed area subject to city taxes and debts.

From and after the effective date of the annexation ordinance, the annexed area and its citizens and property are subject to all debts, laws, ordinances and regulations of the annexing city, and are entitled to the same privileges and benefits as other parts of the city. Real and personal property in the newly annexed territory on the January 1 immediately preceding the beginning of the fiscal year in which the annexation becomes effective is subject to municipal taxes as provided in G.S. 160A-58.10. If the effective date of annexation falls between June 1 and June 30, and the privilege licenses of the annexing city are due on June 1, then businesses in the annexed area are liable for privilege license taxes at the full-year rate. (1973, c. 1173, s. 2; 1975, c. 576, s. 5; 1977, c. 517, s. 7.)

§ 160A-58.4. Extraterritorial powers.

Satellite corporate limits shall not be considered a part of the city's corporate limits for the purposes of extraterritorial land-use regulation pursuant to G.S. 160A-360, or abatement of public health nuisances pursuant to G.S. 160A-193. However, a city's power to regulate land use pursuant to Chapter 160A, Article 19, or to abate public health nuisances pursuant to G.S. 160A-193, shall be the same within satellite corporate limits as within its primary corporate limits. (1973, c. 1173, s. 2.)

Local Modification. — Town of Canton: 1983, c. 301; town of Mooresville: 1991, c. 289, s. 1; 1997-219, s. 4.

§ 160A-58.5. Special rates for water, sewer and other enterprises.

For the purposes of G.S. 160A-314, provision of public enterprise services within satellite corporate limits shall be considered provision of service for special classes of service distinct from the classes of service provided within the primary corporate limits of the city, and the city may fix and enforce schedules of rents, rates, fees, charges and penalties in excess of those fixed and enforced within the primary corporate limits. A city providing enterprise services within satellite corporate limits shall annually review the cost thereof, and shall take such steps as may be necessary to insure that the current operating costs of such services, excluding debt service on bonds issued to finance services within satellite corporate limits, does not exceed revenues realized therefrom. (1973, c. 1173, s. 2.)

Cross References. — For satellite annexation in conjunction with municipal annexation in certain sanitary districts, see G.S. 130A-70.1.

§ 160A-58.6. Transition from satellite to primary corporate limits.

An area annexed pursuant to this Part ceases to constitute satellite corporate limits and becomes a part of the primary corporate limits of a city when, through annexation of intervening territory, the two boundaries touch. (1973, c. 1173, s. 2.)

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If a town wishes to annex involuntarily two unannexed areas on either side of the satellite area, it must first annex the area which abuts directly on both the primary corporate limits and the satellite corporate limits. Only after this intervening territory has been successfully annexed is the area which presently abuts solely on satellite corporate limits eligible for annexation. Only then do the satellite corporate limits become part of the primary corporate limits in accord with this section. Hawks v. Town of Valdese, 299 N.C. 1, 261 S.E.2d 90 (1980).

Definition of Satellite. — A corporate limit is defined as a satellite only when there is no connection whatsoever between the municipality and the satellite. Williams v. Town of Kernersville, 129 N.C. App. 734, 500 S.E.2d 770, 1998 N.C. App. LEXIS 757 (1998), cert. denied, 349 N.C. 241, 516 S.E.2d 611 (1998).

§ 160A-58.7. Annexation of municipal property.

The city council may initiate annexation of property not contiguous to the primary corporate limits and owned by the city by adopting a resolution stating its intent to annex the property, in lieu of filing a petition. The property must satisfy the requirements of G.S. 160A-58.1. The resolution shall contain an adequate description of the property and fix a date for a public hearing on the question of annexation. Notice of the public hearing shall be published once at least 10 days before the date of the hearing. At the hearing, any resident of the city may appear and be heard on the question of the desirability of the annexation. If the council finds that annexation is in the public interest, it may adopt an ordinance annexing the property. The ordinance may be made effective immediately or on any specified date within six months from the date of passage. (1987, c. 562, s. 2.)

Local Modification. — City of Durham: 1993, c. 342, s. 1; city of Reidsville: 1997-343.

§ 160A-58.8. Recording and reporting.

Annexations made under this part shall be recorded and reported in the same manner as under G.S. 160A-29. (1987, c. 879, s. 4.)

Part 4A. Effective Dates of Certain Annexation Ordinances.

§ 160A-58.9. Effective date of certain annexation ordinances adopted from January 1, 1987, to August 3, 1987.

(a) In the case of any annexation ordinance adopted during the period beginning January 1, 1987, and ending on August 3, 1987, if the effective date of the annexation under the ordinance is during 1988, the governing board of the municipality may, notwithstanding G.S. 160A-37(j) or G.S. 160A-49(j), amend the ordinance to provide for an effective date of December 31, 1987. The board must give notice by publication of its intent to consider adoption of such ordinance, such notice to be published at least 10 days before the meeting at which the ordinance is adopted. Copies of the adopted ordinance shall be recorded in accordance with the provisions of G.S. 160A-39 or G.S. 160A-51, as applicable.

(b) This section applies only to territory located in counties with a population of 55,000 or over, according to the 1980 decennial federal census. (1987, c. 715, s. 2.)

§ 160A-58.9A. Effective date of certain annexation ordinances adopted under Article 4A of Chapter 160A.

(a) No annexation ordinance adopted under Article 4A of Chapter 160A of the General Statutes may become effective during the period beginning November 1, 1989, and ending January 1, 1990. If because of the operation of G.S. 160A-37.1(h), G.S. 160A-37.3(g), G.S. 160A-38, G.S. 160A-49.1(h), G.S. 160A-49.3(g), G.S. 160A-50, the order of any court, or the operation of Section 5 of the Voting Rights Act of 1965, an annexation ordinance is to become effective during the period beginning November 1, 1989, and ending January 1, 1990, it shall instead become effective on a date during the period beginning January 2, 1990, and ending December 31, 1990, set by ordinance of the governing board of the city.

(b) If the final date upon which an annexation ordinance adopted under Article 4A of Chapter 160A of the General Statutes, may be made effective occurs during the period beginning November 1, 1989, and ending January 1, 1990, the effective date of the annexation may be set in the annexation ordinance as any date during the period beginning January 2, 1990, and ending December 31, 1990, in addition to any date permitted by law before November 1, 1989.

(c) This section applies to territory located in counties with a population of 55,000 or over, according to the 1980 decennial federal census, and to territory located in all other counties subject to Article 12A of Chapter 163 of the General Statutes, pursuant to G.S. 163-132.6. (1987, c. 715, s. 3; 1989, c. 440, s. 6.)

Part 5. Property Tax Liability of Newly Annexed Territory.

§ 160A-58.10. Tax of newly annexed territory.

(a) Applicability of Section. — Real and personal property in territory annexed pursuant to this Article is subject to municipal taxes as provided in this section.

(b) Prorated Taxes. — Real and personal property in the newly annexed territory on the January 1 immediately preceding the beginning of the fiscal year in which the annexation becomes effective is subject to prorated municipal taxes levied for that fiscal year as provided in this subsection. The amount of municipal taxes that would have been due on the property had it been within the municipality for the full fiscal year shall be multiplied by the following fraction: the denominator shall be 12 and the numerator shall be the number of full calendar months remaining in the fiscal year, following the day on which the annexation becomes effective. The product of the multiplication is the amount of prorated taxes due. The lien for prorated taxes levied on a parcel of real property shall attach to the parcel taxed on the listing date, as provided in G.S. 105-285, immediately preceding the fiscal year in which the annexation becomes effective. The lien for prorated taxes levied on personal property shall attach on the same date to all real property of the taxpayer in the taxing unit, including the newly annexed territory. If the annexation becomes effective after June 30 and before September 2, the prorated taxes shall be due and payable on the first day of September of the fiscal year for which the taxes are levied. If the annexation becomes effective after September 1 and before the following July 1, the prorated taxes shall be due and payable on the first day of September of the next succeeding fiscal year. The prorated taxes are subject to collection and foreclosure in the same manner as other taxes levied for the fiscal year in which the prorated taxes become due.

(c) Taxes in Subsequent Fiscal Years. — In fiscal years subsequent to the fiscal year in which an annexation becomes effective, real and personal property in the newly annexed territory is subject to municipal taxes on the same basis as is the preexisting territory of the municipality.

(d) Transfer of Tax Records. — For purposes of levying prorated taxes the municipality shall obtain from the county a record of property in the area being annexed that was listed for taxation on the January 1 immediately preceding the fiscal year for which the prorated taxes are levied. In addition, if the effective date of annexation falls between January 1 and June 30, the municipality shall, for purposes of levying taxes for the fiscal year beginning July 1 following the date of annexation, obtain from the county a record of property in the area being annexed that was listed for taxation as of said January 1. (1977, c. 517, s. 9.)

Cross References. — As to effective date of annexation ordinances adopted under Article 4A of Chapter 160A, see G.S. 160A-58.9A.

Editor's Note. — Session Laws 2006-72, s. 1, provides: "A taxing unit's governing body may by resolution provide that, notwithstanding the provisions of G.S. 105-360 regarding the due date and accrual of interest, G.S. 105-380 and G.S. 105-381 regarding the release, refund, and compromise of taxes, and G.S. 160A-58.10 regarding the taxation of newly annexed property, property taxes for the partial fiscal year October 1, 2005, through June 30, 2006, shall be collected over a three-year period with one-third due and payable on September 1, 2006, one-third due and payable on September 1, 2007, and the remaining one-third due and payable on September 1, 2008. The resolution may provide that interest accrues on unpaid property taxes only to the extent that the property taxes have become due and payable under the payment schedule set out in the resolution. To the extent property taxes are due and payable pursuant to a resolution adopted under this act, interest accruing on taxes that remain unpaid shall be computed according to the schedule stated in G.S. 105-360. A resolution adopted pursuant to this act applies only to taxes for the partial fiscal year October 1, 2005, through June 30, 2006, on property located in an area that was annexed between January 1, 2003, and January 1, 2006, and for which effective date of the annexation was set by judicial order."

Session Laws 2006-72, s. 2, provides: "If a resolution adopted by a taxing unit's governing body pursuant to this act delays the due date, accrual of interest, or both for any property taxes, the tax collector's obligations under G.S. 160A-58.10 and G.S. 105-360 with respect to those taxes are delayed to the same extent."

Legal Periodicals. — For 1984 survey, "Competitive Annexation Among Municipalities: North Carolina Adopts the Prior Jurisdiction Rule," see 63 N.C.L. Rev. 1260 (1985).

§§ 160A-58.11 through 160A-58.20: Reserved for future codification purposes.

Part 6. Annexation Agreements.

§ 160A-58.21. Purpose.

It is the purpose of this Part to authorize cities to enter into binding agreements concerning future annexation in order to enhance orderly planning by such cities as well as residents and property owners in areas adjacent to such cities. (1989, c. 143, s. 1.)

§ 160A-58.22. Definitions.

The words defined in this section shall have the meanings indicated when used in this Part:

(1) "Agreement" means any written agreement authorized by this Part.

(2) "Annexation" means any extension of a city's corporate limits as authorized by this Article, the charter of the city, or any local act applicable to the city, as such statutory authority exists now or is hereafter amended.

(3) "Participating city" means any city which is a party to an agreement. (1989, c. 143, s. 1.)

§ 160A-58.23. Annexation agreements authorized.

Two or more cities may enter into agreements in order to designate one or more areas which are not subject to annexation by one or more of the participating cities. The agreements shall be of reasonable duration, not to exceed 20 years, and shall be approved by ordinance of the governing board and executed by the mayor of each city and spread upon its minutes. (1989, c. 143, s. 1.)

§ 160A-58.24. Contents of agreements; procedure.

(a) The agreement shall:

(1) State the duration of the agreement.

(2) Describe clearly the area or areas subject to the agreement. The boundaries of such area or areas may be established at such locations as the participating cities shall agree. Thereafter, any participating city may follow such boundaries in annexing any property, whether or not such boundaries follow roads or natural topographical features.

(3) Specify one or more participating cities which may not annex the area or areas described in the agreement.

(4) State the effective date of the agreement.

(5) Require each participating city which proposes any annexation to give written notice to the other participating city or cities of the annexation at least 60 days before the adoption of any annexation ordinance; provided, however, that the agreement may provide for a waiver of this time period by the notified city.

(6) Include any other necessary or proper matter.

(b) The written notice required by subdivision (a)(5) of this section shall describe the area to be annexed by a legible map, clearly and accurately showing the boundaries of the area to be annexed in relation to: the area or areas described pursuant to subdivision (a)(2) of this section, roads, streams and any other prominent geographical features. Such notice shall not be effective for more than 180 days.

(c) No agreement may be entered into under this Part unless each participating city has held a public hearing on the agreement prior to adopting the ordinance approving the agreement. The governing boards of the participating cities may hold a joint public hearing if desired. Notice of the public hearing or hearings shall be given as provided in G.S. 160A-31(c).

(d) Any agreement entered into under this Part may be modified or terminated by a subsequent agreement entered into by all the participating cities to that agreement. The subsequent agreement shall be approved by ordinance after a public hearing or hearings as provided in subsection (c).

(e) No agreement entered into under this Part shall be binding beyond three miles of the primary corporate limits of a participating city which is permitted to annex the area under the agreement, unless approved by the board of county commissioners with jurisdiction over the area. Provided however, that an area where the agreement is not binding because of failure of the board of county commissioners to approve it, shall become subject to the agreement if subsequent annexation brings it within three miles. The approval of a board of county commissioners shall be evidenced by a resolution adopted after a public hearing as provided in subsection (c).

(f) A participating city may terminate an annexation agreement unilaterally or withdraw itself from the agreement, by repealing the ordinance by which it approved the agreement and providing five years' written notice to the other participating cities. Upon the expiration of the five-year period, an agreement originally involving only two cities shall terminate, and an agreement originally involving more than two cities shall terminate unless each of the other participating cities shall have adopted an ordinance reaffirming the agreement. (1989, c. 143, s. 1.)

Local Modification. — Town of Carthage: 1999-239, s. 11.

§ 160A-58.25. Effect of agreement.

From and after the effective date of an agreement, no participating city may adopt an annexation ordinance as to all or any portion of an area in violation of the agreement. (1989, c. 143, s. 1.)

§ 160A-58.26. Part grants no annexation authority.

Nothing in this Part shall be construed to authorize the annexation of any area which is not otherwise subject to annexation under applicable law. (1989, c. 143, s. 1.)

§ 160A-58.27. Relief.

(a) Each provision of an agreement shall be binding upon the respective parties. Not later than 30 days following the passage of an annexation ordinance concerning territory subject to an agreement, a participating city which believes that another participating city has violated this Part or the agreement may file a petition in the superior court of the county where any of the territory proposed to be annexed is located, seeking review of the action of the city alleged to have violated this Part or the agreement.

(b) Within five days after the petition is filed with the court, the petitioning city shall serve copies of the petition by certified mail, return receipt requested, upon the respondent city.

(c) Within 15 days after receipt of the copy of the petition for review, or within such additional time as the court may allow, the respondent city shall transmit to the reviewing court:

(1) A transcript of the portions of the ordinance or minute book in which the procedure for annexation has been set forth;

(2) A copy of resolutions, ordinances, and any other document received or approved by the respondent city's governing board as part of the annexation proceeding.

(d) The court shall fix the date for review of the petition so that review shall be expeditious and without unnecessary delays. The review shall be conducted by the court without a jury. The court may hear oral arguments and receive written briefs, and may take evidence intended to show either:

(1) That the provisions of this Part were not met; or

(2) That the provisions of the agreement were not met.

(e) At any time before or during the review proceeding, any petitioner may apply to the reviewing court for an order staying the operation of the annexation ordinance pending the outcome of the review. The court may grant or deny the stay in its discretion upon such terms as it deems proper, and it may permit annexation of any part of the area described in the ordinance concerning which no question for review has been raised.

(f) Upon a finding that the respondent city has not violated this Part or the agreement, the court may affirm the action of the respondent city without change. Upon a finding that the respondent city has violated this Part or the agreement, the court may:

(1) Remand to the respondent city's governing board any ordinance adopted pursuant to Parts 2 or 3 of this Article, as the same exists now or is hereafter amended, for amendment of the boundaries, or for such other action as is necessary, to conform to the provisions of this Part and the agreement.

(2) Declare any annexation begun pursuant to any other applicable law to be void. If the respondent city shall fail to take action in accordance with the court's instructions upon remand under subdivision (d)(1) of this section within three months from receipt of such instructions, the annexation proceeding shall be void.

(g) Any participating city which is a party to the review proceedings may appeal from the final judgment of the superior court under rules of procedure applicable in other civil cases. The appealing party may apply to superior court for a stay in its final determination, or a stay of the annexation ordinance, whichever shall be appropriate, pending the outcome of the appeal to the appellate division; provided, that the superior court may, with the agreement of the parties, permit annexation to be effective with respect to any part of the area concerning which no appeal is being made and which can be incorporated into the respondent city without regard to any part of the area concerning which an appeal is being made.

(h) If part or all of the area annexed under the terms of a challenged annexation ordinance is the subject of an appeal to the superior court or appellate division on the effective date of the ordinance, then the ordinance shall be deemed amended to make the effective date with respect to such area the date of the final judgment of the superior court or appellate division, whichever is appropriate, or the date the respondent city's governing board completes action to make the ordinance conform to the court's instructions in the event of remand.

(i) A participating city which is prohibited from annexing into an area under a binding agreement may file a petition in the superior court where any of the territory proposed to be annexed is located, or a response in a proceeding initiated by another participating city, seeking permission to annex territory in the area notwithstanding the agreement. If the territory qualifies for annexation by the city seeking to annex it, the court may enter an order allowing the annexation to proceed with respect to all or a portion of the territory upon a finding that there is an imminent threat to public health or safety that can be remedied only by the city seeking annexation. The procedural provisions of this section shall apply to proceedings under this subsection, so far as applicable. (1989, c. 143, s. 1.)

Local Modification. — Town of Carthage: 1999-239, s. 11.

§ 160A-58.28. Effect on prior local acts.

This Part does not affect Chapter 953, Session Laws of 1983, Chapter 847, Session Laws of 1985 (1986 Regular Session), or Chapters 204, 233, or 1009, Session Laws of 1987, authorizing annexation agreements, but any city which is authorized to enter into agreements by one of those acts may enter into future agreements either under such act or this Part. (1989, c. 143, s. 1; 1991 (Reg. Sess., 1992), c. 1030, s. 48.)

ARTICLE 5.

Form of Government.

Part 1. General Provisions.

§ 160A-59. Qualifications for elective office.

All city officers elected by the people shall possess the qualifications set out in Article VI of the Constitution. In addition, when the city is divided into electoral districts for the purpose of electing members of the council, council members shall reside in the district they represent. When any elected city officer ceases to meet all of the qualifications for holding office pursuant to the Constitution, or when a council member ceases to reside in an electoral district that he was elected to represent, the office is ipso facto vacant. (1973, c. 609.)

Local Modification. — City of Roanoke Rapids: 1995, c. 34, s. 1; town of Tarboro: 1995, c. 73, s. 3.2.

§ 160A-60. Qualifications for appointive office.

Residence within a city shall not be a qualification for or prerequisite to appointment to any city office not filled by election of the people, unless the charter or an ordinance provides otherwise. City councils shall have authority to fix qualifications for appointive offices, but shall have no authority to waive qualifications for appointive offices fixed by charters or general laws. (1870-1, c. 24, s. 3; Code, s. 3796; Rev., s. 2941; C.S., s. 2646; 1951, c. 24; 1969, c. 134, s. 1; 1971, c. 698, s. 1.)

CASE NOTES

Editor's Note. — *Some of the cases below were decided under former similar provisions.*

Former § 160-25 dealt merely with the qualification of the appointee and not with the character of the office. State v. Hord, 264 N.C. 149, 141 S.E.2d 241 (1965).

Vacating Office for Preexisting Impediment. — While there can be no serious doubt of the right of a corporate body to vacate the seat of a corporate officer for adequate causes arising subsequent to taking his seat, there has been no precedent for depriving a member of his place by the action of a municipal body of which he is a member for any preexisting impediment affecting his capacity to hold the office. Ellison v. Aldermen of Raleigh, 89 N.C. 125 (1883).

Right to Declaratory Judgment. — When the rights of parties were affected by provisions similar to this section and other statutes, to the end that they might be relieved "from uncertainty and insecurity" such parties were entitled to have the applicable statutes construed and their rights declared, and a real controversy existed between the parties. Bland v. City of Wilmington, 278 N.C. 657, 180 S.E.2d 813 (1971).

City Charter Prescribing Qualifications of Firemen Not Repealed by Former Provisions. — Former G.S. 160-25 and 160-115.1

did not repeal the provisions of a city's charter prescribing the qualifications of its firemen. Bland v. City of Wilmington, 278 N.C. 657, 180 S.E.2d 813 (1971).

§ 160A-61. Oath of office.

Every person elected by the people or appointed to any city office shall, before entering upon the duties of the office, take and subscribe the oath of office prescribed in Article VI, § 7 of the Constitution. Oaths of office shall be administered by some person authorized by law to administer oaths, and shall be filed with the city clerk. (R.C., c. 111, s. 12; Code, s. 3799; Rev., s. 2920; C.S., s. 2628; 1971, c. 698, s. 1.)

§ 160A-62. Officers to hold over until successors qualified.

All city officers, whether elected or appointed, shall continue to hold office until their successors are chosen and qualified. This section shall not apply when an office or position has been abolished, when an appointed officer or employee has been discharged, or when an elected officer has been removed from office. (R.C., c. 111, s. 8; Code, s. 3792; Rev., s. 2943; C.S., s. 2648; 1971, c. 698, s. 1.)

CASE NOTES

Liability for Negligent Obstructions. — The city did not owe a special duty to a cable television repairman who was electrocuted by a fallen unmarked power line, and as plaintiff did not allege any intentional misconduct on the part of the city which would survive application of the public duty doctrine, the city was immune to liability. Vanasek v. Duke Power Co., 132 N.C. App. 335, 511 S.E.2d 41 (1999).

Cited in Pritchard v. Elizabeth City, 318 N.C. App. 417, 344 S.E.2d 821 (1986).

§ 160A-63. Vacancies.

A vacancy that occurs in an elective office of a city shall be filled by appointment of the city council. If the term of the office expires immediately following the next regular city election, or if the next regular city election will be held within 90 days after the vacancy occurs, the person appointed to fill the vacancy shall serve the remainder of the unexpired term. Otherwise, a successor shall be elected at the next regularly scheduled city election that is held more than 90 days after the vacancy occurs, and the person appointed to fill the vacancy shall serve only until the elected successor takes office. The elected successor shall then serve the remainder of the unexpired term. If the number of vacancies on the council is such that a quorum of the council cannot be obtained, the mayor shall appoint enough members to make up a quorum, and the council shall then proceed to fill the remaining vacancies. If the number of vacancies on the council is such that a quorum of the council cannot be obtained and the office of mayor is vacant, the Governor may fill the vacancies upon the request of any remaining member of the council, or upon the petition of any five registered voters of the city. Vacancies in appointive offices shall be filled by the same authority that makes the initial appointment. This section shall not apply to vacancies in cities that have not held a city election, levied any taxes, or engaged in any municipal functions for a period of five years or more.

In cities whose elections are conducted on a partisan basis, a person appointed to fill a vacancy in an elective office shall be a member of the same political party as the person whom he replaces if that person was elected as the nominee of a political party. (R.C., c. 111, ss. 9, 10; Code, ss. 3793, 3794; Rev., ss. 2921, 2931; C.S., ss. 2629, 2631; 1971, c. 698, s. 1; 1973, c. 426, s. 11; 1983, c. 827, s. 1.)

Local Modification. — Wilmington/New Hanover County Consolidated Government: 1987, c. 643; city of Elizabeth City: 2001-227, s. 1; city of Lumberton: 1983 (Reg. Sess., 1984), c. 1009; city of Monroe: 2000-35, s.1; city of Roanoke Rapids: 1995, c. 34, s. 1; city of Trinity: 1997-44, s. 3 (contingent on referendum); town of Carrboro: 2007-270, s. 1; town of Connelly: 1989, c. 528, s. 1; town of Franklinton: 1993, c. 160, s. 1; town of Littleton: 2002-20, s. 1; town of Mills River: 2003-242, s. 3.5; town of Tarboro: 1995, c. 73, s. 1.

OPINIONS OF ATTORNEY GENERAL

This Section Provides for Filling Vacancy Created by Official's Departure. — Upon arriving at a determination that an elected town official has removed his residence to another electoral jurisdiction, a town council, pursuant to the provisions of this section, may fill the vacancy created by the official's departure. See opinion of Attorney General to Mr. John C. Wessell, III, Town Attorney, Surf City (Pender County), 58 N.C.A.G. 28 (1988).

§ 160A-64. Compensation of mayor and council.

(a) The council may fix its own compensation and the compensation of the mayor and any other elected officers of the city by adoption of the annual budget ordinance, but the salary of an elected officer other than a member of the council may not be reduced during the then-current term of office unless he agrees thereto. The mayor, councilmen, and other elected officers are entitled to reimbursement for actual expenses incurred in the course of performing their official duties at rates not in excess of those allowed to other city officers and employees, or to a fixed allowance, the amount of which shall be established by the council, for travel and other personal expenses of office; provided, any fixed allowance so established during a term of office shall not be increased during such term of office.

(b) All charter provisions in effect as of January 1, 1972, fixing the compensation or allowances of any city officer or employee are repealed, but persons holding office or employment on January 1, 1972, shall continue to receive the compensation and allowances then prescribed by law until the council provides otherwise in accordance with this section or G.S. 160A-162. (1969, c. 181, s. 1; 1971, c. 698, s. 1; 1973, c. 426, s. 12; c. 1145; 1979, 2nd Sess., c. 1247, s. 1.)

§ 160A-65: Repealed by Session Laws 1975, c. 514, s. 17.

Part 2. Mayor and Council.

§ 160A-66. Composition of council.

Unless otherwise provided by its charter, each city shall be governed by a mayor and a council of three members, who shall be elected from the city at large for terms of two years. (1971, c. 698, s. 1.)

§ 160A-67. General powers of mayor and council.

Except as otherwise provided by law, the government and general management of the city shall be vested in the council. The powers and duties of the mayor shall be such as are conferred upon him by law, together with such other powers and duties as may be conferred upon him by the council pursuant to law. The mayor shall be recognized as the official head of the city for the purpose of service of civil process, and for all ceremonial purposes. (1971, c. 698, s. 1.)

CASE NOTES

City council, and not the city, was responsible for the government and general management of the city, and, thus, had final policymaking authority; accordingly, the city could not be held liable for its alleged retaliation against the storage business regarding the billing of it for water and sewer services as the entity liable had to be found liable for its policy or custom that violated the rights of another and the city was not responsible for making policy or customs. United States Cold Storage, Inc. v. City of Lumberton, — F.3d —, 2002 U.S. App. LEXIS 8392 (4th Cir. May 2, 2002).

Cited in Carolina Water Serv., Inc. v. Town of Atlantic Beach, 121 N.C. App. 23, 464 S.E.2d 317 (1995); Concrete Mach. Co. v. City of Hickory, 134 N.C. App. 91, 517 S.E.2d 155 (1999).

Part 3. Organization and Procedures of the Council.

§ 160A-68. Organizational meeting of council.

(a) The council may fix the date and time of its organizational meeting. The organizational meeting may be held at any time after the results of the municipal election have been officially determined and published pursuant to Subchapter IX of Chapter 163 of the General Statutes but not later than the date and time of the first regular meeting of the council in December after the results of the municipal election have been certified pursuant to that Subchapter. If the council fails to fix the date and time of its organizational meeting, then the meeting shall be held on the date and at the time of the first regular meeting in December after the results of the municipal election have been certified pursuant to Subchapter IX of Chapter 163 of the General Statutes.

(b) At the organizational meeting, the newly elected mayor and councilmen shall qualify by taking the oath of office prescribed in Article VI, Section 7 of the Constitution. The organization of the council shall take place notwithstanding the absence, death, refusal to serve, failure to qualify, or nonelection of one or more members, but at least a quorum of the members must be present.

(c) All local acts or provisions of city charters which prescribe a particular meeting day or date for the organizational meeting of a council are hereby repealed. (1971, c. 698, s. 1; 1973, c. 426, s. 13; c. 607; 1979, c. 168; 1979, 2nd Sess., c. 1247, s. 2.)

OPINIONS OF ATTORNEY GENERAL

For discussion of legal impediments which prohibit employers from disclosing personal information about their employees, see opinion of Attorney General to Bryan E. Beatty, Inspector General, North Carolina Department of Justice, 1998 N.C.A.G. 49 (12/1/98).

§ 160A-69. Mayor to preside over council.

The mayor shall preside at all council meetings, but shall have the right to vote only when there are equal numbers of votes in the affirmative and in the negative. In a city where the mayor is elected by the council from among its membership, and the city charter makes no provision as to the right of the mayor to vote, he shall have the right to vote as a council member on all matters before the council, but shall have no right to break a tie vote in which he participated. (1971, c. 698, s. 1; 1979, 2nd Sess., c. 1247, s. 3.)

Local Modification. — Town of Lewisville: 1991, c. 116, s. 1.

CASE NOTES

Power of Mayor to Vote. — Ordinarily, the office of mayor is of an executive or administrative character, and he is not permitted to vote except in cases where it is especially provided. Markham v. Simpson, 175 N.C. 135, 95 S.E. 106 (1918), decided under prior law.

§ 160A-70. Mayor pro tempore; disability of mayor.

At the organizational meeting, the council shall elect from among its members a mayor pro tempore to serve at the pleasure of the council. A councilman serving as mayor pro tempore shall be entitled to vote on all matters and shall be considered a councilman for all purposes, including the determination of whether a quorum is present. During the absence of the mayor, the council may confer upon the mayor pro tempore any of the powers and duties of the mayor. If the mayor should become physically or mentally incapable of performing the duties of his office, the council may by unanimous vote declare that he is incapacitated and confer any of his powers and duties on the mayor pro tempore. Upon the mayor's declaration that he is no longer incapacitated, and with the concurrence of a majority of the council, the mayor shall resume the exercise of his powers and duties. In the event both the mayor and the mayor pro tempore are absent from a meeting, the council may elect from its members a temporary chairman to preside in such absence. (1971, c. 698, s. 1; 1979, 2nd Sess., c. 1247, s. 4.)

Local Modification. — City of Morganton: 1998-81, s. 2; city of Reidsville: 1989 (Reg. Sess., 1990), c. 957, s. 1; 1993, c. 306, s. 1 (subject to preclearance); town of Autryville: 1991, c. 384, s. 1; town of Elkin: 1987, c. 740, s. 1; town of Franklinton: 1993, c. 160, s. 1; town of Highlands: 1991, c. 519, s. 1; town of Mount Holly: 1995 (Reg. Sess., 1996), c. 620, s. 1; town of Walnut Cove: 1991, c. 447, s. 1.

§ 160A-71. Regular and special meetings; recessed and adjourned meetings; procedure.

(a) The council shall fix the time and place for its regular meetings. If no action has been taken fixing the time and place for regular meetings, a regular meeting shall be held at least once a month at 10:00 A.M. on the first Monday of the month.

(b)(1) The mayor, the mayor pro tempore, or any two members of the council may at any time call a special council meeting by signing a written notice stating the time and place of the meeting and the subjects to be considered. The notice shall be delivered to the mayor and each councilman or left at his usual dwelling place at least six hours before the meeting. Only those items of business specified in the notice may be transacted at a special meeting, unless all members are present or have signed a written waiver of notice. In addition to the procedures set out in this subsection or any city charter, a person or persons calling a special meeting of a city council shall comply with the notice requirements of Article 33C of General Statutes Chapter 143.

(2) Special meetings may be held at any time when the mayor and all members of the council are present and consent thereto, or when those not present have signed a written waiver of notice.

(3) During any regular meeting, or any duly called special meeting, the council may call or schedule a special meeting, provided that the motion or resolution calling or scheduling any such special meeting

shall specify the time, place and purpose or purposes of such meeting and shall be adopted during an open session.

(b1) Any regular or duly called special meeting may be recessed to reconvene at a time and place certain, or may be adjourned to reconvene at a time and place certain, by the council.

(c) The council may adopt its own rules of procedure, not inconsistent with the city charter, general law, or generally accepted principles of parliamentary procedure. (1917, c. 136, subch. 13, s. 1; C.S., s. 2822; 1971, c. 698, s. 1; 1973, c. 426, s. 14; 1977, 2nd Sess., c. 1191, s. 7; 1979, 2nd Sess., c. 1247, s. 5; 1989, c. 770, s. 37.)

Legal Periodicals. — For survey of 1978 administrative law, see 57 N.C.L. Rev. 831 (1979).

§ 160A-72. Minutes to be kept; ayes and noes.

Full and accurate minutes of the council proceedings shall be kept, and shall be open to the inspection of the public. The results of each vote shall be recorded in the minutes, and upon the request of any member of the council, the ayes and noes upon any question shall be taken. (1917, c. 136, subch. 13, s. 1; C.S., s. 2822; 1971, c. 698, s. 1; 1973, c. 426, s. 15.)

CASE NOTES

Requirement that a full and accurate journal of the proceedings be kept is merely directory and not a condition precedent to the validity of a contract regularly entered into by the municipality. Town of Graham v. Karpark Corp., 194 F.2d 616 (4th Cir. 1952), decided under former § 160-269.

§ 160A-73: Repealed by Session Laws 1971, c. 896, s. 16.

Editor's Note. — The repealed section had been enacted by Session Laws 1971, c. 698, s. 1, and required public legislative sessions of the council and that the results of each vote be recorded in the minutes.

§ 160A-74. Quorum.

A majority of the actual membership of the council plus the mayor, excluding vacant seats, shall constitute a quorum. A member who has withdrawn from a meeting without being excused by majority vote of the remaining members present shall be counted as present for purposes of determining whether or not a quorum is present. (1917, c. 136, subch. 13, s. 1; C.S., s. 2821; 1971, c. 698, s. 1; 1975, c. 664, s. 5; 1979, 2nd Sess., c. 1247, s. 6.)

Local Modification. — City of Roanoke Rapids: 1995, c. 34, s. 1.

§ 160A-75. Voting.

No member shall be excused from voting except upon matters involving the consideration of the member's own financial interest or official conduct or on matters on which the member is prohibited from voting under G.S. 14-234, 160A-381(d), or 160A-388(e1). In all other cases, a failure to vote by a member who is physically present in the council chamber, or who has withdrawn without being excused by a majority vote of the remaining members present, shall be recorded as an affirmative vote. The question of the compensation and allowances of members of the council is not a matter involving a member's own financial interest or official conduct.

An affirmative vote equal to a majority of all the members of the council not excused from voting on the question in issue, including the mayor's vote in case of an equal division, shall be required to adopt an ordinance, take any action having the effect of an ordinance, authorize or commit the expenditure of public funds, or make, ratify, or authorize any contract on behalf of the city. In addition, no ordinance nor any action having the effect of any ordinance may be finally adopted on the date on which it is introduced except by an affirmative vote equal to or greater than two thirds of all the actual membership of the council, excluding vacant seats and not including the mayor unless the mayor has the right to vote on all questions before the council. For purposes of this section, an ordinance shall be deemed to have been introduced on the date the subject matter is first voted on by the council. (1917, c. 136, subch. 13, s. 1; C.S., s. 2821; 1971, c. 698, s. 1; 1973, c. 426, s. 16; 1979, 2nd Sess., c. 1247, s. 7; 1983, c. 696; 2001-409, s. 9; 2005-426, s. 5.1(a).)

Local Modification. — Town of Elon College: 1985, c. 109.

Editor's Note. — Session Laws 2001-409, s. 10, provides that prosecutions for offenses committed before the effective dates of the provisions of the act [Session Laws 2001-409 is effective July 1, 2002] are not abated or affected by the act, and the statutes that would be applicable but for the act remain applicable to those prosecutions.

CASE NOTES

Personnel Policy Must Be Adopted with Formalities to Create Right. — In North Carolina to create property rights, a personnel policy must not merely be adopted, but must be adopted with the formalities necessary for it to rise to the level of an ordinance, and where plaintiff's only evidence as to personnel policy was an affidavit from the clerk of the board of commissioners stating that the personnel policy was "adopted" by the town board, the plaintiff was merely an at-will employee with no property interest in his employment and no procedural due process protections. Dunn v. Town of Emerald Isle, 722 F. Supp. 1309 (E.D.N.C. 1989), aff'd, 918 F.2d 955 (4th Cir. 1990).

Settlement of Annexation Disputes. — Settlements of annexation disputes under G.S. 160A-50(m) are not "actions having the effect of an ordinance" under G.S. 160A-75, but are a method of dispute resolution in the annexation process; therefore, there is no need to send the matter back to city council after a settlement is reached. Home Builders Ass'n of Fayetteville N.C., Inc. v. City of Fayetteville, 170 N.C. App. 625, 613 S.E.2d 521, 2005 N.C. App. LEXIS 1072 (2005).

Cited in Sherrill v. Town of Wrightsville Beach, 81 N.C. App. 369, 344 S.E.2d 357 (1986); County of Lancaster v. Mecklenburg County, 334 N.C. 496, 434 S.E.2d 604 (1993).

§ 160A-76. Franchises; technical ordinances.

(a) No ordinance making a grant, renewal, extension, or amendment of any franchise shall be finally adopted until it has been passed at two regular meetings of the council, and no such grant, renewal, extension, or amendment shall be made otherwise than by ordinance.

(b) Any published technical code or any standards or regulations promulgated by any public agency may be adopted in an ordinance by reference subject to G.S. 143-138(e). A technical code or set of standards or regulations adopted by reference in a city ordinance shall have the force of law within the city. Official copies of all technical codes, standards, and regulations adopted by reference shall be maintained for public inspection in the office of the city clerk. (1917, c. 136, subch. 13; C.S., s. 2823; 1963, c. 790; 1971, c. 698, s. 1; 1973, c. 426, s. 17.)

Cross References. — As to approval, under this section, of long-term contracts entered into by city or town councils for the disposal of solid waste, see G.S. 153A-299.5.

CASE NOTES

Cited in County of Wake v. N.C. Dep't of Env't & Natural Res., 155 N.C. App. 225, 573 S.E.2d 572, 2002 N.C. App. LEXIS 1632 (2002).

§ 160A-77. Code of ordinances.

(a) Not later than July 1, 1974, each city having a population of 5,000 or more shall adopt and issue a code of its ordinances. The code may be reproduced by any method that gives legible and permanent copies, and may be issued as a securely bound book or books with periodic separately bound supplements, or as a loose-leaf book maintained by replacement pages. Supplements or replacement pages should be adopted and issued annually at least, unless no additions to or modifications of the code have been adopted by the council during the year. The code may consist of two separate parts, the "General Ordinances" and the "Technical Ordinances." The technical ordinances may be published as separate books or pamphlets, and may include ordinances regarding the construction of buildings, the installation of plumbing and electric wiring, the installation of cooling and heating equipment, the use of public utilities, buildings, or facilities operated by the city, the zoning ordinance, the subdivision control ordinance, the privilege license tax ordinance, and other similar technical ordinances designated as such by the council. The council may omit from the code designated classes of ordinances of limited interest or transitory nature, but the code should clearly describe the classes of ordinances omitted therefrom.

(b) The council may provide that one or more of the following classes of ordinances shall be codified by appropriate entries upon official map books to be retained permanently in the office of the city clerk or some other city office generally accessible to the public:

(1) Establishing or amending the boundaries of zoning districts;
(2) Designating the location of traffic control devices;
(3) Designating areas or zones where regulations are applied to parking, loading, bus stops, or taxicab stands;
(4) Establishing speed limits;
(4a) Restricting or regulating traffic at certain times on certain streets, or to certain types, weights or sizes of vehicles;
(5) Designating the location of through streets, stop intersections, yield-right-of-way intersections, waiting lanes, one-way streets, or truck traffic routes; and
(6) Establishing regulations upon vehicle turns at designated locations.

(b1) The council may provide that the classes of ordinances described in paragraphs (2) through (6) of subsection (b) above, and ordinances establishing rates for utility or other public enterprise services, or ordinances establishing fees of any nature, shall be codified by entry upon official lists or schedules of the regulations established by such ordinances, or schedules of such rates or fees, to be maintained in the office of the city clerk.

(c) It is the intent of this section to make uniform the law concerning the adoption of city codes. To this end, all charter provisions in conflict with this section in effect as of January 1, 1972, are expressly repealed, except to the extent that the charter makes adoption of a code mandatory, and no local act taking effect on or after January 1, 1972, shall be construed to repeal or amend this section in whole or in part unless it shall expressly so provide by specific reference. (1971, c. 698, s. 1; 1979, 2nd Sess., c. 1247, ss. 8, 9.)

Local Modification. — City of Williamston: 1975, c. 420.

CASE NOTES

Applied in Johnson v. Town of Longview, 37 N.C. App. 61, 245 S.E.2d 516 (1978).

Cited in In re Jacobs, 33 N.C. App. 195, 234 S.E.2d 639 (1977); Pinehurst Area Realty, Inc. v. Village of Pinehurst, 100 N.C. App. 77, 394 S.E.2d 251 (1990).

§ 160A-78. Ordinance book.

Effective January 1, 1972, each city shall file a true copy of each ordinance adopted on or after January 1, 1972, in an ordinance book separate and apart from the council's minute book. The ordinance book shall be appropriately indexed and maintained for public inspection in the office of the city clerk. Effective July 1, 1973, true copies of all ordinances that were adopted before January 1, 1972, and are still in effect shall be filed and indexed in the ordinance book. If the city has adopted and issued a code of ordinances in compliance with G.S. 160A-77, its ordinances shall be filed and indexed in the ordinance book until they are codified. (1971, c. 698, s. 1.)

CASE NOTES

Applied in Johnson v. Town of Longview, 37 N.C. App. 61, 245 S.E.2d 516 (1978).

Cited in Lewis v. White, 287 N.C. 625, 216 S.E.2d 134 (1975).

§ 160A-79. Pleading and proving city ordinances.

(a) In all civil and criminal cases a city ordinance that has been codified in a code of ordinances adopted and issued in compliance with G.S. 160A-77 must be pleaded by both section number and caption. In all civil and criminal cases a city ordinance that has not been codified in a code of ordinances adopted and issued in compliance with G.S. 160A-77 must be pleaded by its caption. In both instances, it is not necessary to plead or allege the substance or effect of the ordinance unless the ordinance has no caption and has not been codified.

(b) Any of the following shall be admitted in evidence in all actions or proceedings before courts or administrative bodies and shall have the same force and effect as would an original ordinance:

(1) A city code adopted and issued in compliance with G.S. 160A-77, containing a statement that the code is published by order of the council.

(2) Copies of any part of an official map book maintained in accordance with G.S. 160A-77 and certified under seal by the city clerk as having been adopted by the council and maintained in accordance with its directions (the clerk's certificate need not be authenticated).

(3) A copy of an ordinance as set out in the minutes, code, or ordinance book of the council, certified under seal by the city clerk as a true copy (the clerk's certificate need not be authenticated).

(4) Copies of any official lists or schedules maintained in accordance with G.S. 160A-77 and certified under seal by the city clerk as having been adopted by the council and maintained in accordance with its directions (the clerk's certificate need not be authenticated).

(c) The burden of pleading and proving the existence of any modification or repeal of an ordinance, map, or code, a copy of which has been duly pleaded or admitted in evidence in accordance with this section, shall be upon the party asserting such modification or repeal. It shall be presumed that any portion of a city code that is admitted in evidence in accordance with this section has been codified in compliance with G.S. 160A-77, and the burden of pleading and proving to the contrary shall be upon the party seeking to obtain an advantage thereby.

(d) From and after the respective effective dates of G.S. 160A-77 and 160A-78, no city ordinance shall be enforced or admitted into evidence in any court unless it has been codified or filed and indexed in accordance with G.S. 160A-77 or 160A-78. It shall be presumed that an ordinance which has been properly pleaded and proved in accordance with this section has been codified or filed and indexed in accordance with G.S. 160A-77 or 160A-78, and the burden of pleading and proving to the contrary shall be upon the party seeking to obtain an advantage thereby.

(e) It is the intent of this section to make uniform the law concerning the pleading and proving of city ordinances. To this end, all charter provisions in conflict with this section in effect as of January 1, 1972, are expressly repealed, and no local act taking effect on or after January 1, 1972, shall be construed to repeal or amend this section in whole or in part unless it shall expressly so provide by specific reference. (1917, c. 136, subch. 13, s. 14; C.S., s. 2825; 1959, c. 631; 1971, c. 698, s. 1; 1973, c. 426, s. 18; 1979, 2nd Sess., c. 1247, s. 10.)

Cross References. — As to application of this section to county ordinances, see G.S. 153A-50.

CASE NOTES

Editor's Note. — *Some of the cases cited below were decided under former statutory provisions.*

Judicial Notice Not Taken of Ordinance. — Courts of general jurisdiction and the Supreme Court will not take judicial notice of a municipal ordinance. High Point Surplus Co. v. Pleasants, 263 N.C. 587, 139 S.E.2d 892, rev'd on other grounds, 264 N.C. 650, 142 S.E.2d 697 (1965).

Warrant or Indictment to Set Out or Plead Ordinance. — Criminal prosecution for violation of a municipal ordinance cannot be maintained if the warrant or indictment on which it is based does not set out the ordinance or plead it in a manner permitted by statute. State v. Wiggs, 269 N.C. 507, 153 S.E.2d 84 (1967); State v. W.N.C. Pallet & Forest Prod. Co., 283 N.C. 705, 198 S.E.2d 433 (1973).

Excerpt of Ordinance in Indictment May Be Construed with Entire Ordinance. — The courts, when called upon to construe an excerpt from an ordinance set out in a bill of indictment, may interpret the excerpt correctly by construing it with the rest of the ordinance, certainly when the entire ordinance is before the court by stipulation of the parties. High Point Surplus Co. v. Pleasants, 263 N.C. 587, 139 S.E.2d 892, rev'd on other grounds, 264 N.C. 650, 142 S.E.2d 697 (1965).

Nonsuit for Variance Allowed. — Where a warrant charging disorderly conduct did not contain any allegations, specific or general, to the effect that the prosecution was for violation of a municipal ordinance, but the municipal ordinance was introduced in evidence and the trial proceeded as though defendant had been charged with violation of the ordinance, nonsuit for variance would be allowed. State v. Wiggs, 269 N.C. 507, 153 S.E.2d 84 (1967).

Ordinance Properly Proved. — In a personal injury action for damages, the introduction of an ordinance of a town regulating the speed of trains backing upon the track, properly proven, would not be regarded as error on appeal, when it was proved that upon the evidence in the case the jury had found, upon a trial without legal error, that the negligence of defendant's employees proximately caused the personal injury for which damages were sought in the action. Parker v. Seaboard Air Line Ry., 181 N.C. 95, 106 S.E. 755 (1921).

Applied in In re Jacobs, 33 N.C. App. 195, 234 S.E.2d 639 (1977).

Cited in Johnson v. Town of Longview, 37 N.C. App. 61, 245 S.E.2d 516 (1978).

§ 160A-80. Power of investigation; subpoena power.

(a) The council shall have power to investigate the affairs of the city, and for that purpose may subpoena witnesses, administer oaths, and compel the production of evidence.

(b) If a person fails or refuses to obey a subpoena issued pursuant to this section, the council may apply to the General Court of Justice for an order requiring that its order be obeyed, and the court shall have jurisdiction to issue these orders after notice to all proper parties. No testimony of any witness before the council pursuant to a subpoena issued in exercise of the power conferred by this section may be used against him on the trial of any civil or criminal action other than a prosecution for false swearing committed on the examination. If any person, while under oath at an investigation by the council, willfully swears falsely, he is guilty of a Class 1 misdemeanor.

(c) Repealed by Session Laws 1991, c. 512, s. 1, effective July 2, 1991. (1971, c. 698, s. 1; 1991, c. 512, s. 1; 1993, c. 539, s. 1083; 1994, Ex. Sess., c. 24, s. 14(c).)

CASE NOTES

Radio and Television Coverage. — Though radio and television coverage may not be necessary to the conduct of investigative hearings by municipalities, it does not follow that it is unreasonable to permit such coverage; conversely, radio and television coverage is reasonably consistent with the concept of a fully informed public, a concept which is receiving ever increasing support as the public becomes more fully informed. Leak v. High Point City Council, 25 N.C. App. 394, 213 S.E.2d 386 (1975).

§ 160A-81. Conduct of public hearings.

Public hearings may be held at any place within the city or within the county in which the city is located. The council may adopt reasonable rules governing the conduct of public hearings, including but not limited to rules (i) fixing the maximum time allotted to each speaker, (ii) providing for the designation of spokesmen for groups of persons supporting or opposing the same positions, (iii) providing for the selection of delegates from groups of persons supporting or opposing the same positions when the number of persons wishing to attend the hearing exceeds the capacity of the hall, and (iv) providing for the maintenance of order and decorum in the conduct of the hearing.

The council may continue any public hearing without further advertisement. If a public hearing is set for a given date and a quorum of the council is not then present, the hearing shall be continued until the next regular council meeting without further advertisement. (1971, c. 698, s. 1.)

CASE NOTES

Application to Annexation Hearings. — Nothing in this section indicates that its application should be limited to public hearings not concerning annexation. Thrash v. City of Asheville, 115 N.C. App. 310, 444 S.E.2d 482 (1994).

Radio and Television Coverage. — Though radio and television coverage may not be necessary to the conduct of investigative hearings by municipalities, it does not follow that it is unreasonable to permit such coverage; conversely, radio and television coverage is reasonably consistent with the concept of a fully informed public, a concept which is receiving ever increasing support as the public becomes more fully informed. Leak v. High Point City Council, 25 N.C. App. 394, 213 S.E.2d 386 (1975).

§ 160A-81.1. Public comment period during regular meetings.

The council shall provide at least one period for public comment per month at a regular meeting of the council. The council may adopt reasonable rules governing the conduct of the public comment period, including, but not limited to, rules (i) fixing the maximum time allotted to each speaker, (ii) providing for the designation of spokesmen for groups of persons supporting or opposing the same positions, (iii) providing for the selection of delegates from groups of persons supporting or opposing the same positions when the number of persons wishing to attend the hearing exceeds the capacity of the hall, and (iv) providing for the maintenance of order and decorum in the conduct of the hearing. The council is not required to provide a public comment period under this section if no regular meeting is held during the month. (2005-170, s. 3.)

§ 160A-82. Applicability of Part.

Nothing in this Part, except G.S. 160A-77, 160A-78 and 160A-79, shall be construed to repeal any portion of any city charter inconsistent with anything contained herein. (1971, c. 698, s. 1.)

§§ 160A-83 through 160A-85: Reserved for future codification purposes.

Part 3A. Ethics Codes and Education Programs.

§ 160A-86. Local governing boards' code of ethics.

(a) Governing boards of cities, counties, local boards of education, unified governments, sanitary districts, and consolidated city-counties shall adopt a resolution or policy containing a code of ethics to guide actions by the governing board members in the performance of the member's official duties as a member of that governing board.

(b) The resolution or policy required by subsection (a) of this section shall address at least all of the following:

(1) The need to obey all applicable laws regarding official actions taken as a board member.
(2) The need to uphold the integrity and independence of the board member's office.
(3) The need to avoid impropriety in the exercise of the board member's official duties.
(4) The need to faithfully perform the duties of the office.
(5) The need to conduct the affairs of the governing board in an open and public manner, including complying with all applicable laws governing open meetings and public records. (2009-403, s. 1.)

Editor's Note. — Session Laws 2009-403, s. 1, enacted this section as G.S. 160A-83. It has been renumbered as this section at the direction of the Revisor of Statutes.

Session Laws 2009-403, s. 8, made this Part effective January 1, 2010. Section 8 further provides: "All members of governing boards covered by this act shall receive their initial training to comply with G.S. 160A-87 within 12 months after that date."

Session Laws 2009-403, s. 7, provides: "The resolution or policy containing a code of ethics that is required by G.S. 160A-86 shall be adopted by each municipality, county, local board of education, unified government, sanitary district, and consolidated city-county on or before January 1, 2011. The governing board may look to model local government codes of ethics for guidance in developing the resolution or policy."

§ 160A-87. Ethics education program required.

(a) All members of governing boards of cities, counties, local boards of education, unified governments, sanitary districts, and consolidated city-counties shall receive a minimum of two clock hours of ethics education within 12 months after initial election or appointment to the office and again within 12 months after each subsequent election or appointment to the office.

(b) The ethics education shall cover laws and principles that govern conflicts of interest and ethical standards of conduct at the local government level.

(c) The ethics education may be provided by the North Carolina League of Municipalities, North Carolina Association of County Commissioners, North Carolina School Boards Association, the School of Government at the University of North Carolina at Chapel Hill, or other qualified sources at the choice of the governing board.

(d) The clerk to the governing board shall maintain a record verifying receipt of the ethics education by each member of the governing board. (2009-403, s. 1.)

Editor's Note. — Session Laws 2009-403, s. 1, enacted this section as G.S. 160A-84. It has been renumbered as this section at the direction of the Revisor of Statutes.

Session Laws 2009-403, s. 7, provides: "The resolution or policy containing a code of ethics that is required by G.S. 160A-86 shall be adopted by each municipality, county, local board of education, unified government, sanitary district, and consolidated city-county on or before January 1, 2011. The governing board may look to model local government codes of ethics for guidance in developing the resolution or policy."

Session Laws 2009-403, s. 8, provides: "Except as otherwise provided in this act, this act becomes effective January 1, 2010. All members of governing boards covered by this act shall receive their initial training to comply with G.S. 160A-87 within 12 months after that date."

Part 4. Modification of Form of Government.

§ 160A-101. Optional forms.

Any city may change its name or alter its form of government by adopting any one or combination of the options prescribed by this section:

(1) Name of the corporation:

The name of the corporation may be changed to any name not deceptively similar to that of another city in this State.

(2) Style of the corporation:

The city may be styled a city, town, or village.

(3) Style of the governing board:

The governing board may be styled the board of commissioners, the board of aldermen, or the council.

(4) Terms of office of members of the council:

Members of the council shall serve terms of office of either two or four years. All of the terms need not be of the same length, and all of the terms need not expire in the same year.

(5) Number of members of the council:

The council shall consist of any number of members not less than three nor more than 12.

(6) Mode of election of the council:

a. All candidates shall be nominated and elected by all the qualified voters of the city.

b. The city shall be divided into single-member electoral districts; council members shall be apportioned to the districts so that each member represents the same number of persons as nearly as possible, except for members apportioned to the city at large, if any; the qualified voters of each district shall nominate and elect candidates who reside in the district for seats apportioned to that district; and all the qualified voters of the city shall nominate and elect candidates apportioned to the city at large, if any.

c. The city shall be divided into single-member electoral districts; council members shall be apportioned to the districts so that each member represents the same number of persons as nearly as possible, except for members apportioned to the city at large; and candidates shall reside in and represent the districts according to the apportionment plan adopted, but all candidates shall be nominated and elected by all the qualified voters of the city.

d. The city shall be divided into electoral districts equal in number to one half the number of council seats; the council seats shall be divided equally into "ward seats" and "at-large seats," one each of which shall be apportioned to each district, so that each council member represents the same number of persons as nearly as possible; the qualified voters of each district shall nominate and elect candidates to the "ward seats"; candidates for the "at-large seats" shall reside in and represent the districts according to the apportionment plan adopted, but all candidates for "at-large" seats shall be nominated and elected by all the qualified voters of the city.

e. The city shall be divided into single-member electoral districts; council members shall be apportioned to the districts so that each member represents the same number of persons as nearly as possible, except for members apportioned to the city at large, if any; in a nonpartisan primary, the qualified voters of each district shall nominate two candidates who reside in the district, and the qualified voters of the entire city shall nominate two candidates for each seat apportioned to the city at large, if any; and all candidates shall be elected by all the qualified voters of the city.

If either of options b, c, d or e is adopted, the council shall divide the city into the requisite number of single-member electoral districts according to the apportionment plan adopted, and shall cause a map of the districts so laid out to be drawn up and filed as provided by G.S. 160A-22 and 160A-23. No more than one half of the council may be apportioned to the city at large. An initiative petition may specify the number of single-member electoral districts to be laid out, but the drawing of district boundaries and apportionment of members to the districts shall be done in all cases by the council.

(7) Elections:

a. Partisan. — Municipal primaries and elections shall be conducted on a partisan basis as provided in G.S. 163-291.

b. Nonpartisan Plurality. — Municipal elections shall be conducted as provided in G.S. 163-292.

c. Nonpartisan Election and Runoff Election. — Municipal elections and runoff elections shall be conducted as provided in G.S. 163-293.

d. Nonpartisan Primary and Election. — Municipal primaries and elections shall be conducted as provided in G.S. 163-294.

(8) Selection of mayor:

a. The mayor shall be elected by all the qualified voters of the city for a term of not less than two years nor more than four years.

b. The mayor shall be selected by the council from among its membership to serve at its pleasure.

Under option a, the mayor may be given the right to vote on all matters before the council, or he may be limited to voting only to break a tie. Under option b, the mayor has the right to vote on all matters before the council. In both cases the mayor has no right to break a tie vote in which he participated.

(9) Form of government:
  a. The city shall operate under the mayor-council form of government in accordance with Part 3 of Article 7 of this Chapter.
  b. The city shall operate under the council-manager form of government in accordance with Part 2 of Article 7 of this Chapter and any charter provisions not in conflict therewith. (1969, c. 629, s. 2; 1971, c. 698, s. 1; c. 1076, s. 1; 1973, c. 426, s. 19; c. 1001, ss. 1, 2; 1975, c. 19, s. 64; c. 664, s. 6.)

Local Modification. — (As to Part 4) Wilmington/New Hanover County Consolidated Government: 1987, c. 643; city of Bessemer City: 1991, c. 293; city of Lexington: 1987, c. 64, s. 1(2).

Editor's Note. — Session Laws 1975, c. 664, which added references to option e. in subdivision (6), provided in s. 6(c): "Nothing contained in this section shall be construed to alter any existing form of government of any municipality."

CASE NOTES

Applied in Disher v. Weaver, 308 F. Supp. 2d 614, 2004 U.S. Dist. LEXIS 3849 (M.D.N.C. 2004).

§ 160A-102. Amendment by ordinance.

By following the procedure set out in this section, the council may amend the city charter by ordinance to implement any of the optional forms set out in G.S. 160A-101. The council shall first adopt a resolution of intent to consider an ordinance amending the charter. The resolution of intent shall describe the proposed charter amendments briefly but completely and with reference to the pertinent provisions of G.S. 160A-101, but it need not contain the precise text of the charter amendments necessary to implement the proposed changes. At the same time that a resolution of intent is adopted, the council shall also call a public hearing on the proposed charter amendments, the date of the hearing to be not more than 45 days after adoption of the resolution. A notice of the hearing shall be published at least once not less than 10 days prior to the date fixed for the public hearing, and shall contain a summary of the proposed amendments. Following the public hearing, but not earlier than the next regular meeting of the council and not later than 60 days from the date of the hearing, the council may adopt an ordinance amending the charter to implement the amendments proposed in the resolution of intent.

The council may, but shall not be required to unless a referendum petition is received pursuant to G.S. 160A-103, make any ordinance adopted pursuant to this section effective only if approved by a vote of the people, and may by resolution adopted at the same time call a special election for the purpose of submitting the ordinance to a vote. The date fixed for the special election shall be not more than 90 days after adoption of the ordinance.

Within 10 days after an ordinance is adopted under this section, the council shall publish a notice stating that an ordinance amending the charter has been adopted and summarizing its contents and effect. If the ordinance is made effective subject to a vote of the people, the council shall publish a notice of the election in accordance with G.S. 163-287, and need not publish a separate notice of adoption of the ordinance.

The council may not commence proceedings under this section between the time of the filing of a valid initiative petition pursuant to G.S. 160A-104 and the date of any election called pursuant to such petition. (1969, c. 629, s. 2; 1971, c. 698, s. 1; 1973, c. 426, s. 20; 1979, 2nd Sess., c. 1247, s. 11.)

Local Modification. — City of Greenville: 1989, c. 359, s. 1.

§ 160A-103. Referendum on charter amendments by ordinance.

An ordinance adopted under G.S. 160A-102 that is not made effective upon approval by a vote of the people shall be subject to a referendum petition. Upon receipt of a referendum petition bearing the signatures and residence addresses of a number of qualified voters of the city equal to at least 10 percent of the whole number of voters who are registered to vote in city elections according to the most recent figures certified by the State Board of Elections or 5,000, whichever is less, the council shall submit an ordinance adopted under G.S. 160A-102 to a vote of the people. The date of the special election shall be fixed at not more than 120 nor fewer than 60 days after receipt of the petition. A referendum petition shall be addressed to the council and shall identify the ordinance to be submitted to a vote. A referendum petition must be filed with the city clerk not later than 30 days after publication of the notice of adoption of the ordinance. (1969, c. 629, s. 2; 1971, c. 698, s. 1; 1979, 2nd Sess., c. 1247, ss. 13, 15.)

Local Modification. — City of Wilson: 1989, c. 107, s. 1; town of Duck: 2001-394, s. 1; town of Eastover: 2007-267, s. 1 (contingent on preclearance under Section 5 of the Voting Rights Act of 1965); town of St. James: 1999-241, s. 1.

§ 160A-104. Initiative petitions for charter amendments.

The people may initiate a referendum on proposed charter amendments. An initiative petition shall bear the signatures and resident addresses of a number of qualified voters of the city equal to at least ten percent (10%) of the whole number of voters who are registered to vote in city elections according to the most recent figures certified by the State Board of Elections or 5,000, whichever is less. The petition shall set forth the proposed amendments by describing them briefly but completely and with reference to the pertinent provisions of G.S. 160A-101, but it need not contain the precise text of the charter amendments necessary to implement the proposed changes. The petition may not propose changes in the alternative, or more than one integrated set of charter amendments. Upon receipt of a valid initiative petition, the council shall call a special election on the question of adopting the charter amendments proposed therein, and shall give public notice thereof in accordance with G.S. 163-287. The date of the special election shall be fixed at not more than 120 nor fewer than 60 days after receipt of the petition. If a majority of the votes cast in the special election shall be in favor of the proposed changes, the council shall adopt an ordinance amending the charter to put them into effect. Such an ordinance shall not be subject to a referendum petition. No initiative petition may be filed (i) between the time the council initiates proceedings under G.S. 160A-102 by publishing a notice of hearing on proposed charter amendments and the time proceeding under that section have been carried to a conclusion either through adoption or rejection of a proposed ordinance or lapse of time, nor (ii) within one year and six months following the effective date of an ordinance amending the city charter pursuant to this Article, nor (iii) within one year and six months following the date of any election on charter amendments that were defeated by the voters.

The restrictions imposed by this section on filing initiative petitions shall apply only to petitions concerning the same subject matter. For example, pendency of council action on amendments concerning the method of electing the council shall not preclude an initiative petition on adoption of the council-manager form of government.

Nothing in this section shall be construed to prohibit the submission of more than one proposition for charter amendments on the same ballot so long as no proposition offers a different plan under the same option as another proposition on the same ballot. (1969, c. 629, s. 2; 1971, c. 698, s. 1; 1973, c. 426, s. 21; 1979, 2nd Sess., c. 1247, ss. 12, 14.)

Local Modification. — (Effective September 1, 1999) City of Charlotte: 1998-212, s. 24.2(a).

§ 160A-105. Submission of propositions to voters; form of ballot.

A proposition to approve an ordinance or petition shall be printed on the ballot in substantially the following form:

"Shall the ordinance (describe the effect of the ordinance) be approved?
( ) YES
( ) NO"

The ballot shall be separate from all other ballots used at the election.

If a majority of the votes cast on a proposition shall be in the affirmative, the plan contained therein shall be put into effect as provided in this Article. If a majority of the votes cast shall be against the proposition, the ordinance or petition proposing the amendments shall be void and of no effect. (1969, c. 629, s. 2; 1971, c. 698, s. 1.)

§ 160A-106. Amendment of charter provisions dependent on form of government.

The authority conferred by this Article to amend charter provisions within the options set out in G.S. 160A-101 also includes authority to amend other charter provisions dependent on the form of city government to conform them to the form of government amendments. By way of illustration and not limitation, if a charter providing for a five-member council is amended to increase the size of the council to seven members, a charter provision defining a quorum of the council as three members shall be amended to define a quorum as four members. (1971, c. 698, s. 1.)

§ 160A-107. Plan to continue for two years.

Charter amendments adopted as provided in this Article shall continue in force for at least two years after the beginning of the term of office of the officers elected thereunder. (1969, c. 629, s. 2; 1971, c. 698, s. 1.)

§ 160A-108. Municipal officers to carry out plan.

It shall be the duty of the mayor, the council, the city clerk, and other city officials in office, and all boards of election and election officials, when any plan of government is adopted as provided by this Article or is proposed for adoption, to comply with all requirements of this Article, to the end that all things may be done which are necessary for the nomination and election of the officers first to be elected under the new plan so adopted. (1969, c. 629, s. 2; 1971, c. 698, s. 1.)

§ 160A-109. Effective date.

The council may submit new charter amendments proposed under this Article at any regular or special municipal election, or at a special election called for that sole purpose. Any amendment affecting the election of city officers shall be finally adopted and approved at least 90 days before the first election for mayor or council members held thereunder. (1969, c. 629, s. 2; 1971, c. 698, s. 1.)

§ 160A-110. Charters to remain in force.

The charter of any city that adopts a new form of government as provided in this Article shall continue in full force and effect notwithstanding adoption of a new form of government, except to the extent modified by an ordinance adopted under the authority conferred and pursuant to the procedures prescribed by this Article. (1969, c. 629, s. 2; 1971, c. 698, s. 1.)

§ 160A-111. Filing certified true copies of charter amendments.

The city clerk shall file a certified true copy of any charter amendment adopted under this Part with the Secretary of State, and the Legislative Library. (1985 (Reg. Sess., 1986), c. 935, s. 2; 1989, c. 191, s. 2.)

§§ 160A-112 through 160A-115: Reserved for future codification purposes.

ARTICLE 6.

Elections.

§§ 160A-116 through 160A-127: Repealed by Session Laws 1971, c. 1076, s. 2.

Cross References. — As to municipal elections, see G.S. 163-279 to 163-306.

§§ 160A-128 through 160A-145: Reserved for future codification purposes.

ARTICLE 7.

Administrative Offices.

Part 1. Organization and Reorganization of City Government.

§ 160A-146. Council to organize city government.

The council may create, change, abolish, and consolidate offices, positions, departments, boards, commissions, and agencies of the city government and generally organize and reorganize the city government in order to promote orderly and efficient administration of city affairs, subject to the following limitations:

(1) The council may not abolish any office, position, department, board, commission, or agency established and required by law;

(2) The council may not combine offices or confer certain duties on the same officer when such action is specifically forbidden by law;

(3) The council may not discontinue or assign elsewhere any functions or duties assigned by law to a particular office, position, department, or agency. (1971, c. 698, s. 1.)

Local Modification. — City of Charlotte: 1973, c. 330.

CASE NOTES

Board of Adjustment. — If a board of adjustment is created, then it must consist of at least five appointees, each with three-year terms. Such terms may not be reduced by the city council as long as the board of adjustment is in existence. However, the prohibition against the reduction of the length of the terms of the members of an existing board of adjustment does not diminish the authority of the city council to abolish the board. Board of Adjustment v. Town of Swansboro, 108 N.C. App. 198, 423 S.E.2d 498 (1992), aff'd, 334 N.C. 421, 432 S.E.2d 310, reh'g denied, 335 N.C. 182, 436 S.E.2d 369 (1993).

A town's board of commissioners authority to organize city government pursuant to this section includes the power to abolish a board of adjustment, appointed and created pursuant to G.S. 160A-388, and to thereafter create a new board of adjustment and make appointments thereto. Board of Adjustment v. Town of Swansboro, 334 N.C. 421, 432 S.E.2d 310, rehearing denied, 335 N.C. 182, 436 S.E.2d 369 (1993).

Cited in Town of Scotland Neck v. Western Sur. Co., 301 N.C. 331, 271 S.E.2d 501 (1980).

Part 2. Administration of Council-Manager Cities.

§ 160A-147. Appointment of city manager; dual office holding.

(a) In cities whose charters provide for the council-manager form of government, the council shall appoint a city manager to serve at its pleasure. The manager shall be appointed solely on the basis of the manager's executive and administrative qualifications. The manager need not be a resident of the city or State at the time of appointment. The office of city manager is hereby declared to be an office that may be held concurrently with other appointive (but not elective) offices pursuant to Article VI, Sec. 9, of the Constitution.

(b) Notwithstanding the provisions of subsection (a), a city manager may serve on a county board of education that is elected on a non-partisan basis if the following criteria are met:

(1) The population of the city by which the city manager is employed does not exceed 10,000;

(2) The city is located in two counties; and

(3) The population of the county in which the city manager resides does not exceed 40,000.

(b1) Notwithstanding the provisions of subsection (a) of this section, a city manager may serve on a county board of education that is elected on a nonpartisan basis if the population of the city by which the city manager is employed does not exceed 3,000.

(c) Notwithstanding the provisions of subsection (a), a city manager may hold elective office if the following criteria are met:

(1) The population of the city by which the city manager is employed does not exceed 3,000.

(2) The city manager is an elected official of a city other than the city by which the city manager is employed.

(d) For the purposes of this section, population figures shall be according to the latest United States decennial figures issued at the time the second office is assumed. If census figures issued after the second office is assumed increase the city or county population beyond the limits of this section, the city manager may complete the term of elected office that the city manager is then serving. (1969, c. 629, s. 2; 1971, c. 698, s. 1; 1989, c. 49; 1997-25, s. 1; 2009-321, s. 1.)

Local Modification. — Town of Elon College: 1985, c. 109; (As to Part 2) town of Kernersville: 1989, c. 381, s. 12.

Editor's Note. — Session Laws 1989, c. 49, which amended this section, in s. 2 provided: "Whenever a city manager has served on a county board of education consistent with the requirements set forth in G.S. 160A-147(b) as enacted by Section 1 of this act, provided that such dual office holding commenced no earlier than January 1, 1984, that person may continue to serve in such dual capacity and shall not be deemed to have given up the first office upon assumption of the second office. Actions of neither the county board of education nor the city shall be invalid because of the dual office holding permitted or validated by this act."

Effect of Amendments. — Session Laws 2009-321, s. 1, effective July 17, 2009, added subsection (b1).

CASE NOTES

Severance Pay Not at Odds with "At Will" Employment. — An agreement providing severance pay to a town manager does not prohibit, although it may deter, a town from terminating the town manager "at will" in violation of this section. Myers v. Town of Plymouth, 135 N.C. App. 707, 522 S.E.2d 122, 1999 N.C. App. LEXIS 1237 (1999).

§ 160A-148. Powers and duties of manager.

The manager shall be the chief administrator of the city. He shall be responsible to the council for administering all municipal affairs placed in his charge by them, and shall have the following powers and duties:

(1) He shall appoint and suspend or remove all city officers and employees not elected by the people, and whose appointment or removal is not otherwise provided for by law, except the city attorney, in accordance with such general personnel rules, regulations, policies, or ordinances as the council may adopt.

(2) He shall direct and supervise the administration of all departments, offices, and agencies of the city, subject to the general direction and control of the council, except as otherwise provided by law.

(3) He shall attend all meetings of the council and recommend any measures that he deems expedient.

(4) He shall see that all laws of the State, the city charter, and the ordinances, resolutions, and regulations of the council are faithfully executed within the city.

(5) He shall prepare and submit the annual budget and capital program to the council.

(6) He shall annually submit to the council and make available to the public a complete report on the finances and administrative activities of the city as of the end of the fiscal year.

(7) He shall make any other reports that the council may require concerning the operations of city departments, offices, and agencies subject to his direction and control.

(8) He shall perform any other duties that may be required or authorized by the council. (1969, c. 629, s. 2; 1971, c. 698, s. 1; 1973, c. 426, s. 22.)

CASE NOTES

Role of Manager Under Subdivision (1). — Subdivision (1) of this section prohibits the city manager from unilateral adoption of a policy establishing funding for stand-by and on-call duty for any city department. The manager's role is limited to recommending position classification and pay plans to the city council for their ultimate approval. Newber v. City of Wilmington, 83 N.C. App. 327, 350 S.E.2d 125 (1986), cert. denied and appeal dismissed, 319 N.C. 225, 353 S.E.2d 402 (1987).

Liability of City for Malicious Prosecution of Employee by City Manager. — Action of the city manager in instigating the arrest and prosecution of a municipal employee for embezzlement was done in the performance of a governmental function imposed upon the city manager, and therefore the city could not be held liable in tort by such employee in an action for malicious prosecution. McDonald v. Carper, 252 N.C. 29, 112 S.E.2d 741 (1960), decided under former § 160-349.

Cited in Disher v. Weaver, 308 F. Supp. 2d 614, 2004 U.S. Dist. LEXIS 3849 (M.D.N.C. 2004).

§ 160A-149. Acting city manager.

By letter filed with the city clerk, the manager may designate, subject to the approval of the council, a qualified person to exercise the powers and perform the duties of manager during his temporary absence or disability. During this absence or disability, the council may revoke that designation at any time and appoint another to serve until the manager returns or his disability ceases. (1971, c. 698, s. 1.)

§ 160A-150. Interim city manager.

When the position of city manager is vacant, the council shall designate a qualified person to exercise the powers and perform the duties of manager until the vacancy is filled. (1971, c. 698, s. 1.)

§ 160A-151. Mayor and councilmen ineligible to serve or act as manager.

Neither the mayor nor any member of the council shall be eligible for appointment as manager or acting or interim manager. (1971, c. 698, s. 1.)

§ 160A-152. Applicability of Part.

This Part shall apply only to those cities having the council-manager form of government. If the powers and duties of a city manager set out in any city charter shall differ materially from those set out in G.S. 160A-148, the council may by ordinance confer or impose on the manager any of the powers or duties set out in G.S. 160A-148 but not contained in the charter. (1971, c. 698, s. 1.)

§§ 160A-153, 160A-154: Reserved for future codification purposes.

Part 3. Administration of Mayor-Council Cities.

§ 160A-155. Council to provide for administration in mayor-council cities.

The council shall appoint, suspend, and remove the heads of all city departments, and all other city employees; provided, the council may delegate to any administrative official or department head the power to appoint, suspend, and remove city employees assigned to his department. The head of each department shall see that all laws of the State, the city charter, and the ordinances, resolutions, and regulations of the council concerning his department are faithfully executed within the city. Otherwise, the administration of the city shall be performed as provided by law or direction of the council. (1971, c. 698, s. 1; 1979, 2nd Sess., c. 1247, s. 16.)

§ 160A-156. Acting department heads.

By letter filed with the city clerk, the head of any department may designate, subject to the approval of the council, a qualified person to exercise the powers and perform the duties of head of that department during his temporary absence or disability. During his absence or disability, the council may revoke that designation at any time and appoint another officer to serve until the department head returns or his disability ceases. (1971, c. 698, s. 1.)

§ 160A-157. Interim department heads.

When the position of head of any department is vacant, the council may designate a qualified person to exercise the powers and perform the duties of head of the department until the vacancy is filled. (1971, c. 698, s. 1.)

§ 160A-158. Mayor and councilmen ineligible to serve or act as heads of departments.

Neither the mayor nor any member of the council shall be eligible for appointment as head of any city department or as acting or interim head of a department; provided, that in cities having a population of less than 5,000 according to the most recent official federal census, the mayor and any member of the council shall be eligible for appointment by the council as department head or other employee, and may receive reasonable compensation for such employment, notwithstanding any other provision of law. (1971, c. 698, s. 1; 1979, 2nd Sess., c. 1247, s. 17.)

§ 160A-159. Applicability of Part.

This Part shall apply only to those cities having the mayor-council form of government. (1971, c. 698, s. 1.)

§§ 160A-160, 160A-161: Reserved for future codification purposes.

Part 4. Personnel.

§ 160A-162. Compensation.

(a) The council shall fix or approve the schedule of pay, expense allowances, and other compensation of all city employees, and may adopt position classification plans; any compensation or pay plan may include provisions for payments to employees on account of sickness or disability. In cities with the council-manager form of government, the manager shall be responsible for preparing position classification and pay plans for submission to the council and, after any such plans have been adopted by the council, shall administer them. In cities with the mayor-council form of government, the council shall appoint a personnel officer (or confer the duties of personnel officer on some city administrative officer); the personnel officer shall then be responsible for administering the pay plan and any position classification plan in accordance with general policies and directives adopted by the council.

(b) The council may purchase life, health, and any other forms of insurance for the benefit of all or any class of city employees and their dependents, and may provide other fringe benefits for city employees. (1923, c. 20; 1949, c. 103; 1969, c. 845; 1971, c. 698, s. 1; 1979, 2nd Sess., c. 1247, ss. 18, 19.)

CASE NOTES

Policy as to Payment of Employees Must Have Council Approval. — This section makes ineffective any policy as to payment of city employees in the City of Wilmington, a city with the council-manager form of government, without the approval of the Wilmington City Council. Newber v. City of Wilmington, 83 N.C. App. 327, 350 S.E.2d 125 (1986), cert. denied and appeal dismissed, 319 N.C. 225, 353 S.E.2d 402 (1987).

As the evidence before the trial court on a motion for summary judgment filed by a police department did not raise a genuine issue of material fact as to whether numerous current police officers were entitled to a pay increase, because the city council had not approved any pay raise for existing employees of the police department with post-secondary degrees, the trial court properly granted summary judgment in favor of the department and against the contesting officers. City of Asheville v. Bowman, 172 N.C. App. 586, 616 S.E.2d 669, 2005 N.C. App. LEXIS 1808 (2005).

Stand-By and On-Call Duty Policy. — Administrative policy issued by city manager's office, which indicated in its initial sentence its purposes "to establish conditions for authorizing stand-by and on-call duty, to define them and to set rates for compensation," fell within the purview of this section and its mandate as to "schedule of pay." Newber v. City of Wilmington, 83 N.C. App. 327, 350 S.E.2d 125 (1986), cert. denied and appeal dismissed, 319 N.C. 225, 353 S.E.2d 402 (1987).

Compensation When No Salary Specified. — Where a municipal corporation engaged a commissioner of its sinking fund under the provisions of its charter, by which the incumbent was employed for a term of years continuously, his employment was that of a public officer, which precluded compensation based upon a quantum meruit, and he could not recover for his services in the absence of express statutory provision. Borden v. City of Goldsboro, 173 N.C. 661, 92 S.E. 694 (1917), decided under former law.

Contract with Town Manager Not Ultra Vires. — The execution of an employment contract providing severance pay to an at-will town manager was not ultra vires. Myers v. Town of Plymouth, 135 N.C. App. 707, 522 S.E.2d 122, 1999 N.C. App. LEXIS 1237 (1999).

§ 160A-163. Retirement benefits.

(a) The council may provide for enrolling city employees in the Local Governmental Employees' Retirement System, the Law-Enforcement Officers' Benefit and Relief Fund, the Firemen's Pension Fund, or a retirement plan certified to be actuarially sound by a qualified actuary as defined in subsection (d) of this section, and may make payments into any such retirement system or plan on behalf of its employees. The city may also supplement from local funds benefits provided by the Local Governmental Employees' Retirement System, the Law-Enforcement Officers' Benefit and Relief Fund, or the Firemen's Pension Fund.

(b) The council may create and administer a special fund for the relief of members of the police and fire departments who have been retired for age, or for disability or injury incurred in the line of duty, but any such funds established on or after January 1, 1972, shall be subject to the provisions of subsection (c) of this section. The council may receive donations and bequests in aid of any such fund, shall provide for its permanence and increase, and shall prescribe and regulate the conditions under which benefits may be paid.

(c) No city shall make payments into any retirement system or plan established or authorized by local act of the General Assembly unless the plan is certified to be actuarially sound by a qualified actuary as defined in subsection (d) of this section.

(d) A qualified actuary means an individual certified as qualified by the Commissioner of Insurance, or any member of the American Academy of Actuaries.

(e) A city which is providing health insurance under G.S. 160A-162(b) may provide health insurance for all or any class of former employees of the city who are receiving benefits under subsection (a) of this section or who are 65 years of age or older. Such health insurance may be paid entirely by the city, partly by the city and former employee, or entirely by the former employee, at the option of the city.

(f) The council may provide a deferred compensation plan. Where the council provides a deferred compensation plan, the investment of funds for the plan shall be exempt from the provisions of G.S 159-30 and G.S. 159-31. Cities may invest deferred compensation plan funds in life insurance, fixed or variable annuities and retirement income contracts, regulated investment trusts, or other forms of investments approved by the Board of Trustees of the North Carolina Public Employee Deferred Compensation Plan.

(g) Should the council provide for a retirement plan, a plan which supplements a State-administered plan, or a special fund, any benefits payable from such plan or fund on account of the disability of city employees may be restricted with regard to the amount which may be earned by the disabled former employee in any other employment, but only to the extent that the earnings of disability beneficiaries in the Local Governmental Employees' Retirement System are restricted in accordance with G.S. 128-27(e)(1). (1917, c. 136, subch. 5, s. 1; 1919, cc. 136, 237; C.S., s. 2787; 1965, c. 931; 1971, c. 698, s. 1; 1981, c. 347, s. 2; 1991, c. 277, s. 2; 1995, c. 259, s. 3.)

§ 160A-164. Personnel rules.

The council may adopt or provide for rules and regulations or ordinances concerning but not limited to annual leave, sick leave, special leave with full pay or with partial pay supplementing workers' compensation payments for employees injured in accidents arising out of and in the course of employment, hours of employment, holidays, working conditions, service award and incentive award programs, other personnel policies, and any other measures that promote the hiring and retention of capable, diligent, and honest career employees. (1917, c. 136, subch. 5, s. 1; 1919, cc. 136, 237; C.S., s. 2787; 1965, c. 931; 1971, c. 698, s. 1; 1979, c. 714, s. 2.)

CASE NOTES

Role of City Manager. — Section 160A-148(1) prohibits the city manager from the unilateral adoption of a policy establishing the funding for stand-by and on-call duty for any city department. The manager's role is limited to recommending position classification and pay plans to the city council for their ultimate approval. Newber v. City of Wilmington, 83 N.C. App. 327, 350 S.E.2d 125 (1986), cert. denied and appeal dismissed, 319 N.C. 225, 353 S.E.2d 402 (1987).

§ 160A-164.1. Smallpox vaccination policy (see editor's note on condition precedent).

All municipalities that employ firefighters, police officers, paramedics, or other first responders shall, not later than 90 days after this section becomes law, enact a policy regarding sick leave and salary continuation for those employees for absence from work due to an adverse medical reaction resulting from the employee receiving in employment vaccination against smallpox incident to the Administration of Smallpox Countermeasures by Health

Professionals, section 304 of the Homeland Security Act, Pub. L. No. 107-296 (Nov. 25, 2002) (to be codified at 42 U.S.C. § 233(p)). (2003-169, s. 5.)

Cross References. — As to tort claims arising from certain smallpox vaccinations of State employees, see G.S. 143-300.1A.

Condition precedent to recovery. — Session Laws 2003-169, s. 7, provides: "In the event that federal regulatory or statutory provisions providing compensation and benefits to persons for infection with smallpox, infection with vaccinia, or any adverse medical reaction incident to the Administration of Smallpox Countermeasures by Health Professionals, section 304 of the Homeland Security Act, Pub. L. No. 107-296 (Nov. 25, 2002) (to be codified at 42 U.S.C. § 233(p)) are adopted, a condition precedent to recovery under this act shall be that the person claiming compensation and benefits under this act shall first seek compensation and benefits under the federal provisions, with those provisions constituting primary coverage and the person then being entitled to compensation and benefits under this act not exceeding a total recovery under the federal provisions and this act equal to the amount available under the applicable provisions of this act."

The Smallpox Emergency Personnel Protection Act of 2003, Public Law 108-20, 117, Sta. 638, authorizes the Secretary of Health and Human Services to establish a Smallpox Vaccine Injury Compensation Program, which covers individuals immunized through January 23, 2005 or vaccina contacts who show symptoms by February 22, 2005.

Editor's Note. — Session Laws 2003-169, s. 9, made this section effective June 12, 2003, and applicable to claims arising from infection or adverse medical reactions related to smallpox vaccinations incident to the Administration of Smallpox Countermeasures by Health Professionals, section 304 of the Homeland Security Act, Pub. L. No.107-296 (Nov. 25, 2002) (to be codified at 42 U.S.C. § 233(p)) whether the infection or adverse medical reactions occurred before, on, or after June 12, 2003.

Session Laws 2003-169, s. 8, is a severability clause.

§ 160A-164.2. Criminal history record check of employees permitted.

The council may adopt or provide for rules and regulations or ordinances concerning a requirement that any applicant for employment be subject to a criminal history record check of State and National Repositories of Criminal Histories conducted by the Department of Justice in accordance with G.S. 114-19.14. The city may consider the results of these criminal history record checks in its hiring decisions. (2003-214, s. 5.)

Cross References. — As to criminal history record checks under the National Crime Prevention and Privacy Compact, see G.S. 114-19.50.

Editor's Note. — This section was originally enacted as G.S. 160A-164.1 by Session Laws 2003-214, s. 5. It has been renumbered as G.S. 160A-164.2 at the direction of the Revisor of Statutes.

§ 160A-165. Personnel board.

The council may establish a personnel board with authority to administer tests designed to determine the merit and fitness of candidates for appointment or promotion, to conduct hearings upon the appeal of employees who have been suspended, demoted, or discharged, and hear employee grievances. (1917, c. 136, subch. 5, s. 1; 1919, cc. 136, 237; C.S., s. 2787; 1965, c. 931; 1971, c. 698, s. 1.)

§ 160A-166. Participation in Social Security Act.

The council may take any action necessary to allow city employees to participate fully in benefits provided by the federal Social Security Act. (1949, c. 103; 1969, c. 845; 1971, c. 698, s. 1.)

§ 160A-167. Defense of employees and officers; payment of judgments.

(a) Upon request made by or in behalf of any member or former member of the governing body of any authority, or any city, county, or authority employee or officer, or former employee or officer, any soil and water conservation supervisor or any local soil and water conservation employee, whether the employee is a district or county employee, or any member of a volunteer fire department or rescue squad which receives public funds, any city, authority, county, soil and water conservation district, or county alcoholic beverage control board may provide for the defense of any civil or criminal action or proceeding brought against him either in his official or in his individual capacity, or both, on account of any act done or omission made, or any act allegedly done or omission allegedly made, in the scope and course of his employment or duty as an employee or officer of the city, authority, county or county alcoholic beverage control board. The defense may be provided by the city, authority, county or county alcoholic beverage control board by its own counsel, or by employing other counsel, or by purchasing insurance which requires that the insurer provide the defense. Providing for a defense pursuant to this section is hereby declared to be for a public purpose, and the expenditure of funds therefor is hereby declared to be a necessary expense. Nothing in this section shall be deemed to require any city, authority, county or county alcoholic beverage control board to provide for the defense of any action or proceeding of any nature.

(b) Any city council or board of county commissioners may appropriate funds for the purpose of paying all or part of a claim made or any civil judgment entered against any of its members or former members of the governing body of any authority, or any city, county, or authority employees or officers, or former employees or officers, or any soil and water conservation supervisor or any local soil and water conservation employee, whether the employee is a district or county employee, when such claim is made or such judgment is rendered as damages on account of any act done or omission made, or any act allegedly done or omission allegedly made, in the scope and course of his employment or duty as a member or former member of the governing body of any authority, or any city, county, district, or authority employee or officer of the city, authority, district, or county; provided, however, that nothing in this section shall authorize any city, authority, district, or county to appropriate funds for the purpose of paying any claim made or civil judgment entered against any of its members or former members of the governing body of any authority, or any city, county, district, or authority employees or officers or former employees or officers if the city council or board of county commissioners finds that such members or former members of the governing body of any authority, or any city, county, or authority employee or officer acted or failed to act because of actual fraud, corruption or actual malice on his part. Any city, authority, or county may purchase insurance coverage for payment of claims or judgments pursuant to this section. Nothing in this section shall be deemed to require any city, authority, or county to pay any claim or judgment referred to herein, and the purchase of insurance coverage for payment of any such claim or judgment shall not be deemed an assumption of any liability not covered by such insurance contract, and shall not be deemed an assumption of liability for payment of any claim or judgment in excess of the limits of coverage in such insurance contract.

(c) Subsection (b) shall not authorize any city, authority, or county to pay all or part of a claim made or civil judgment entered unless (1) notice of the claim or litigation is given to the city council, authority governing board, or board of county commissioners as the case may be prior to the time that the claim is settled or civil judgment is entered, and (2) the city council, authority governing board, or board of county commissioners as the case may be shall have adopted, and made available for public inspection, uniform standards under which claims made or civil judgments entered against members or former members of the governing body of any authority, or any city, county, or authority employees or officers, or former employees or officers, shall be paid.

(d) For the purposes of this section, "authority" means an authority organized under Article 1 of Chapter 162A of the General Statutes, the North Carolina Water and Sewer Authorities Act. "District" means a soil and water conservation district organized under Chapter 139 of the General Statutes. (1967, c. 1093; 1971, c. 698, s. 1; 1973, c. 426, s. 23; c. 1450; 1977, c. 307, s. 2; c. 834, s. 1; 1983, c. 525, ss. 1-4; 2001-300, s. 2.)

Local Modification. — Mecklenburg: 1989, c. 151, s. 1; city of Charlotte: 1989 (Reg. Sess., 1990), c. 862.

Legal Periodicals. — For comment on the need for reform in North Carolina of local government sovereign immunity, see 18 Wake Forest L. Rev. 43 (1982).

For comment, "Waiving Local Government Immunity in North Carolina: Risk Management Programs Are Insurance," see 27 Wake Forest L. Rev. 709 (1992).

CASE NOTES

Action Under Section Does Not Waive Immunity. — Section 106A-485 provides that the only way a city may waive its governmental immunity is by the purchase of liability insurance. Action by the City under this section does not waive immunity. Blackwelder v. City of Winston-Salem, 332 N.C. 319, 420 S.E.2d 432 (1992).

When taxpayers sued county commissioners for entering into a contract that benefitted one of the commissioners, evidence of the amount spent by the county to defend the commissioners was admissible; the actions of one of the commissioners were unquestionably outside the scope of his office, due to his clear violation of the conflict of interest statute, G.S 14-234(a), so that he was not entitled to have his defense provided by the county, and, while the actions of the other commissioners did not rise to a violation of the conflict of interest law, their actions combined with their judgment and knowledge of the actions of the commissioner who was guilty of a conflict of interest raised questions as to whether their conduct was within the course and scope of their office. Gibbs v. Mayo, 162 N.C. App. 549, 591 S.E.2d 905, 2004 N.C. App. LEXIS 252 (2004), cert. denied, 358 N.C. 543, 599 S.E.2d 45 (2004).

Applied in Gray v. Laws, 51 F.3d 426 (4th Cir. 1995).

§ 160A-168. Privacy of employee personnel records.

(a) Notwithstanding the provisions of G.S. 132-6 or any other general law or local act concerning access to public records, personnel files of employees, former employees, or applicants for employment maintained by a city are subject to inspection and may be disclosed only as provided by this section. For purposes of this section, an employee's personnel file consists of any information in any form gathered by the city with respect to that employee and, by way of illustration but not limitation, relating to his application, selection or nonselection, performance, promotions, demotions, transfers, suspension and other disciplinary actions, evaluation forms, leave, salary, and termination of employment. As used in this section, "employee" includes former employees of the city.

(b) The following information with respect to each city employee is a matter of public record: name; age; date of original employment or appointment to the service; the terms of any contract by which the employee is employed whether written or oral, past and current, to the extent that the city has the written contract or a record of the oral contract in its possession; current position title; current salary; date and amount of the most recent increase or decrease in salary; date of the most recent promotion, demotion, transfer, suspension, separation, or other change in position classification; and the office to which the employee is currently assigned. For the purposes of this subsection, the term "salary" includes pay, benefits, incentives, bonuses, and deferred and all other forms of compensation paid by the employing entity. The city council shall determine in what form and by whom this information will be maintained. Any person may have access to this information for the purpose of inspection, examination, and copying, during regular business hours, subject only to such rules and regulations for the safekeeping of public records as the city council may have adopted. Any person denied access to this information may apply to the appropriate division of the General Court of Justice for an order compelling disclosure, and the court shall have jurisdiction to issue such orders.

(c) All information contained in a city employee's personnel file, other than the information made public by subsection (b) of this section, is confidential and shall be open to inspection only in the following instances:

(1) The employee or his duly authorized agent may examine all portions of his personnel file except (i) letters of reference solicited prior to employment, and (ii) information concerning a medical disability, mental or physical, that a prudent physician would not divulge to his patient.

(2) A licensed physician designated in writing by the employee may examine the employee's medical record.

(3) A city employee having supervisory authority over the employee may examine all material in the employee's personnel file.

(4) By order of a court of competent jurisdiction, any person may examine such portion of an employee's personnel file as may be ordered by the court.

(5) An official of an agency of the State or federal government, or any political subdivision of the State, may inspect any portion of a personnel file when such inspection is deemed by the official having custody of such records to be inspected to be necessary and essential to the pursuance of a proper function of the inspecting agency, but no information shall be divulged for the purpose of assisting in a criminal prosecution (of the employee), or for the purpose of assisting in an investigation of (the employee's) tax liability. However, the official having custody of such records may release the name, address, and telephone number from a personnel file for the purpose of assisting in a criminal investigation.

(6) An employee may sign a written release, to be placed with his personnel file, that permits the person with custody of the file to provide, either in person, by telephone, or by mail, information specified in the release to prospective employers, educational institutions, or other persons specified in the release.

(7) The city manager, with concurrence of the council, or, in cities not having a manager, the council may inform any person of the employment or nonemployment, promotion, demotion, suspension or other disciplinary action, reinstatement, transfer, or termination of a city employee and the reasons for that personnel action. Before releasing the information, the manager or council shall determine in writing that the release is essential to maintaining public confidence in the administration of city services or to maintaining the level and quality of city services. This written determination shall be retained in the office of the manager or the city clerk, and is a record available for public inspection and shall become part of the employee's personnel file.

(c1) Even if considered part of an employee's personnel file, the following information need not be disclosed to an employee nor to any other person:

(1) Testing or examination material used solely to determine individual qualifications for appointment, employment, or promotion in the city's service, when disclosure would compromise the objectivity or the fairness of the testing or examination process.

(2) Investigative reports or memoranda and other information concerning the investigation of possible criminal actions of an employee, until the investigation is completed and no criminal action taken, or until the criminal action is concluded.

(3) Information that might identify an undercover law enforcement officer or a law enforcement informer.

(4) Notes, preliminary drafts and internal communications concerning an employee. In the event such materials are used for any official personnel decision, then the employee or his duly authorized agent shall have a right to inspect such materials.

(c2) The city council may permit access, subject to limitations they may impose, to selected personnel files by a professional representative of a training, research, or academic institution if that person certifies that he will not release information identifying the employees whose files are opened and that the information will be used solely for statistical, research, or teaching purposes. This certification shall be retained by the city as long as each personnel file examined is retained.

(c3) Notwithstanding any provision of this section to the contrary, the Retirement Systems Division of the Department of State Treasurer may disclose the name and mailing address of former local governmental employees to domiciled, nonprofit organizations representing 2,000 or more active or retired State government, local government, or public school employees.

(d) The city council of a city that maintains personnel files containing information other than the information mentioned in subsection (b) of this section shall establish procedures whereby an employee who objects to material in his file on grounds that it is inaccurate or misleading may seek to have the material removed from the file or may place in the file a statement relating to the material.

(e) A public official or employee who knowingly, willfully, and with malice permits any person to have access to information contained in a personnel file, except as is permitted by this section, is guilty of a Class 3 misdemeanor and upon conviction shall only be fined an amount not more than five hundred dollars ($500.00).

(f) Any person, not specifically authorized by this section to have access to a personnel file designated as confidential, who shall knowingly and willfully examine in its official filing place, remove or copy any portion of a confidential personnel file shall be guilty of a Class 3 misdemeanor and upon conviction shall only be fined in the discretion of the court but not in excess of five hundred dollars ($500.00). (1975, c. 701, s. 2; 1981, c. 926, ss. 1-4; 1993, c. 539, ss. 1084, 1085; 1994, Ex. Sess., c. 24, s. 14(c); 2007-508, s. 7; 2008-194, s. 11(e).)

Local Modification. — City of Charlotte: 1997-305, s. 3; city of Durham: 1998-142, s. 1; city of Greensboro: 2001-20; city of Wilmington: 2003-238, s. 1.

Effect of Amendments. — Session Laws 2008-194, s. 11(e), effective August 8, 2008, added subsection (c3).

Legal Periodicals. — For comment, "You Can't Always Get What You Want: A Look at North Carolina's Public Records Law," see 72 N.C.L. Rev. 1527 (1994).

CASE NOTES

Subdivision (c)(4) of this section specifically authorizes disclosure by order of a court of competent jurisdiction. Hall v. Helms, 118 F.R.D. 51 (W.D.N.C. 1987).

The plain language of subsection (c)(4) indicates that a superior court, being a court of competent jurisdiction, has the authority to allow inspection of the personnel files of police officers. In re Brooks, 143 N.C. App. 601, 548 S.E.2d 748, 2001 N.C. App. LEXIS 344 (2001).

This section does not create a civil cause of action. Houpe v. City of Statesville, 128 N.C. App. 334, 497 S.E.2d 82 (1998), cert. denied, 348 N.C. 72, 505 S.E.2d 871 (1998).

Ex Parte Petitions for Disclosure under Subsection (c)(4). — An ex parte petition submitted pursuant to subsection (c)(4) should be accompanied by sworn affidavits or similar evidence, including specific factual allegations detailing reasons justifying disclosure and stating the statutory grounds which allow disclosure, the court should docket petitions submitted and orders entered pursuant to subsection (c)(4) per its rules for docketing special proceedings, and the Superior Court should make an independent determination that the interests of justice require disclosure of the confidential employment information. In re Brooks, 143 N.C. App. 601, 548 S.E.2d 748, 2001 N.C. App. LEXIS 344 (2001).

Applied in Spell v. McDaniel, 591 F. Supp. 1090 (E.D.N.C. 1984).

Cited in Rowell v. City of Hickory, — F. Supp. 2d —, 2008 U.S. Dist. LEXIS 103444 (W.D.N.C. Oct. 8, 2008).

OPINIONS OF ATTORNEY GENERAL

Attorney-Client Communications to City on Personnel Matters. — Written attorney-client communications to a city (including the city manager and city council) on specific personnel matters related to an employee that are more than three years old, and which are confidential under G.S. 160A-168(a), are not public records; by its specific terms, G.S. 160A-168(a) supersedes the requirement in G.S. 132-1.1 that privileged attorney-client communications must be disclosed three years after they are received. See opinion of Attorney General to Mr. Grady Joseph Wheeler, Jr., Esq., Attorney, 2001 N.C. AG LEXIS 15 (5/30/2001).

§ 160A-169. City employee political activity.

(a) Purpose. The purpose of this section is to ensure that city employees are not subjected to political or partisan coercion while performing their job duties, to ensure that employees are not restricted from political activities while off duty, and to ensure that public funds are not used for political or partisan activities.

It is not the purpose of this section to allow infringement upon the rights of employees to engage in free speech and free association. Every city employee has a civic responsibility to support good government by every available means and in every appropriate manner. Employees shall not be restricted from affiliating with civic organizations of a partisan or political nature, nor shall employees, while off duty, be restricted from attending political meetings, or advocating and supporting the principles or policies of civic or political organizations, or supporting partisan or nonpartisan candidates of their choice in accordance with the Constitution and laws of the State and the Constitution and laws of the United States of America.

(b) Definitions. For the purposes of this section:

(1) "City employee" or "employee" means any person employed by a city or any department or program thereof that is supported, in whole or in part, by city funds;

(2) "On duty" means that time period when an employee is engaged in the duties of his or her employment; and

(3) "Workplace" means any place where an employee engages in his or her job duties.

(c) No employee while on duty or in the workplace may:

(1) Use his or her official authority or influence for the purpose of interfering with or affecting the result of an election or nomination for political office; or

(2) Coerce, solicit, or compel contributions for political or partisan purposes by another employee.

(d) No employee may be required as a duty or condition of employment, promotion, or tenure of office to contribute funds for political or partisan purposes.

(e) No employee may use city funds, supplies, or equipment for partisan purposes, or for political purposes except where such political uses are otherwise permitted by law.

(f) To the extent that this section conflicts with the provisions of any local act, city charter, local ordinance, resolution, or policy, this section prevails to the extent of the conflict. (1991, c. 619, s. 2; 1993, c. 298, s. 2.)

Editor's Note. — The number of this section was assigned by the Revisor of Statutes. The number assigned by the enacting act, G.S. 160A-99, was apparently a typographical error.

OPINIONS OF ATTORNEY GENERAL

The provisions of this section and § 153A-99 are applicable to elected officials of counties and cities. See opinion of Attorney General to Mr. William R. Gilkeson, Staff Attorney, N.C. General Assembly, 1998 N.C.A.G. 1 (1/14/98).

§ 160A-170: Reserved for future codification purposes.

Part 5. City Clerk.

§ 160A-171. City clerk; duties.

There shall be a city clerk who shall give notice of meetings of the council, keep a journal of the proceedings of the council, be the custodian of all city records, and shall perform any other duties that may be required by law or the council. (1917, c. 136, subch. 13, s. 1; C.S., s. 2826; 1941, c. 103; 1949, c. 14; 1971, c. 698, s. 1.)

CASE NOTES

Cited in Town of Scotland Neck v. Western Sur. Co., 46 N.C. App. 124, 264 S.E.2d 917 (1980); Town of Scotland Neck v. Western Sur. Co., 301 N.C. 331, 271 S.E.2d 501 (1980).

Town Clerk. — Trial court did not err in denying the town's motion to dismiss the newspaper's amended complaint for lack of standing and for the alleged failure to join a necessary party, the town clerk, as the newspaper was a party to the action who sought the disclosure of the alleged public records at issue and, thus, the newspaper had standing to request the documents, and it was not necessary to join the town clerk to the action before all necessary parties to the action were before the trial court. Womack Newspapers, Inc. v. Town of Kitty Hawk, 181 N.C. App. 1, 639 S.E.2d 96, 2007 N.C. App. LEXIS 81 (2007).

§ 160A-172. Deputy clerk.

The council may provide for a deputy city clerk who shall have full authority to exercise and perform any of the powers and duties of the city clerk that may be specified by the council. (1917, c. 136, subch. 13, s. 1; C.S., s. 2826; 1941, c. 103; 1949, c. 14; 1971, c. 698, s. 1.)

Part 6. City Attorney.

§ 160A-173. City attorney; appointment and duties.

The council shall appoint a city attorney to serve at its pleasure and to be its legal adviser. (1971, c. 698, s. 1.)

ARTICLE 8.

Delegation and Exercise of the General Police Power.

§ 160A-174. General ordinance-making power.

(a) A city may by ordinance define, prohibit, regulate, or abate acts, omissions, or conditions, detrimental to the health, safety, or welfare of its citizens and the peace and dignity of the city, and may define and abate nuisances.

(b) A city ordinance shall be consistent with the Constitution and laws of North Carolina and of the United States. An ordinance is not consistent with State or federal law when:

(1) The ordinance infringes a liberty guaranteed to the people by the State or federal Constitution;

(2) The ordinance makes unlawful an act, omission or condition which is expressly made lawful by State or federal law;

(3) The ordinance makes lawful an act, omission, or condition which is expressly made unlawful by State or federal law;

(4) The ordinance purports to regulate a subject that cities are expressly forbidden to regulate by State or federal law;

(5) The ordinance purports to regulate a field for which a State or federal statute clearly shows a legislative intent to provide a complete and integrated regulatory scheme to the exclusion of local regulation;

(6) The elements of an offense defined by a city ordinance are identical to the elements of an offense defined by State or federal law.

The fact that a State or federal law, standing alone, makes a given act, omission, or condition unlawful shall not preclude city ordinances requiring a higher standard of conduct or condition. (1971, c. 698, s. 1.)

Cross References. — As to limitations on enactment of Sunday-closing ordinances, see G.S. 160A-191.

Legal Periodicals. — For article, "Regulating Obscenity Through the Power to Define and Abate Nuisances," see 14 Wake Forest L. Rev. 1 (1978).

For comment, "Municipal Tort Liability for Negligent Failure to Provide Adequate Police Protection," see 20 Wake Forest L. Rev. 697 (1984).

For note, "Preemption Hogwash: North Carolina's Judicial Repeal of Local Authority to Regulate Hog Farms in Craig v. County of Chatham," see 80 N.C.L. Rev. 2121 (2002).

For note, "A First Step in the Wrong Direction: Slavin v. Town of Oak Island and the Taking of Littoral Rights of Direct Beach Access," see 82 N.C.L. Rev. 1510 (2004).

CASE NOTES

I. In General.
II. Sunday Ordinances.
III. Other Specific Ordinances.

I. IN GENERAL.

Editor's Note. *— Many of the cases cited below were decided under former similar provisions.*

Through this section and § 160A-186 the legislature has delegated to the municipalities a part of its police power, which may be exercised to protect or promote the health, morals, order, safety and general welfare of society. Town of Atlantic Beach v. Young, 307 N.C. 422, 298 S.E.2d 686, appeal dismissed, 462 U.S. 1101, 103 S. Ct. 2446, 77 L. Ed. 2d 1328 (1983).

Power to Enact Ordinances. — Established municipal authorities may enact such ordinances as are promotive of the peace and good order of the town, the limitation being that the regulations may not be unreasonable or unduly discriminative nor manifestly oppressive and in derogation of common right. State v. Burbage, 172 N.C. 876, 89 S.E. 795 (1916).

The necessary implication of subdivision (b)(3) is that the General Assembly intended to allow the issuance of a preliminary injunction upon a showing by plaintiffs of a likelihood of success on the merits of a tort claim and some type of irreparable harm, even where an ordinance has not been enforced by local authorities or where an ordinance might permit one to pursue a course of action that otherwise would constitute a potential tort claim under State law. Kaplan v. Prolife Action League, 111 N.C. App. 1, 431 S.E.2d 828, appeal dismissed and discretionary review denied, 335 N.C. 175, 436 S.E.2d 379 (1993), cert. denied, 512 U.S. 1253, 114 S. Ct. 2783, 129 L. Ed. 2d 894 (1994).

It is not necessary now to aver authority conferred by a general and public law to pass an ordinance, as it was when that authority was derived under a special act of incorporation. State v. Merritt, 83 N.C. 677 (1880).

A municipal ordinance is presumed to be valid, and the burden is upon the complaining party to show its invalidity or inapplicability. Currituck County v. Willey, 46 N.C. App. 835, 266 S.E.2d 52, cert. denied, 283 S.E.2d 131 (1980).

A municipal ordinance promulgated in the exercise of the police power will not be declared unconstitutional unless it is clearly so, and every intendment will be made to sustain it. Currituck County v. Willey, 46 N.C. App. 835, 266 S.E.2d 52, cert. denied, 283 S.E.2d 131 (1980).

Doubt as to whether an ordinance is invalid, as conflicting with individual rights, should be resolved against the city. Slaughter v. O'Berry, 126 N.C. 181, 35 S.E. 241, 48 L.R.A. 442 (1900).

The courts will not inquire into the motives which prompt a municipality's legislative body to enact an ordinance which is valid on its face. Clark's Greenville, Inc. v. West, 268 N.C. 527, 151 S.E.2d 5 (1966).

Courts Will Be Slow to Interfere. — By this section discretionary power is vested in the city authorities, and the courts will be slow to interfere when the ordinance is not contrary to the laws of the State and no fraud, dishonesty, or oppression is charged. State v. Austin, 114 N.C. 855, 19 S.E. 919 (1894).

Unless municipality's action is so clearly unreasonable as to amount to oppression and manifest abuse of discretion, courts will be slow to interfere, and then the power of the court will be exercised with great caution and only in a clear case. Jones v. Town of N. Wilkesboro, 150 N.C. 646, 64 S.E. 866 (1909).

Scope of Courts' Review. — Where town passed ordinance pursuant to its police power as provided under G.S. 160A-186 and expressly stated that its purpose was to protect the health, safety and welfare of the town, review of validity of such ordinance would be to determine if the police power had been exercised within the constitutional limitations imposed by both the state and federal Constitutions. Such review would not include an analysis of the motives which prompted the passage of the ordinance, because so long as an act is not forbidden, the wisdom of the enactment is exclusively a legislative decision. Town of Atlantic Beach v. Young, 307 N.C. 422, 298 S.E.2d 686, appeal dismissed, 462 U.S. 1101, 103 S. Ct. 2446, 77 L. Ed. 2d 1328 (1983).

As to stay of federal court action, see Brown v. Brannon, 399 F. Supp. 133 (M.D.N.C. 1975), aff'd, 535 F.2d 1249 (4th Cir. 1976).

Challenge to Constitutionality of Criminal Statute or Ordinance in Action to Enjoin Enforcement. — Notwithstanding the general rule that the constitutionality of a statute or ordinance purporting to create a criminal offense may not be challenged in an action to enjoin its enforcement, a well-established exception permits such action when injunctive relief is essential to the protection of property rights and the rights of persons against injuries otherwise irremediable. Raleigh Mobile Home Sales, Inc. v. Tomlinson, 7 N.C. App. 289, 172 S.E.2d 276, aff'd, 276 N.C. 661, 174 S.E.2d 542 (1970).

Succeeding boards of commissioners are deemed to act subject to the provisions of previous ordinances passed by their predecessors in authority, until they see fit to repeal them. Hutchins v. Town of Durham, 118 N.C. 457, 24 S.E. 723 (1896).

General Laws Prevail over Ordinances. — Municipal bylaws and ordinances must be in harmony with the general laws of the State, and whenever they come in conflict with the general laws, the bylaws and ordinances must give way. Washington v. Hammond, 76 N.C. 33 (1877); State v. Stevens, 114 N.C. 873, 19 S.E. 861 (1894); State v. Williams, 283 N.C. 550, 196 S.E.2d 756 (1973).

Although the majority of cases dealing with a conflict between a municipal ordinance and a state statute have arisen in criminal actions, the same principles apply in civil causes. Greene v. City of Winston-Salem, 287 N.C. 66, 213 S.E.2d 231 (1975).

In determining whether the General Assembly intended to provide statewide regulation of the land application of biosolids to the exclusion of local regulation, the court must ascertain if the General Assembly has shown a clear legislative intent to provide a complete and integrated regulatory scheme. Granville Farms, Inc. v. County of Granville, 170 N.C. App. 109, 612 S.E.2d 156, 2005 N.C. App. LEXIS 906 (2005).

Legislative Classifications to Bear Reasonable Relation to Purpose. — The equal protection clauses of the United States and North Carolina Constitutions impose upon lawmaking bodies the requirement that any legislative classification be based on differences that are reasonably related to the purposes of the act in which it is found. State v. Greenwood, 280 N.C. 651, 187 S.E.2d 8 (1972).

So long as classification made by ordinance bears some reasonable relationship to the public welfare which the ordinance seeks to promote, the ordinance will not be rendered unconstitutional merely because persons in one class derive some incidental competitive advantage over those in another. Raleigh Mobile Home Sales, Inc. v. Tomlinson, 7 N.C. App. 289, 172 S.E.2d 276, aff'd, 276 N.C. 661, 174 S.E.2d 542 (1970).

Authority to abate nuisances is liberally construed by the courts for the benefit of the citizens. State v. Beacham, 125 N.C. 652, 34 S.E. 447 (1899).

No Liability for Failure to Enact or Enforce Ordinances. — A municipal corporation is not civilly liable for failure to pass ordinances to preserve the public health or otherwise promote the public good, nor for any omission to enforce the ordinances enacted under the legislative powers granted in its charter or to see that they are properly observed by its citizens or by those who may be resident within the corporate limits. Bunch v. Edenton, 90 N.C. 431 (1886); Hull v. Town of Roxboro, 142 N.C. 453, 55 S.E. 351 (1906); Harrington v. Town of Greenville, 159 N.C. 632, 75 S.E. 849 (1912).

But a city is liable in damages for failure to abate a nuisance that amounts to an obstruction in a street in a reasonable time. Dillon v. City of Raleigh, 124 N.C. 184, 32 S.E. 548 (1899).

When Owner Is Entitled to Compensation for Abatement of Nuisance. — An owner of property is not entitled to compensation for property rightfully destroyed or damaged by a city in abating a nuisance; the reason for this is that the destruction or damage is for public safety or health and is not a taking of private property for public use without compensation or due process in the constitutional sense. Rhyne v. Town of Mount Holly, 251 N.C. 521, 112 S.E.2d 40 (1960).

A municipality is liable for impairing, removing or destroying property, ostensibly in the abatement of a nuisance, where the thing or condition in question is not a nuisance per se, under statute or in fact, or where the thing or condition has not been declared to be a nuisance. Rhyne v. Town of Mount Holly, 251 N.C. 521, 112 S.E.2d 40 (1960).

As to legislative authority of board of aldermen of Winston-Salem, see Southern Ry. v. City of Winston-Salem, 275 N.C. 465, 168 S.E.2d 396 (1969).

Conflict Between Regulation Adopted by State Agency and Municipal Ordinance. — Provision of the Gastonia (North Carolina) City Code that governed outdoor billboards conflicted with a regulation that was adopted by the North Carolina Department of Transportation (DOT) to implement North Carolina's Outdoor Advertising Control Act, G.S. 136-126 et seq., and was preempted by the DOT's regulation. Morris Communs. Corp. v. Bd. of Adjustment, 159 N.C. App. 598, 583 S.E.2d 419, 2003 N.C. App. LEXIS 1530 (2003), appeal dismissed sub nom. Morris Communs. v. Bd. of Adjust., 357 N.C. 658, 590 S.E.2d 269 (2003).

Judgment affirming a zoning board's decision upholding a zoning administrator's determination that a billboard violated a local zoning ordinance was error because the North Carolina Department of Transportation's outdoor advertising regulations authorized relocation of a billboard within certain limitations, and pursuant to G.S. 160A-174(b)(2) those regulations preempted the local zoning ordinance. Lamar OCI South Corp. v. Stanly County Zoning Bd. of Adjustment, 186 N.C. App. 44, 650 S.E.2d 37, 2007 N.C. App. LEXIS 1985 (2007).

Ordinance for State-Owned Beach. — Because the renourishment projects undertaken by the town to restore ocean turtle habitat were publicly financed sand placement projects, title to the newly-created beach was vested in the State, and despite the protests of ocean front property owners, the appellate court could find nothing in the State Lands Act, codified at G.S. 146-1 et seq., which limited the authority of a town or city to enact regulations in order to protect a public beach located within its municipal limits. Slavin v. Town of Oak Island, 160 N.C. App. 57, 584 S.E.2d 100, 2003 N.C. App. LEXIS 1670 (2003), notice of appeal dismissed, cert. denied, 357 N.C. 659, 590 S.E.2d 271 (2003).

Applied in State v. Underwood, 283 N.C. 154, 195 S.E.2d 489 (1973); Smith v. Keator, 21 N.C. App. 102, 203 S.E.2d 411 (1974); Craig v. County of Chatham, 143 N.C. App. 30, 545 S.E.2d 455, 2001 N.C. App. LEXIS 221 (2001).

Cited in Smith v. Keator, 285 N.C. 530, 206 S.E.2d 203 (1974); U.T., Inc. v. Brown, 457 F. Supp. 163 (W.D.N.C. 1978); Batch v. Town of Chapel Hill, 92 N.C. App. 601, 376 S.E.2d 22 (1989); Board of Adjustment v. Town of Swansboro, 108 N.C. App. 198, 423 S.E.2d 498 (1992); Homebuilders Ass'n v. City of Charlotte, 336 N.C. 37, 442 S.E.2d 45 (1994); Moore v. City of Creedmoor, 120 N.C. App. 27, 460 S.E.2d 899 (1995); Lamar Outdoor Adver., Inc. v. City of Hendersonville Zoning Bd. of Adjustment, 155 N.C. App. 516, 573 S.E.2d 637, 2002 N.C. App. LEXIS 1581 (2002); Williams v. Blue Cross Blue Shield, 357 N.C. 170, 581 S.E.2d 415, 2003 N.C. LEXIS 595 (2003).

II. SUNDAY ORDINANCES.

Constitutionality Generally. — Ordinances prohibiting certain activities on Sunday, enacted pursuant to this section, are not in contravention of N.C. Const., Art. I, § 13. State v. McGee, 237 N.C. 633, 75 S.E.2d 783, appeal dismissed, 346 U.S. 802, 74 S. Ct. 50, 98 L. Ed. 334, rehearing denied, 346 U.S. 918, 74 S. Ct. 272, 98 L. Ed. 413 (1953).

Sunday observance ordinances, when they proscribe buying and selling, whether it be tangible merchandise or a ticket to an amusement or a sporting event, regulate trade under the broad definition of trade which has been adopted by the Supreme Court. Since, however, these city ordinances are passed under general laws, with reference to them there is no conflict between the exercise of the police power and N.C. Const., Art. II, § 24. State v. Smith, 265 N.C. 173, 143 S.E.2d 293 (1965).

The provisions of N.C. Const., Art. I, § 13 and 19, do not deprive the legislature of authority to prohibit by a statute, otherwise valid, the carrying on of and engaging in, on Sunday, any and all labor and the operation of industrial and commercial pursuits, except for works of necessity and acts which, themselves, are in exercise of the constitutional right to worship. The legislature may delegate this power to municipalities. Such legislation is within the police power of the State and, nothing else appearing, is not a violation of U.S. Const., Amends. I and XIV. Raleigh Mobile Home Sales, Inc. v. Tomlinson, 276 N.C. 661, 174 S.E.2d 542 (1970).

Enactment of Sunday regulations comes within the police power, and the General Assembly or a municipal governing board exercising delegated power may enact such regulations provided the classifications of those affected are based upon reasonable distinctions, affect all persons similarly situated, and have some reasonable relation to the public peace, welfare, and safety. Clark's Charlotte, Inc. v. Hunter, 261 N.C. 222, 134 S.E.2d 364 (1964).

Power to enact Sunday ordinances has been delegated to municipalities of the State. State v. Trantham, 230 N.C. 641, 55 S.E.2d 198 (1949).

Reasonable and Nondiscriminatory Ordinances Upheld. — When enacted by cities and towns under general laws, Sunday observance ordinances which are reasonable and do not discriminate within a class of competitors similarly situated have been upheld as a valid exercise of delegated police power. State v. Smith, 265 N.C. 173, 143 S.E.2d 293 (1965).

Ordinance regulating sale of merchandise on Sunday held valid. Clark's Greenville, Inc. v. West, 268 N.C. 527, 151 S.E.2d 5 (1966).

Sunday observance ordinances adopted in the exercise of the police power conferred by the General Assembly upon cities and towns have been upheld by the Supreme Court. Whitney Stores, Inc. v. Clark, 277 N.C. 322, 177 S.E.2d 418 (1970).

Validity of Ordinance Dependent on Reasonable Relation to Legitimate Objective. — The validity of a Sunday closing statute or ordinance depends upon its reasonable relation to the accomplishment of the State's legitimate objective, which, in this instance, is the promotion of the public health, safety, morals and welfare by the establishment of a day of rest and relaxation. Legislation for this purpose, like other legislation, may not discriminate arbitrarily either between persons, or groups of persons, or between activities which are prohibited and those which are permitted. State v. Greenwood, 280 N.C. 651, 187 S.E.2d 8 (1972).

The general rule is that the enactment of Sunday regulations is a legitimate exercise of the police power, and that the classification on which a Sunday law is based is within the discretion of the legislative branch of the government or within the discretion of the governing body of a municipality clothed with power to enact and enforce ordinances for the observance of Sunday, and will be upheld, provided the classification is founded upon reasonable distinctions, affects all persons similarly situated or engaged in the same business without discrimination, and has some reasonable relation to the public peace, welfare and safety. State v. Greenwood, 280 N.C. 651, 187 S.E.2d 8 (1972).

Difference in Treatment of Businesses Must Have Reasonable Basis. — The objective of a municipal ordinance being the establishment of Sunday as a day of general rest and relaxation, the difference in treatment by the ordinance of two types of business must be supported by a reasonable basis for the conclusion that one, substantially more than the other, will interfere with such use and enjoyment of the day. Raleigh Mobile Home Sales, Inc. v. Tomlinson, 276 N.C. 661, 174 S.E.2d 542 (1970).

Burden of Showing Absence of Reasonable Basis on Complainant. — The legislative body has wide discretion in determining which activities do and which activities do not interfere with the observance of Sunday as a day of general rest and relaxation sufficiently to justify the prohibition of those activities on that day. The burden rests upon the person complaining to establish the absence of a reasonable basis for such determination. Raleigh Mobile Home Sales, Inc. v. Tomlinson, 276 N.C. 661, 174 S.E.2d 542 (1970).

Prohibition of Ordinary Business Pursuits. — It is against the public policy of the State that one should pursue his ordinary business calling on Sunday, and it is very generally understood not only that ordinary business pursuits may be regulated, but altogether prohibited on Sunday. State v. Medlin, 170 N.C. 682, 86 S.E. 597 (1915); State v. Burbage, 172 N.C. 876, 89 S.E. 795 (1916).

Sunday closing ordinance which singled out and banned the operation of billiard halls on Sunday, but permitted other businesses which provided facilities for recreation, sports and amusements, which were potentially as equally disruptive, violated the equal protection clauses of the North Carolina and United States Constitutions. State v. Greenwood, 280 N.C. 651, 187 S.E.2d 8 (1972).

Opening of Drugstores Only. — An ordinance of a town may, under the provisions of this section, prohibit the opening of all places of business on Sunday, except drugstores, and it is not an unreasonable regulation, under the police power of the town, inasmuch as drugstores are open all day Sunday, for the governing authorities to further provide that they may sell articles of common use which are quasi-necessities to many, such as mineral waters, soft drinks, cigars and tobacco, only between certain hours of that day. State v. Medlin, 170 N.C. 682, 86 S.E. 597 (1915).

Failure to Except Department Stores Upheld. — A municipal ordinance prohibiting generally the operation of all businesses within a municipality on Sunday, but excepting certain businesses, including hotels, drugstores, magazine stands, etc., did not result in unlawful discrimination in regard to general department stores, even though such stores had departments selling the same types of goods as stores within the classifications excepted from the ordinance, since the classification of general department stores, as distinguished from drugstores, bakeries, etc., was based upon a reasonable distinction and the ordinance operated equally upon all within several classifications. Clark's Charlotte, Inc. v. Hunter, 261 N.C. 222, 134 S.E.2d 364 (1964).

Sunday observance ordinance classifying "sporting goods and toys" as prohibited items and live bait as permitted was not unreasonable, arbitrary or discriminatory. S.S. Kresge Co. v. Tomlinson, 275 N.C. 1, 165 S.E.2d 236 (1969).

Prohibition of Sales of Mobile But Not Conventional Homes. — A municipal ordinance which prohibited the sale on Sunday of mobile homes but which did not prohibit the sale on Sunday of conventional homes was valid, since a classification based on the differences between the two types of selling, i.e., presence or absence of traffic, congestion, and noise, bore a reasonable relation to the purpose of the ordinance in establishing Sunday as a day of rest and relaxation. Raleigh Mobile Home Sales, Inc. v. Tomlinson, 276 N.C. 661, 174 S.E.2d 542 (1970).

Sale of Coca-Cola. — Regulating the sale of merchandise, drinks, etc., on Sunday is a valid exercise of the police powers of an incorporated city or town. And while the service of meals within the municipality at restaurants, etc., was a necessity (permitting the sale of coffee, tea, etc.), the sale of Coca-Cola as a part of the meals could be prohibited by ordinance. State v. Weddington, 188 N.C. 643, 125 S.E. 257 (1924).

Differential Fines Upheld. — An ordinance of a town, authorized by statute, imposing a fine of $25.00 upon drugstores for selling cigars, etc., on Sunday, and a fine of $5.00 for the same offense upon restaurants, cafes, and lunch stands, declaring the same to be a misdemeanor, related to distinct and easily severable occupations, and in the absence of any finding that those engaged in them came in competition with each other, the ordinance would not be declared unconstitutional and invalid upon the ground that it was discretionary against the owners of drugstores. State v. Davis, 171 N.C. 809, 89 S.E. 40 (1916).

III. OTHER SPECIFIC ORDINANCES.

Classification of Occupations. — The General Assembly or municipal corporation has the power to classify different occupations, provided the classification is not unreasonable and oppressive, and usually the extent to which the power will be exercised is for the General Assembly or the governing body of the municipality. State v. Davis, 171 N.C. 809, 89 S.E. 40 (1916). See also, State v. Davis, 157 N.C. 648, 73 S.E. 130 (1911); Smith v. Wilkins, 164 N.C. 135, 80 S.E. 168 (1913).

Power to Close Business at Certain Hours. — The right of a city to restrict hours of business is restricted to cases when it is for the protection and benefit of the public. It has no power to require a merchant to close his store at an early hour because other merchants so desire to close all stores at a regular early hour. State v. Ray, 131 N.C. 814, 42 S.E. 960 (1902).

Sitting in Place of Business After Closing Time. — A city has power to restrict the use of property insofar as it may injure others, but it has no power to provide against a person sitting in his place of business after a time prescribed for closing it. State v. Thomas, 118 N.C. 1221, 24 S.E. 535 (1896).

City May Proscribe Obscenity Not Forbidden by State Law. — Under subsection (b) of this section, notwithstanding the existence of a general statewide law relating to obscene displays and publications, a city may enact an ordinance prohibiting and punishing conduct not forbidden by such statewide law. State v. Tenore, 280 N.C. 238, 185 S.E.2d 644 (1972).

Nothing in G.S. 14-190.1 to 14-190.9, statewide laws relating to obscene literature and exhibitions and to indecent exposure, expresses or indicates an intent by the General Assembly to preclude cities and towns under this section and G.S. 160A-181 from enacting and enforcing ordinances requiring a higher standard of conduct or condition within their respective jurisdictions. State v. Tenore, 280 N.C. 238, 185 S.E.2d 644 (1972).

As to the regulation of massage parlors, see Cheek v. City of Charlotte, 273 N.C. 293, 160 S.E.2d 18 (1968).

Indecent Language or Cursing. — An ordinance which forbids the use of "abusive or indecent language, cursing, swearing or any loud or boisterous talking, hallooing or any other disorderly conduct" within the corporate limits of a town, and imposes a fine of $25.00 for a violation of it, may be enacted by proper authorities under the powers granted to them in the general law, and such an ordinance is reasonable. State v. Merritt, 83 N.C. 677 (1880); State v. McNinch, 87 N.C. 567 (1882); State v. Cainan, 94 N.C. 880 (1886); State v. Earnhardt, 107 N.C. 789, 12 S.E. 426 (1890).

Prohibition on Sex Offenders Entering Public Parks. — Woodfin, N.C., Ordinances § 130.03, which prohibited registered sex offenders from knowingly entering any public park owned and operated by a town, was rationally related to its intended purpose of protecting the health and safety of the citizens of the town; the town acted within its delegated police power to enact and enforce the ordinance for the purpose of promoting citizen safety, as permitted by G.S. 160A-174. Standley v. Town of Woodfin, 186 N.C. App. 134, 650 S.E.2d 618, 2007 N.C. App. LEXIS 2121 (2007).

Woodfin, N.C., Ordinance § 130.03 was constitutional under the Fourteenth Amendment of the United States Constitution and N.C. Const., Art. I, §§ 19 and 35 as: (1) a sex offender's alleged liberty interest to enter a park owned by a town to have barbecues and enjoy nature was not protected by the right to intrastate travel, (2) an asserted liberty interest to freely roam in parks was not a fundamental right, (3) a town had been delegated the authority to prohibit acts detrimental to its citizens' health, safety, or welfare by G.S. 160A-174, (4) G.S. 14-208.5 recognized that sex offenders posed a high risk of engaging in sex offenses, and (5) Woodfin, N.C., Ordinance § 130.03 was rationally related to a legitimate government interest in protecting children and other visitors to parks owned and operated by the town from sexual attacks. Standley v. Town of Woodfin, 362 N.C. 328, 661 S.E.2d 728, 2008 N.C. LEXIS 496 (2008).

Town commissioners have no authority to make it unlawful to insult an officer while in the discharge of his duty, nor to provide a fine for one convicted of such offense. State v. Clay, 118 N.C. 1234, 24 S.E. 492 (1896).

Conflict with State Building Code. — An interpretation of this section to allow a city ordinance requiring sprinkler systems, thus empowering a city to ignore explicit statewide legislative enactments, would, in effect, permit a city to amend the North Carolina Building Code by the simple expedient of codifying a contested ordinance as a part of its fire prevention code and thereby to evade the clear requirements of G.S. 143-138(e). Greene v. City of Winston-Salem, 287 N.C. 66, 213 S.E.2d 231 (1975).

Regulation of Gasoline Stations. — That the regulation of gasoline filling or gasoline storage stations comes within the police power of the State is freely conceded; and that such power is specifically conferred upon the plaintiff is likewise conceded. Town of Wake Forest v. Medlin, 199 N.C. 83, 154 S.E. 29 (1930).

It is not necessary to the validity of an ordinance regulating the establishment of gasoline filling stations in a municipality that it substantially comply with the provisions of the statutes as to zoning, since the regulation of filling stations comes within the State police power which has been conferred on municipalities by the general law. Shuford v. Town of Waynesville, 214 N.C. 135, 198 S.E. 585 (1938).

As to the storage of gasoline, see City of Fayetteville v. Spur Distrib. Co., 216 N.C. 596, 5 S.E.2d 838 (1939).

Fluoridation Ordinance. — A municipal ordinance for the fluoridation of the city water supply is enacted in the exercise of public policy, and the courts will not interfere therewith in the absence of a showing that the ordinance is so unreasonable, oppressive, and subversive as to amount to an abuse rather than a legitimate exercise of the legislative power. Stroupe v. Eller, 262 N.C. 573, 138 S.E.2d 240 (1964).

Mobile Home Is Not a Nuisance Per Se. — Subdivision (26) of former G.S. 160-200 conferred upon cities and towns the power to prevent and abate nuisances, but a mobile home is not a nuisance per se. Town of Conover v. Jolly, 277 N.C. 439, 177 S.E.2d 879 (1970).

And May Not Be Prohibited Per Se. — A well-constructed and equipped mobile home connected with the public water, sewer and electric systems could not be deemed per se "detrimental to the health, morals, comfort, safety, convenience and welfare of the people" of a town within the purview of subdivision (6) of former G.S. 160-200; consequently, that subdivision did not confer upon a municipality the authority to enact an ordinance prohibiting the use anywhere within its limits of a single mobile home as a permanent residence. Town of Conover v. Jolly, 277 N.C. 439, 177 S.E.2d 879 (1970).

Zoning Requirements for Mobile Homes. — Mobile homes are sufficiently different from other types of housing so that there is a rational basis for placing different requirements upon them pursuant to a zoning ordinance. Currituck County v. Willey, 46 N.C. App. 835, 266 S.E.2d 52, cert. denied, 301 N.C. 234, 283 S.E.2d 131 (1980).

Zoning Ordinance Preempted by ABC Permit. — In case in which petitioner, without objection by respondent board, argued that the decision of the ABC Commission to grant him a permit preempted respondent's denial of his special exception use permit request, since the zoning ordinance, upon which respondent's denial was based, attempted to regulate the sale of alcoholic beverages, which is a violation of State law, the trial court did not err in concluding that petitioner, as the holder of a valid ABC permit issued by the State Alcoholic Beverage Control Commission, was entitled to be issued a city beer license, and in ordering the tax collector of the city to issue any city license. Melkonian v. Board of Adjustment, 85 N.C. App. 351, 355 S.E.2d 503, cert. denied and appeal dismissed, 320 N.C. 631, 360 S.E.2d 91 (1987).

Abatement of Encroachment on Street by Buildings. — Any permanent structure which materially encroaches upon a public street and impedes travel is a nuisance per se, and may be abated, notwithstanding space is left for the passage of the public; a failure on the part of the city to abate it in a reasonable time will make it liable as a joint tort-feasor. Graham v. City of Charlotte, 186 N.C. 649, 120 S.E. 466 (1923).

Forbidding Lumber Yards in Residential Sections. — It is within the valid discretionary exercise of the police powers of a municipality to pass an ordinance forbidding the erection of lumber yards within a long-established, exclusively residential portion, and when this discretionary power has not been abused the courts will not interfere. Turner v. City of New Bern, 187 N.C. 541, 122 S.E. 469 (1924); Angelo v. City of Winston-Salem, 193 N.C. 207, 136 S.E. 489, aff'd, 274 U.S. 725, 47 S. Ct. 763, 71 L. Ed. 1329 (1927).

Disinfection of Secondhand Clothing. — A city has power to require that a dealer in secondhand clothing turn them over to the city to be disinfected, and exercise of such power cannot be considered as a restriction of an owner over his property, but only the proper and lawful use of authority to protect the health of its citizens from diseases. Rosenbaum v. City of New Bern, 118 N.C. 83, 24 S.E. 1 (1896).

A municipal corporation has a legal right to destroy mosquitoes detrimental to the health and comfort of its residents. Moore v. Town of Plymouth, 249 N.C. 423, 106 S.E.2d 695 (1959).

Regulation of Perishable Food Markets. — A city, in the exercise of statutory authority, may enact a valid penal ordinance as affecting the health of its citizens, and under its police power, require that meats, fish, oysters, and perishable matter be sold at a sanitary market building containing refrigeration and other sanitary methods, under proper inspection, where adequate accommodation may be obtained at a reasonable rental, not for profit, and the city may exclude such business within a prescribed territory therefrom, the location of the markethouse being reasonably suitable to the business or trades specified. Angelo v. City of Winston-Salem, 193 N.C. 207, 136 S.E. 489, aff'd, 274 U.S. 725, 47 S. Ct. 763, 71 L. Ed. 1329 (1927).

Board of town commissioners could forbid the keeping of hog pens in the town to such an extent as they might deem necessary to prevent nuisances to the public, and, indeed, they could have done so without express authority. State v. Hord, 122 N.C. 1092, 29 S.E. 952 (1898).

Ordinance Against Running of Hogs at Large. — A town ordinance declaring that "all hogs, etc., found running at large within the town" shall be taken up or impounded, is valid, whether the owner resides within the corporate limits of such town or not. Rose v. Hardie, 98 N.C. 44, 4 S.E. 41 (1887).

Regulation of Swine Farms. — County's ordinances attempting to regulate swine farms were invalid because the state had established a comprehensive scheme of regulation that indicated the General Assembly's intention to regulate this area on a state-wide basis, leaving no room for local regulation. Craig v. County of Chatham, 356 N.C. 40, 565 S.E.2d 172, 2002 N.C. LEXIS 539 (2002).

Town ordinance dealing with dogs running at large was not inconsistent with

former § 106-381, which statute was designed to provide minimum protection against vicious dogs in all parts of the State (rural, urban, small villages and large cities). With more concentrated population, cities are justified in adopting stricter regulations for dogs and are authorized to require a higher standard of conduct or condition with respect to the keeping of dogs within its corporate limits than was required by former G.S. 106-381 for the State generally. Pharo v. Pearson, 28 N.C. App. 171, 220 S.E.2d 359 (1975).

Ordinance Limiting Number of Dogs. — Nashville, N.C., Ordinance § 4.3, which limits the number of dogs allowed on property, is not unconstitutional; the ordinance did not set an arbitrary, immutable limit on the number of pets, but, rather, the number of dogs allowed was based on the square footage of the lot, and there was no restriction on the number of dogs less than five months old. The record revealed that the town enacted the ordinance for the purpose of reducing noise and odor problems within the city limits, which were clearly legitimate public purposes, and a limitation on the number of dogs per lot was directly connected to these objectives. State v. Maynard, — N.C. App. —, 673 S.E.2d 877, 2009 N.C. App. LEXIS 263 (2009).

Paved Parking Lots. — Provision of city ordinance requiring paved parking lots, challenged on due process and equal protection grounds, held valid. Grace Baptist Church v. City of Oxford, 320 N.C. 439, 358 S.E.2d 372 (1987).

Town had authority under its Development Ordinance as authorized by G.S. 160A-372 to require plaintiff to take future road plans into account in designing her subdivision and denial of plaintiff's permit for her failure to do so was neither ultra vires nor unconstitutionally vague. Batch v. Town of Chapel Hill, 326 N.C. 1, 387 S.E.2d 655, cert. denied, 496 U.S. 931, 110 S. Ct. 2631, 110 L. Ed. 2d 651 (1990).

Waste disposal is a recognized function of local government and a service consistent with governmental responsibility under the State's delegation of police power. Stillings v. City of Winston-Salem, 63 N.C. App. 618, 306 S.E.2d 489 (1983), rev'd on other grounds, 311 N.C. 689, 319 S.E.2d 233 (1984).

Regulatory Authority of State over Speed of Trains May Not Be Delegated to Cities and Towns. — Section 434 of the Federal Railway Safety Act of 1970, 45 U.S.C., says a state may adopt the law, rule, or regulation regulating the speed of trains within city limits. It does not say the state may delegate to the cities and towns in the state the power to do so. Even though the state may delegate powers to its state created municipalities through enabling statutes, there is no authority for the proposition that the state may delegate to its cities powers it is authorized by Congress to exercise. Johnson v. Southern Ry., 654 F. Supp. 121 (W.D.N.C. 1987).

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Local Ordinance Which Conflicts With State Law. — A town municipal ordinance prohibiting the location of gill nets where they are expressly permitted by State law violates subdivision (b)(2) of this section and is, therefore, invalid to the extent of the conflict with State law. See opinion of Attorney General to Preston P. Pate, Jr., Director, Division of Marine Fisheries, 1998 N.C.A.G. 31 (7/22/98).

§ 160A-175. Enforcement of ordinances.

(a) A city shall have power to impose fines and penalties for violation of its ordinances, and may secure injunctions and abatement orders to further insure compliance with its ordinances as provided by this section.

(b) Unless the Council shall otherwise provide, violation of a city ordinance is a misdemeanor or infraction as provided by G.S. 14-4. An ordinance may provide by express statement that the maximum fine, term of imprisonment, or infraction penalty to be imposed for a violation is some amount of money or number of days less than the maximum imposed by G.S. 14-4.

(c) An ordinance may provide that violation shall subject the offender to a civil penalty to be recovered by the city in a civil action in the nature of debt if the offender does not pay the penalty within a prescribed period of time after he has been cited for violation of the ordinance.

(c1) An ordinance may provide for the recovery of a civil penalty by the city for violation of the fire prevention code of the State Building Code as authorized under G.S. 143-139.

(d) An ordinance may provide that it may be enforced by an appropriate equitable remedy issuing from a court of competent jurisdiction. In such case, the General Court of Justice shall have jurisdiction to issue such orders as may be appropriate, and it shall not be a defense to the application of the city for equitable relief that there is an adequate remedy at law.

(e) An ordinance that makes unlawful a condition existing upon or use made of real property may be enforced by injunction and order of abatement, and the General Court of Justice shall have jurisdiction to issue such orders. When a violation of such an ordinance occurs the city may apply to the appropriate division of the General Court of Justice for a mandatory or prohibitory injunction and order of abatement commanding the defendant to correct the unlawful condition upon or cease the unlawful use of the property. The action shall be governed in all respects by the laws and rules governing civil proceedings, including the Rules of Civil Procedure in general and Rule 65 in particular.

In addition to an injunction, the court may enter an order of abatement as a part of the judgment in the cause. An order of abatement may direct that buildings or other structures on the property be closed, demolished, or removed; that fixtures, furniture, or other movable property be removed from buildings on the property; that grass and weeds be cut; that improvements or repairs be made; or that any other action be taken that is necessary to bring the property into compliance with the ordinance. If the defendant fails or refuses to comply with an injunction or with an order of abatement within the time allowed by the court, he may be cited for contempt, and the city may execute the order of abatement. The city shall have a lien on the property for the cost of executing an order of abatement in the nature of a mechanic's and materialman's lien. The defendant may secure cancellation of an order of abatement by paying all costs of the proceedings and posting a bond for compliance with the order. The bond shall be given with sureties approved by the clerk of superior court in an amount approved by the judge before whom the matter is heard and shall be conditioned on the defendant's full compliance with the terms of the order of abatement within a time fixed by the judge. Cancellation of an order of abatement shall not suspend or cancel an injunction issued in conjunction therewith.

(f) Subject to the express terms of the ordinance, a city ordinance may be enforced by any one, all, or a combination of the remedies authorized and prescribed by this section.

(g) A city ordinance may provide, when appropriate, that each day's continuing violation shall be a separate and distinct offense. (1971, c. 698, s. 1; 1985, c. 764, s. 35; 1993, c. 329, s. 4.)

Local Modification. — City of Durham: 1987, c. 224; town of Pittsboro: 1987, c. 460, s. 28.

Editor's Note. — The Rules of Civil Procedure, referred to in this section, are found in G.S. 1A-1.

CASE NOTES

Procedure for abatement orders in subsection (e) of this section is constitutionally defective and may not be used in enforcing the substantive provisions of a city ordinance. U.T., Inc. v. Brown, 457 F. Supp. 163 (W.D.N.C. 1978).

Legislative Intent. — Subsection (f) of this section and G.S. 160A-365 demonstrate a general intent by the legislature to defer to the decisions of cities on which remedies and penalties shall be used to achieve enforcement of planning and zoning ordinances. Town of Pine Knoll Shores v. Evans, 104 N.C. App. 79, 407 S.E.2d 895 (1991).

This Section Limits City's Choice of Remedies and Penalties. — Under subsection (f) of this section and G.S. 160A-365, the choice of remedies and penalties for enforcement of planning and zoning ordinances remains with the city. The choice of remedies and penalties, however, is limited to those remedies and penalties available in this section. Town of Pine Knoll Shores v. Evans, 104 N.C. App. 79, 407 S.E.2d 895 (1991).

Certain Penalties Must Be Authorized to Be Imposed by Court. — Civil penalties and orders of abatement available under subsections (c) and (d) of this section must be authorized in a city's ordinance in order to be imposed by a court. That authorization may be either specific or general. Town of Pine Knoll Shores v. Evans, 104 N.C. App. 79, 407 S.E.2d 895 (1991).

Court May Issue Injunctions and Orders of Abatement Despite Absence of Ordinance Authorization. — The trial court may, in the absence of authorization in a city ordinance, and upon the request of the city, issue injunctions and orders of abatement for violation of ordinances that makes unlawful a condition existing upon or use made of a real property. Town of Pine Knoll Shores v. Evans, 104 N.C. App. 79, 407 S.E.2d 895 (1991).

Civil Penalty Not Allowed Where Not Authorized by Ordinance. — Judgment of the trial court permitting defendants to avoid, by payment of $2,000.00 to town, removing a deck which town contended defendants constructed in violation of town zoning ordinance was improper where a civil penalty was not authorized by town's ordinance and was not authorized by subsection (e); the fact that the civil penalty was to be paid at the option of defendants was immaterial, as where a party violating a city ordinance is given the option of paying a civil penalty, such optional penalty must nonetheless be authorized by the ordinance. Town of Pine Knoll Shores v. Evans, 104 N.C. App. 79, 407 S.E.2d 895 (1991).

Obscenity Ordinance Held Unconstitutional. — The procedural provisions of a city ordinance regulating commercial exploitation of obscenity, which provided civil penalties for violation and authorized the city manager to issue a citation to the violator describing the violation and assessing the penalty and to include in the citation notice that the city manager would instruct the city attorney to commence suit under subsection (c) of this section if the penalty was not paid in five days, was unconstitutional. U.T., Inc. v. Brown, 457 F. Supp. 163 (W.D.N.C. 1978).

Enforcement of Ordinances Through Injunctive Relief. — Although the General Assembly has given to municipalities the power to enforce ordinances through injunctive relief, a municipality must comply with the requirements of G.S. 1A-1, Rule 65, which requires a clear showing of specific facts of irreparable injury; the availability of injunctive relief as the appropriate ultimate remedy is not prima facie evidence establishing a municipality's right to injunctive relief prior to the resolution of a matter on its merits. Town of Knightdale v. Vaughn, 95 N.C. App. 649, 383 S.E.2d 460 (1989).

Parking Violations. — G.S. 1-54(2) did not bar a City's recovery against a driver for unpaid taxes and fines as it applied only to actions based on statutes that expressly provided for a penalty or forfeiture, the purpose of which was punitive, and the penalty at issue was civil in nature; G.S. 160A-175 granted the City the power to impose fines and penalties for the violation of its ordinances, and the penalties assessed against the driver were assessed pursuant to Greensboro, N.C., Code of Ordinances § 16-71, which was a municipal ordinance rather than a statute, for parking violations. City of Greensboro v. Morse, — N.C. App. —, 677 S.E.2d 505, 2009 N.C. App. LEXIS 745 (2009).

Disposition of Proceeds of Civil Action to Recover Parking Penalties. — In any case in which a person is prosecuted and convicted and a fine is imposed for the violation of a parking ordinance, the fine so imposed must be paid, by directive of N.C. Const., Art. IX, G.S. 7, to the county school fund. However, if a city chooses to maintain civil actions to recover the penalties imposed for parking violations, the proceeds of any judgment obtained would belong to the city, and the school fund would have no claim thereon. Cauble v. City of Asheville, 45 N.C. App. 152, 263 S.E.2d 8, aff'd in part and rev'd in part, 301 N.C. 340, 271 S.E.2d 258 (1980).

City had the authority to require confirmation of a sexually oriented business's zoning compliance in its business privilege license application and the authority to reject the business's privilege license application where zoning compliance was found wanting. Fantasy World, Inc. v. Greensboro Bd. of Adjustment, 162 N.C. App. 603, 592 S.E.2d 205, 2004 N.C. App. LEXIS 267 (2004), cert. denied, 358 N.C. 543, 599 S.E.2d 43 (2004).

Applied in Cauble v. City of Asheville, 301 N.C. 340, 271 S.E.2d 258 (1980); Shavitz v. City of High Point, 177 N.C. App. 465, 630 S.E.2d 4, 2006 N.C. App. LEXIS 1080 (2006).

Cited in Town of Nags Head v. Tillett, 314 N.C. 627, 336 S.E.2d 394 (1985); Town of Pine Knoll Shores v. Evans, 331 N.C. 361, 416 S.E.2d 4 (1992); Homebuilders Ass'n v. City of Charlotte, 336 N.C. 37, 442 S.E.2d 45 (1994); Blevins v. Denny, 114 N.C. App. 766, 443 S.E.2d 354 (1994).

§ 160A-176. Ordinances effective on city property outside limits.

Any city ordinance may be made effective on and to property and rights-of-way belonging to the city and located outside the corporate limits. (1917, c. 136, subch. 5, s. 2; C.S., s. 2790; 1971, c. 698, s. 1; 1973, c. 426, s. 24.)

CASE NOTES

City's Code Not Applicable Outside of City Limits. — Trial court's order requiring a corporation to pay a city for water the corporation drew from its own well was reversed as, although under G.S. 160A-176, the city could have made its ordinances applicable on rights of way, Lumberton, N.C., Code of Ordinances § 23-22(a), (b), and (d) were only applicable to businesses within the city limits; the corporation's facility was outside of the city limits. City of Lumberton v. United States Cold Storage, Inc., 178 N.C. App. 305, 631 S.E.2d 165, 2006 N.C. App. LEXIS 1397 (2006).

§ 160A-176.1. Ordinances effective in Atlantic Ocean.

(a) A city may adopt ordinances to regulate and control swimming, surfing and littering in the Atlantic Ocean adjacent to that portion of the city within its boundaries or within its extraterritorial jurisdiction; provided, however, nothing contained herein shall be construed to permit any city to prohibit altogether swimming and surfing or to make these activities unlawful.

(b) This section shall apply only to cities in the counties of Brunswick, Carteret, Currituck, Dare, Hyde, New Hanover, Onslow, and Pender. (1973, c. 539, s. 1.)

Local Modification. — Wrightsville Beach: 1989, c. 611, s. 1, as amended by 2005-265, s. 1.

Editor's Note. — The section above has been codified at the direction of the Revisor of Statutes.

§ 160A-176.2. Ordinances effective in Atlantic Ocean.

(a) A city may adopt ordinances to regulate and control swimming, personal watercraft operation, surfing and littering in the Atlantic Ocean and other waterways adjacent to that portion of the city within its boundaries or within its extraterritorial jurisdiction; provided, however, nothing contained herein shall be construed to permit any city to prohibit altogether swimming or surfing or to make these activities unlawful.

(b) Subsection (a) of this section applies to the Towns of Atlantic Beach, Calabash, Cape Carteret, Carolina Beach, Caswell Beach, Duck, Emerald Isle, Holden Beach, Kill Devil Hills, Kitty Hawk, Manteo, Nags Head, Oak Island, Ocean Isle Beach, Southern Shores, Sunset Beach, Topsail Beach, and Wrightsville Beach, and the City of Southport only. (1991, c. 494, ss. 1, 2; 1991 (Reg. Sess., 1992), c. 801; 1993, c. 67, s. 5; c. 125, s. 2; 1993 (Reg. Sess., 1994), c. 625, s. 1; 1997-48, s. 1; 2002-141, s. 1; 2004-203, s. 55.)

Editor's Note. — Session Laws 1991, c. 494, ss. 1 and 2, effective July 2, 1991, as amended by Session Laws 1991 (Reg. Sess., 1992), c. 801, effective June 29, 1992, has been codified as this section at the direction of the Revisor of Statutes.

Legal Periodicals. — For note, "A First Step in the Wrong Direction: Slavin v. Town of Oak Island and the Taking of Littoral Rights of Direct Beach Access," see 82 N.C.L. Rev. 1510 (2004).

§ 160A-177. Enumeration not exclusive.

The enumeration in this Article or other portions of this Chapter of specific powers to regulate, restrict or prohibit acts, omissions, and conditions shall not be deemed to be exclusive or a limiting factor upon the general authority to adopt ordinances conferred on cities by G.S. 160A-174. (1971, c. 698, s. 1.)

CASE NOTES

Cited in Homebuilders Ass'n v. City of Charlotte, 336 N.C. 37, 442 S.E.2d 45 (1994).

§ 160A-178. Regulation of solicitation campaigns, flea markets and itinerant merchants.

A city may by ordinance regulate, restrict or prohibit the solicitation of contributions from the public for any charitable or eleemosynary purpose, and also the business activities of itinerant merchants, salesmen, promoters, drummers, peddlers, flea market operators and flea market vendors or hawkers. These ordinances may include, but shall not be limited to, requirements that an application be made and a permit issued, that an investigation be made, that activities be reasonably limited as to time and place, that proper credentials and proof of financial stability be submitted, that not more than a stated percentage of contributions to solicitation campaigns be retained for administrative expenses, and that an adequate bond be posted to protect the public from fraud. (1963, c. 789; 1971, c. 698, s. 1; 1987, c. 708, s. 8.)

CASE NOTES

As to unconstitutionality of solicitation ordinance containing 25% cost-of-solicitation limitation, as applied to unincorporated association formed for exerting political influence on state level, see Carolina Action v. Pickard, 465 F. Supp. 576 (W.D.N.C. 1979). See also, Carolina Action v. Pickard, 420 F. Supp. 310 (W.D.N.C. 1976).

Ordinance Requiring License to Beg or Solicit Contributions on Streets Upheld Under Former Law. — A city ordinance under former G.S. 160-200, requiring a license to be issued by the municipal authorities to beg upon the city streets or to solicit contributions for charitable or religious purposes, in accordance with whether the person or purpose was ascertained by such authorities as worthy or whether the moneys solicited would be properly applied, was a valid and undiscriminating exercise of a police power, and not unlawful as an interference with religious liberty of people or an obstruction to the lawful pursuit of business. State v. Hundley, 195 N.C. 377, 142 S.E. 330 (1928), decided under former § 160-200.

As to power to regulate peddling prior to 1963 amendment to former G.S. 160-200, authorizing municipalities to prohibit peddlers, etc., see State v. Byrd, 259 N.C. 141, 130 S.E.2d 55 (1963).

§ 160A-179. Regulation of begging.

A city may by ordinance prohibit or regulate begging or otherwise canvassing the public for contributions for the private benefit of the solicitor or any other person. (1971, c. 698, s. 1.)

CASE NOTES

No Question as to Which Ordinance a County Sought to Enforce. — In a declaratory judgment action wherein an amended ordinance was the only ordinance codified in the county's code at the time the county filed its complaint to enforce the amended ordinance, which required sexually oriented businesses to become licensed among other requirements, the trial court did not err by denying the businesses' motion to dismiss the county's complaint for failing to plead in the complaint the section number and caption of the county ordinance sought to be enforced, as it was clear to the businesses what ordinance the county sought to enforce. Pitt County v. Deja Vue, Inc., 185 N.C. App. 545, 650 S.E.2d 12, 2007 N.C. App. LEXIS 1937 (2007).

§ 160A-180. Regulation of aircraft overflights.

A city may by ordinance regulate the operation of aircraft over the city. (1971, c. 698, s. 1.)

§ 160A-181. Regulation of places of amusement.

A city may by ordinance regulate places of amusement and entertainment, and may regulate, restrict or prohibit the operation of pool and billiard halls, dance halls, carnivals, circuses, or any itinerant show or exhibition of any kind. Places of amusement and entertainment shall include coffee houses, cocktail lounges, night clubs, beer halls, and similar establishments, but any regulations thereof shall be consistent with any permits or licenses issued by the North Carolina Alcoholic Beverage Control Commission. (1917, c. 136, subch. 5, s. 1; 1919, cc. 136, 237; C.S., s. 2787; 1971, c. 698, s. 1; 1981, c. 412, ss. 4, 5.)

CASE NOTES

Sunday closing ordinance which singled out and banned the operation of billiard halls on Sunday, but permitted other businesses which provided facilities for recreation, sports and amusements, which were potentially as equally disruptive, violated the equal protection clauses of the North Carolina and United States Constitutions. State v. Greenwood, 280 N.C. 651, 187 S.E.2d 8 (1972).

Regulation of Dance Halls. — Under express provisions of former G.S. 160-200, cities had power, among other things, to license, prohibit, and regulate dance halls, and in the interest of public morals to provide for the revocation of such licenses, as a valid exercise of the State's inherent police power, made applicable to cities and towns generally. State v. Vanhook, 182 N.C. 831, 109 S.E. 65 (1921).

An ordinance requiring the consent of the board of directors of the city before keeping a dance hall therein was not objectionable as an arbitrary exercise of power, or as being at the pleasure of the board, but came within its limited legal discretion, which the courts would not permit it to abuse, but would not disturb in the absence of its abusive use. State v. Vanhook, 182 N.C. 831, 109 S.E. 65 (1921), decided under former § 160-200.

Regulation of Obscenity. — Nothing in G.S. 14-190.1 to 14-190.9, statewide laws relating to obscene literature and exhibitions and to indecent exposure, expresses or indicates an intent by the General Assembly to preclude cities and towns under G.S. 160A-174 and this section from enacting and enforcing ordinances requiring a higher standard of conduct or condition within their respective jurisdictions. State v. Tenore, 280 N.C. 238, 185 S.E.2d 644 (1972).

Applied in State v. Underwood, 283 N.C. 154, 195 S.E.2d 489 (1973).

§ 160A-181.1. Regulation of sexually oriented businesses.

(a) The General Assembly finds and determines that sexually oriented businesses can and do cause adverse secondary impacts on neighboring properties. Numerous studies that are relevant to North Carolina have found increases in crime rates and decreases in neighboring property values as a result of the location of sexually oriented businesses in inappropriate locations or from the operation of such businesses in an inappropriate manner. Reasonable local government regulation of sexually oriented businesses in order to prevent or ameliorate adverse secondary impacts is consistent with the federal constitutional protection afforded to nonobscene but sexually explicit speech.

(b) In addition to State laws on obscenity, indecent exposure, and adult establishments, local government regulation of the location and operation of sexually oriented businesses is necessary to prevent undue adverse secondary impacts that would otherwise result from these businesses.

(c) A city or county may regulate sexually oriented businesses through zoning regulations, licensing requirements, or other appropriate local ordinances. The city or county may require a fee for the initial license and any annual renewal. Such local regulations may include, but are not limited to:

(1) Restrictions on location of sexually oriented businesses, such as limitation to specified zoning districts and minimum separation from sensitive land uses and other sexually oriented businesses;

(2) Regulations on operation of sexually oriented businesses, such as limits on hours of operation, open booth requirements, limitations on exterior advertising and noise, age of patrons and employees, required separation of patrons and performers, clothing restrictions for masseuses, and clothing restrictions for servers of alcoholic beverages;

(3) Clothing restrictions for entertainers; and

(4) Registration and disclosure requirements for owners and employees with a criminal record other than minor traffic offenses, and restrictions on ownership by or employment of a person with a criminal record that includes offenses reasonably related to the legal operation of sexually oriented businesses.

(d) In order to preserve the status quo while appropriate studies are conducted and the scope of potential regulations is deliberated, cities and counties may enact moratoria of reasonable duration on either the opening of any new businesses authorized to be regulated under this section or the expansion of any such existing business. Businesses existing at the time of the effective date of regulations adopted under this section may be required to come into compliance with newly adopted regulations within an appropriate and reasonable period of time.

(e) Cities and counties may enter into cooperative agreements regarding coordinated regulation of sexually oriented businesses, including provision of adequate alternative sites for the location of constitutionally protected speech within an interrelated geographic area.

(f) For the purpose of this section, "sexually oriented businesses" means any businesses or enterprises that have as one of their principal business purposes or as a significant portion of their business an emphasis on matter and conduct depicting, describing, or related to anatomical areas and sexual activities specified in G.S. 14-202.10. Local governments may adopt detailed definitions of these and similar businesses in order to precisely define the scope of any local regulations. (1998-46, s. 1.)

CASE NOTES

Constitutionality of City Zoning Ordinances. — City zoning requirements regarding sexually oriented businesses set forth by the city's zoning ordinances, pursuant to G.S. 160A-181.1, and imposed upon the city tax collector by a city ordinance, comported with the Constitutional requirements established by the United States Supreme Court; therefore, the city possessed the authority to allow the city tax collector to assess zoning compliance as part of the administration of the business privilege license tax and to deny a business privilege license to a sexually oriented business because the business sought to operate in violation of a zoning ordinance. Fantasy World, Inc. v. Greensboro Bd. of Adjustment, 162 N.C. App. 603, 592 S.E.2d 205, 2004 N.C. App. LEXIS 267 (2004), cert. denied, 358 N.C. 543, 599 S.E.2d 43 (2004).

County ordinance requiring licensure and other conditions upon sexually oriented businesses was upheld as within the police powers of the county, pursuant to G.S. 153A-121, as no procedural or constitutional errors occurred by a trial court declaring the ordinance enforceable and requiring unlicensed businesses to cease operation. Pitt County v. Deja Vue, Inc., 185 N.C. App. 545, 650 S.E.2d 12, 2007 N.C. App. LEXIS 1937 (2007).

§ 160A-182. Abuse of animals.

A city may by ordinance define and prohibit the abuse of animals. (1917, c. 136, subch. 5, s. 1; 1919, cc. 136, 237; C.S., s. 2787; 1971, c. 698, s. 1.)

§ 160A-183. Regulation of explosive, corrosive, inflammable, or radioactive substances.

A city may by ordinance restrict, regulate or prohibit the sale, possession, storage, use, or conveyance of any explosive, corrosive, inflammable, or radioactive substances, or any weapons or instrumentalities of mass death and destruction within the city. (1917, c. 136, subch. 5, s. 1; 1919, cc. 136, 237; C.S., s. 2787; 1971, c. 698, s. 1.)

§ 160A-184. Noise regulation.

A city may by ordinance regulate, restrict, or prohibit the production or emission of noises or amplified speech, music, or other sounds that tend to annoy, disturb, or frighten its citizens. (1971, c. 698, s. 1; 1973, c. 426, s. 25.)

Local Modification. — Town of Kill Devil Hills: 1995, c. 84, s. 1; town of Kitty Hawk: 1995, c. 84, s. 1; town of Manteo: 1995, c. 196, s. 4; town of Nags Head: 1995, c. 84, s. 1; town of Southern Shores: 1995, c. 84, s. 1.

CASE NOTES

Prevention of Disturbing Noises. — The protection of the well-being and tranquility of a community by the reasonable prevention of disturbing noises is within the city's power to control nuisances. State v. Dorsett, 3 N.C. App. 331, 164 S.E.2d 607 (1968), decided prior to enactment of this section.

Applied in Jim Crockett Promotion, Inc. v. City of Charlotte, 706 F.2d 486 (4th Cir. 1983).

§ 160A-185. Emission of pollutants or contaminants.

A city may by ordinance regulate, restrict, or prohibit the emission or disposal of substances or effluents that tend to pollute or contaminate land, water, or air, rendering or tending to render it injurious to human health or welfare, to animal or plant life or to property, or interfering or tending to interfere with the enjoyment of life or property. A city may by ordinance regulate the illegal disposal of solid waste, including littering on public and private property, provide for enforcement by civil penalties as well as other remedies, and provide that such regulations may be enforced by city employees specially appointed as environmental enforcement officers. Any such ordinance shall be consistent with and supplementary to State and federal laws and regulations. (1917, c. 136, subch. 5, s. 1; 1919, cc. 136, 237; C.S., s. 2787; 1949, c. 594, s. 2; 1971, c. 698, s. 1; 1973, c. 426, s. 26; 2001-512, s. 6.)

Cross References. — As to authority of counties, cities and towns to enter into long-term contracts with private persons, firms or corporations for the disposal of solid waste, see G.S. 153A-299.1 through 153A-299.6.

Editor's Note. — Session Laws 2001-512, s. 15, provides: "This act shall not be construed to obligate the General Assembly to appropriate any funds to implement the provisions of this act. Every agency to which this act applies shall implement the provisions of this act from funds otherwise appropriated or available to the agency."

CASE NOTES

Cited in Stanley v. Department of Conservation & Dev., 284 N.C. 15, 199 S.E.2d 641 (1973).

§ 160A-186. Regulation of domestic animals.

A city may by ordinance regulate, restrict, or prohibit the keeping, running, or going at large of any domestic animals, including dogs and cats. The ordinance may provide that animals allowed to run at large in violation of the ordinance may be seized and sold or destroyed after reasonable efforts to notify their owner. (1917, c. 136, subch. 5, s. 1; 1919, cc. 136, 237; C.S., s. 2787; 1971, c. 698, s. 1.)

CASE NOTES

Through this section and § 160A-174 the legislature has delegated to the municipalities a part of its police power which may be exercised to protect or promote the health, morals, order, safety and general welfare of society. Town of Atlantic Beach v. Young, 307 N.C. 422, 298 S.E.2d 686, appeal dismissed, 462 U.S. 1101, 103 S. Ct. 2446, 77 L. Ed. 2d 1328 (1983).

Scope of Review of Ordinance. — Where town passed ordinance pursuant to its police power as provided under this section and expressly stated that its purpose is to protect the health, safety and welfare of the town, review of validity of such ordinance will be to determine if the police power has been exercised within the constitutional limitations imposed by both the state and federal Constitutions. Such review will not include an analysis of the motives which prompted the passage of this ordinance, because so long as an act is not forbidden, the wisdom of the enactment is exclusively a legislative decision. Town of Atlantic Beach v. Young, 307 N.C. 422, 298 S.E.2d 686, appeal dismissed, 462 U.S. 1101, 103 S. Ct. 2446, 77 L. Ed. 2d 1328 (1983).

Ordinance forbidding the keeping of cows within a certain portion of the city is valid. State v. Stowe, 190 N.C. 79, 128 S.E. 481 (1925), decided under prior similar provisions.

Animal Control Ordinance Held Constitutional. — Nashville, N.C., Ordinance § 4.3, which limits the number of dogs allowed on property, is not unconstitutional; the ordinance did not set an arbitrary, immutable limit on the number of pets, but, rather, the number of dogs allowed was based on the square footage of the lot, and there was no restriction on the number of dogs less than five months old. The record revealed that the town enacted the ordinance for the purpose of reducing noise and odor problems within the city limits, which were clearly legitimate public purposes, and a limitation on the number of dogs per lot was directly connected to these objectives. State v. Maynard, — N.C. App. —, 673 S.E.2d 877, 2009 N.C. App. LEXIS 263 (2009).

§ 160A-187. Possession or harboring of dangerous animals.

A city may by ordinance regulate, restrict, or prohibit the possession or harboring within the city of animals which are dangerous to persons or property. No such ordinance shall have the effect of permitting any activity or condition with respect to a wild animal which is prohibited or more severely restricted by regulations of the Wildlife Resources Commission. (1971, c. 698, s. 1; 1977, c. 407, s. 2.)

Cross References. — As to the power of counties to regulate, restrict, or prohibit the possession or harboring of dangerous animals, see G.S. 153A-131.

CASE NOTES

Cited in Altman v. City of High Point, — F. Supp. 2d —, 2002 U.S. Dist. LEXIS 26412 (M.D.N.C. Jan. 17, 2002).

§ 160A-188. Bird sanctuaries.

A city may by ordinance create and establish a bird sanctuary within the city limits. The ordinance may not protect any birds classed as a pest under Article 22A of Chapter 113 of the General Statutes and the Structural Pest Control Act of North Carolina of 1955 or the North Carolina Pesticide Law of 1971. When a bird sanctuary has been established, it shall be unlawful for any person to hunt, kill, trap, or otherwise take any protected birds within the city limits except pursuant to a permit issued by the North Carolina Wildlife Resources Commission under G.S. 113-274(c) (1a) or under any other license or permit of the Wildlife Resources Commission specifically made valid for use in taking birds within city limits. (1951, c. 411, ss. 1, 2; 1971, c. 698, s. 1; 1979, c. 830, s. 3.)

§ 160A-189. Firearms.

A city may by ordinance regulate, restrict, or prohibit the discharge of firearms at any time or place within the city except when used in defense of person or property or pursuant to lawful directions of law-enforcement officers, and may regulate the display of firearms on the streets, sidewalks, alleys, or other public property. Nothing in this section shall be construed to limit a city's authority to take action under Article 36A of Chapter 14 of the General Statutes. (1971, c. 698, s. 1.)

CASE NOTES

Cited in State v. Tanner, 25 N.C. App. 251, 212 S.E.2d 695 (1975).

§ 160A-190. Pellet guns.

A city may by ordinance regulate, restrict, or prohibit the sale, possession or use within the city of pellet guns or any other mechanism or device designed or used to project a missile by compressed air or mechanical action with less than deadly force. (1971, c. 698, s. 1.)

§ 160A-191. Limitations on enactment of Sunday-closing ordinances.

No ordinance regulating or prohibiting business activity on Sundays shall be enacted unless the council shall hold a public hearing on the proposed ordinance. Notice of the hearing shall be published once each week for four successive weeks before the date of the hearing. The notice shall fix the date, hour and place of the public hearing, and shall contain a statement of the council's intent to consider a Sunday-closing ordinance, the purpose for such an ordinance, and one or more reasons for its enactment. No ordinance shall be held invalid for failure to observe the procedural requirements for enactment imposed by this section unless the issue is joined in an appropriate proceeding initiated within 90 days after the date of final enactment. This section shall not apply to ordinances enacted pursuant to G.S. 18B-1004(d). (1967, c. 1156, s. 1; 1971, c. 698, s. 1; 1973, c. 426, s. 27; 1983, c. 768, s. 22.)

CASE NOTES

Applied in State v. Underwood, 283 N.C. 154, 195 S.E.2d 489 (1973).

§ 160A-192: Repealed by Session Laws 1991, c. 698, s. 1.

§ 160A-193. Abatement of public health nuisances.

(a) A city shall have authority to summarily remove, abate, or remedy everything in the city limits, or within one mile thereof, that is dangerous or prejudicial to the public health or public safety. Pursuant to this section, the governing board of a city may order the removal of a swimming pool and its appurtenances upon a finding that the swimming pool or its appurtenances is dangerous or prejudicial to public health or safety. The expense of the action shall be paid by the person in default. If the expense is not paid, it is a lien on the land or premises where the nuisance occurred. A lien established pursuant to this subsection shall have the same priority and be collected as unpaid ad valorem taxes.

(b) The expense of the action is also a lien on any other real property owned by the person in default within the city limits or within one mile of the city limits, except for the person's primary residence. A lien established pursuant to this subsection is inferior to all prior liens and shall be collected as a money judgment. This subsection shall not apply if the person in default can show that the nuisance was created solely by the actions of another. (1917, c. 136, subch. 7, s. 4; C.S., s. 2800; 1971, c. 698, s. 1; 1979, 2nd Sess., c. 1247, s. 20; 2001-448, s. 1; 2002-116, s. 3.)

CASE NOTES

Contract May Extend Limits of Protection. — By use of a contract between a county and a city, rather than the provisions of this section, a city can extend its protection against accumulated garbage and refuse for more than one mile from its territorial limits. Koontz v. City of Winston-Salem, 280 N.C. 513, 186 S.E.2d 897 (1972).

Adult Business Ordinance Held Vague. — Because a county's adult business ordinance was ambiguous as to whether it applied to businesses outside a city's business limits or only to businesses outside the city's extraterritorial jurisdiction, it was interpreted as applying only to the latter. State v. Baggett, 133 N.C. App. 47, 514 S.E.2d 536 (1999).

City's Demolition of a House Without Giving Notice. — Trial court erred in granting summary judgment to the city on the homeowner's claim for violation of her due process rights because, although the homeowner's house was in severe disrepair, the city violated her due process rights by demolishing the home without giving her notice, as the condition of the house did not pose an imminent threat to the public, warranting its immediate demolition; accordingly, the appellate court reversed the judgment and remanded the case for an entry summary judgment in favor of the homeowner and a trial on the issue of damages. Monroe v. City of New Bern, 158 N.C. App. 275, 580 S.E.2d 372, 2003 N.C. App. LEXIS 1053 (2003), cert. denied, 357 N.C. 461, 586 S.E.2d 93 (2003).

Cited in Stanley v. Department of Conservation & Dev., 284 N.C. 15, 199 S.E.2d 641 (1973); River Birch Assocs. v. City of Raleigh, 326 N.C. 100, 388 S.E.2d 538 (1990).

§ 160A-193.1. Stream-clearing programs.

(a) A city shall have the authority to remove natural and man-made obstructions in stream channels and in the floodway of streams that may impede the passage of water during rain events.

(b) The actions of a city to clear obstructions from a stream shall not create or increase the responsibility of the city for the clearing or maintenance of the stream, or for flooding of the stream. In addition, actions by a city to clear obstructions from a stream shall not create in the city any ownership in the stream, obligation to control the stream, or affect any otherwise existing private property right, responsibility, or entitlement regarding the stream. These provisions shall not relieve a city for negligence that might be found under otherwise applicable law.

(c) Nothing in this section shall be construed to affect otherwise existing rights of the State to control or regulate streams or activities within streams. In implementing a stream-clearing program, the city shall comply with all requirements in State or federal statutes and rules. (2005-441, s. 2.)

Editor's Note. — The preamble to Session Laws 2005-441, reads: "Whereas, the clearing of obstructions in streams, such as dead trees, fallen tree limbs, root balls, underbrush, and trash and debris furthers the health, safety, and welfare of the State's citizens by allowing such streams to function more efficiently to remove stormwater, thus reducing flooding; and

"Whereas, local governments are deterred from engaging in stream-clearing activities by the possibility that they will become legally responsible for regular stream clearing, or the possibility that they will become legally responsible for the impact on private properties of natural events such as flooding, which have never been the legal responsibility of local governments; and

"Whereas, many private landowners do not have the resources to clear obstructions from the streams that are located on their property, and it is in the public interest to facilitate the establishment of stream-clearing programs by local governments; Now, therefore,"

§ 160A-194. Regulating and licensing businesses, trades, etc.

A city may by ordinance, subject to the general law of the State, regulate and license occupations, businesses, trades, professions, and forms of amusement or entertainment and prohibit those that may be inimical to the public health, welfare, safety, order, or convenience. In licensing trades, occupations, and professions, the city may, consistent with the general law of the State, require applicants for licenses to be examined and charge a reasonable fee therefor. Nothing in this section shall impair the city's power to levy privilege license taxes on occupations, businesses, trades, professions, and other activities pursuant to G.S. 160A-211.

Nothing in this section shall authorize a city to examine or license a person holding a license issued by an occupational licensing board of this State as to the profession or trade that he has been licensed to practice or pursue by the State. (1971, c. 698, s. 1.)

CASE NOTES

Cited in Smith v. Keator, 285 N.C. 530, 206 S.E.2d 203 (1974); Fantasy World, Inc. v. Greensboro Bd. of Adjustment, 162 N.C. App. 603, 592 S.E.2d 205, 2004 N.C. App. LEXIS 267 (2004).

§ 160A-195: Repealed by Session Laws 1998-128, s. 11, effective September 4, 1998.

§ 160A-196. Sewage tie-ons.

Cities that (in whole or in part) are adjacent to, adjoining, intersected by or bounded by the Atlantic Ocean and Roanoke, Albemarle, Currituck, or Pamlico Sound may by ordinance regulate the tie-ons to sewage systems within their corporate limits. (1985, c. 525, s. 1; 1987, c. 303.)

§ 160A-197: Repealed by Session Laws 1995, c. 501, s. 4.

§ 160A-198. Curfews.

A city may by an appropriate ordinance impose a curfew on persons of any age less than 18. (1997-189, s. 1.)

Legal Periodicals. — For 1997 legislative survey, see 20 Campbell L. Rev. 417.

§ 160A-199. Regulation of outdoor advertising.

(a) As used in this section, the term "off-premises outdoor advertising" includes off-premises outdoor advertising visible from the main-traveled way of any road.

(b) A city may require the removal of an off-premises outdoor advertising sign that is nonconforming under a local ordinance and may regulate the use of off-premises outdoor advertising within the jurisdiction of the city in accordance with the applicable provisions of this Chapter.

(c) A city shall give written notice of its intent to require removal of off-premises outdoor advertising by sending a letter by certified mail to the last known address of the owner of the outdoor advertising and the owner of the property on which the outdoor advertising is located.

(d) No city may enact or amend an ordinance of general applicability to require the removal of any nonconforming, lawfully erected off-premises outdoor advertising sign without the payment of monetary compensation to the owners of the off-premises outdoor advertising, except as provided below. The payment of monetary compensation is not required if:

(1) The city and the owner of the nonconforming off-premises outdoor advertising enter into a relocation agreement pursuant to subsection (g) of this section.

(2) The city and the owner of the nonconforming off-premises outdoor advertising enter into an agreement pursuant to subsection (k) of this section.

(3) The off-premises outdoor advertising is determined to be a public nuisance or detrimental to the health or safety of the populace.

(4) The removal is required for opening, widening, extending or improving streets or sidewalks, or for establishing, extending, enlarging, or improving any of the public enterprises listed in G.S. 160A-311, and the city allows the off-premises outdoor advertising to be relocated to a comparable location.

(5) The off-premises outdoor advertising is subject to removal pursuant to statutes, ordinances, or regulations generally applicable to the demolition or removal of damaged structures.

(e) Monetary compensation is the fair market value of the off-premises outdoor advertising in place immediately prior to its removal and without consideration of the effect of the ordinance or any diminution in value caused by the ordinance requiring its removal. Monetary compensation shall be determined based on:

(1) The factors listed in G.S. 105-317.1(a); and

(2) The listed property tax value of the property and any documents regarding value submitted to the taxing authority.

(f) If the parties are unable to reach an agreement under subsection (e) of this section on monetary compensation to be paid by the city to the owner of the nonconforming off-premises outdoor advertising sign for its removal, and the city elects to proceed with the removal of the sign, the city may bring an action in superior court for a determination of the monetary compensation to be paid. In determining monetary compensation, the court shall consider the factors set forth in subsection (e) of this section. Upon payment of monetary compensation for the sign, the city shall own the sign.

(g) In lieu of paying monetary compensation, a city may enter into an agreement with the owner of a nonconforming off-premises outdoor advertising sign to relocate and reconstruct the sign. The agreement shall include the following:

(1) Provision for relocation of the sign to a site reasonably comparable to or better than the existing location. In determining whether a location is comparable or better, the following factors shall be taken into consideration:
   a. The size and format of the sign.
   b. The characteristics of the proposed relocation site, including visibility, traffic count, area demographics, zoning, and any uncompensated differential in the sign owner's cost to lease the replacement site.
   c. The timing of the relocation.

(2) Provision for payment by the city of the reasonable costs of relocating and reconstructing the sign including:
   a. The actual cost of removing the sign.
   b. The actual cost of any necessary repairs to the real property for damages caused in the removal of the sign.
   c. The actual cost of installing the sign at the new location.
   d. An amount of money equivalent to the income received from the lease of the sign for a period of up to 30 days if income is lost during the relocation of the sign.

(h) For the purposes of relocating and reconstructing a nonconforming off-premises outdoor advertising sign pursuant to subsection (g) of this section, a city, consistent with the welfare and safety of the community as a whole, may adopt a resolution or adopt or modify its ordinances to provide for the issuance of a permit or other approval, including conditions as appropriate, or to provide for dimensional, spacing, setback, or use variances as it deems appropriate.

(i) If a city has offered to enter into an agreement to relocate a nonconforming off-premises outdoor advertising sign pursuant to subsection (g) of this section, and within 120 days after the initial notice by the city the parties have not been able to agree that the site or sites offered by the city for relocation of the sign are reasonably comparable to or better than the existing site, the parties shall enter into binding arbitration to resolve their disagreements. Unless a different method of arbitration is agreed upon by the parties, the arbitration shall be conducted by a panel of three arbitrators. Each party shall select one arbitrator and the two arbitrators chosen by the parties shall select the third member of the panel. The American Arbitration Association rules shall apply to the arbitration unless the parties agree otherwise.

(j) If the arbitration results in a determination that the site or sites offered by the city for relocation of the nonconforming sign are not comparable to or better than the existing site, and the city elects to proceed with the removal of the sign, the parties shall determine the monetary compensation under subsection (e) of this section to be paid to the owner of the sign. If the the parties are unable to reach an agreement regarding monetary compensation within 30 days of the receipt of the arbitrators' determination, and the city elects to proceed with the removal of the sign, then the city may bring an action in superior court for a determination of the monetary compensation to be paid by the city to the owner for the removal of the sign. In determining monetary compensation, the court shall consider the factors set forth in subsection (e) of this section. Upon payment of monetary compensation for the sign, the city shall own the sign.

(k) Notwithstanding the provisions of this section, a city and an off-premises outdoor advertising sign owner may enter into a voluntary agreement allowing for the removal of the sign after a set period of time in lieu of monetary compensation. A city may adopt an ordinance or resolution providing for a relocation, reconstruction, or removal agreement.

(*l*) A city has up to three years from the effective date of an ordinance enacted under this section to pay monetary compensation to the owner of the off-premises outdoor advertising provided the affected property remains in place until the compensation is paid.

(m) This section does not apply to any ordinance in effect on the effective date of this section. A city may amend an ordinance in effect on the effective date of this section to extend application of the ordinance to off-premises outdoor advertising located in territory acquired by annexation or located in the extraterritorial jurisdiction of the city. A city may repeal or amend an ordinance in effect on the effective date of this section so long as the amendment to the existing ordinance does not reduce the period of amortization in effect on the effective date of this section.

(n) The provisions of this section shall not be used to interpret, construe, alter or otherwise modify the exercise of the power of eminent domain by an entity pursuant to Chapter 40A or Chapter 136 of the General Statutes.

(o) Nothing in this section shall limit a city's authority to use amortization as a means of phasing out nonconforming uses other than off-premises outdoor advertising. (2004-152, s. 2.)

§ 160A-200. Annual notice to chronic violators of overgrown vegetation ordinances.

(a) A municipality may notify a chronic violator of the municipality's overgrown vegetation ordinance that, if the violator's property is found to be in violation of the ordinance, the municipality shall, without further notice in the calendar year in which notice is given, take action to remedy the violation and the expense of the action shall become a lien upon the property and shall be collected as unpaid taxes. The initial annual notice shall be served by registered or certified mail. A chronic violator is a person who owns property whereupon, in the previous calendar year, the municipality took remedial action at least three times under the overgrown vegetation ordinance.

(b) Repealed by Session Laws 2009-19, s. 1, effective April 30, 2009. (1999-58, s. 2; 2000-33, s. 1; 2000-38, s. 1; 2001-107, s. 1; 2003-77, s. 1; 2003-80, s. 1; 2005-81, s. 1; 2005-202, s. 1; 2007-31, s. 1; 2007-258, s. 1; 2008-6, s. 1; 2008-25, s. 1; 2009-3, s. 1; 2009-19, s. 1; 2009-570, s. 46.)

Local Modification. — City of Durham: 2007-220, s. 2 (as to subsection (a)); city of Winston Salem: 2003-120, s. 2, as amended by 2007-319, s. 2, and 2008-47, s. 2; town of Spring Lake: 2007-319, s. 2.

Editor's Note. — Session Laws 1999-58, s. 1, effective May 18, 1999, enacted subsection (a) and s. 2 made it effective as to the city of Roanoke Rapids. Session Laws 2000-33, s. 1, effective June 29, 2000, added the city of High Point. Session Laws 2000-38, s. 1, effective June 30, 2000, added the city of Gastonia. Session Laws 2001-107, s. 1, effective May 23, 2001, added the cities of Lexington and Winston Salem. Session Laws 2003-77, s. 1, effective May 22, 2003, added the cities of Durham and Monroe. Session Laws 2003-80, s. 1, effective May 27, 2003, added the city of Rocky Mount. Session Laws 2005-81, s. 1, effective June 13, 2005, added the Towns of Ayden, Leland, and Pineville. Session Laws 2005-202, s. 1, effective July 20, 2005, added the Town of Ahoskie. The section has been codified at the direction of the Revisor of Statutes.

Session Laws 1998-108, s. 2, contains very similar provisions and, as amended by 1999-129, applies to the Towns of Denton, Farmville, and Jonesville and the City of Greenville.

Session Laws 2009-19, s. 2, as amended by Session Laws 2009-570, s. 46, provides in part: "A municipality newly covered by G.S. 160A-200 on account of this act may adopt an ordinance under G.S. 160A-200 when this act becomes law, but the ordinances may not become effective prior to October 1, 2009."

Effect of Amendments. — Session Laws 2008-6, s. 1, effective June 23, 2008, inserted "Franklinton," "Pinetops," "Smithfield," "Yadkinville," "Louisburg," and "Mount Airy" in subsection (b).

Session Laws 2008-25, s. 1, effective June 30, 2008, inserted "Marshville," "Wingate" and "Wadesboro" in subsection (b).

Session Laws 2009-3, s. 1, effective March 5, 2009, inserted "Clinton" in subsection (b).

Session Laws 2009-19, s. 1, effective April 30, 2009, deleted subsection (b).

§ 160A-200.1. Annual notice to chronic violators of public nuisance ordinance.

A city may notify a chronic violator of the city's public nuisance ordinance that, if the violator's property is found to be in violation of the ordinance, the city shall, without further notice in the calendar year in which notice is given, take action to remedy the violation, and the expense of the action shall become a lien upon the property and shall be collected as unpaid taxes. The notice shall be sent by certified mail. A chronic violator is a person who owns property whereupon, in the previous calendar year, the city gave notice of violation at least three times under any provision of the public nuisance ordinance. (2009-287, s. 1.)

Editor's Note. — Session Laws 2009-287, s. 4, made this section effective July 10, 2009. Section 4 further provides: "A municipality or county may adopt an ordinance under G.S. 160A-200.1 or G.S. 153A-140.2 when this act becomes law, but the ordinances may not become effective prior to October 1, 2009. The repeal in this act of any local act does not affect the rights or liabilities of a municipality or county that arose during the time the act was in effect, or under an ordinance adopted under such an act. If any municipality or county adopted an ordinance under any act repealed by this act, and the ordinance would be permitted under G.S. 160A-200.1 or G.S. 153A-140.2, as enacted by this act, that ordinance shall remain in effect until amended or repealed by that municipality or county."

§ 160A-201. Limitations on regulating solar collectors.

(a) Except as provided in subsection (c) of this section, no city ordinance shall prohibit, or have the effect of prohibiting, the installation of a solar collector that gathers solar radiation as a substitute for traditional energy for water heating, active space heating and cooling, passive heating, or generating electricity for a residential property, and no person shall be denied permission by a city to install a solar collector that gathers solar radiation as a substitute for traditional energy for water heating, active space heating and cooling, passive heating, or generating electricity for a residential property. As used in this section, the term "residential property" means property where the predominant use is for residential purposes.

(b) This section does not prohibit an ordinance regulating the location or screening of solar collectors as described in subsection (a) of this section, provided the ordinance does not have the effect of preventing the reasonable use of a solar collector for a residential property.

(c) This section does not prohibit an ordinance that would prohibit the location of solar collectors as described in subsection (a) of this section that are visible by a person on the ground:

(1) On the facade of a structure that faces areas open to common or public access;

(2) On a roof surface that slopes downward toward the same areas open to common or public access that the facade of the structure faces; or

(3) Within the area set off by a line running across the facade of the structure extending to the property boundaries on either side of the facade, and those areas of common or public access faced by the structure.

(d) In any civil action arising under this section, the court may award costs and reasonable attorneys' fees to the prevailing party. (2007-279, s. 1; 2009-553, s. 1.)

Editor's Note. — Session Laws 2007-279, s. 4, made this section effective October 1, 2007.

Local Modification. — Town of Carrboro: 1987, c. 476, as added by 2009-427, s. 1.

Effect of Amendments. — Session Laws 2009-553, s. 1, effective December 1, 2009, substituted "residential property" for "detached single-family residence" twice in the first sentence of subsection (a) and at the end of subsection (b); and added the last sentence in subsection (a).

§§ 160A-202 through 160A-205: Reserved for future codification purposes.

ARTICLE 9.

Taxation.

§ 160A-206. General power to impose taxes.

A city shall have power to impose taxes only as specifically authorized by act of the General Assembly. Except when the statute authorizing a tax provides for penalties and interest, the power to impose a tax shall include the power to impose reasonable penalties for failure to declare tax liability, if required, or to impose penalties or interest for failure to pay taxes lawfully due within the time prescribed by law or ordinance. The power to impose a tax shall also include the power to provide for its administration in a manner not inconsistent with the statute authorizing the tax. (1971, c. 698, s. 1.)

CASE NOTES

Editor's Note. *— Some of the cases cited below were decided under former statutory provisions.*

City having power to levy a heavy tax on "gift enterprises" must restrict this tax to enterprises that are of a lottery nature. A dealer in trading stamps cannot be taxed, for the tax cannot be applied to a business merely because of its peculiarity. City of Winston v. Beeson, 135 N.C. 271, 47 S.E. 457 (1904).

Recovery of Excess License Tax. — In order to recover money paid a municipality as a license tax in excess of the amount the town was lawfully authorized to collect, and in the absence of statutory regulations, or under the common law, it is necessary that the one so paying should have done so under protest at the time or under circumstances of duress or such as would endanger his person or property, and where the payment has been voluntarily made, the action may not be successfully maintained. Blackwell v. City of Gastonia, 181 N.C. 378, 107 S.E. 218 (1921).

Power to Appoint Special Tax Collector. — Whenever the authorities of a town are commanded to levy and collect taxes, they may appoint a special tax collector to collect the same. But this power to appoint such a collector is additional, and does not abridge their right to require the collection to be made by the regular officer appointed for that purpose. Webb v. Town of Beaufort, 88 N.C. 496 (1883).

Authority to Require Compliance with Zoning Requirements. — City had the authority to require confirmation of a sexually oriented business's zoning compliance in its business privilege license application and the authority to reject the business's privilege license application where zoning compliance was found wanting. Fantasy World, Inc. v. Greensboro Bd. of Adjustment, 162 N.C. App. 603, 592 S.E.2d 205, 2004 N.C. App. LEXIS 267 (2004), cert. denied, 358 N.C. 543, 599 S.E.2d 43 (2004).

Applied in Cooke v. Futrell, 37 N.C. App. 441, 246 S.E.2d 65 (1978).

OPINIONS OF ATTORNEY GENERAL

Town Located Within Two Counties. — Session Laws 2001-439 and 2002-94 pertaining to the levy of an occupancy tax by cities in Avery County did not specifically authorize the levying of the tax throughout the entire town of Seven Devils, which is located within both Avery and Watagua counties. See opinion of Attorney General to Rebecca Eggers-Gryder, Eggers, Eggers, Eggers, and Eggers, 2003 N.C.A.G. 1 (1/23/03).

§ 160A-207. Remedies for collecting taxes.

In addition to any other remedies provided by law, the remedies of levy, garnishment, and attachment shall be available for collecting any city tax under the rules and procedures prescribed by the Machinery Act for the enforcement of tax liability against personal property, except that:

(1) The remedies shall become available on the due date of the tax and not before that time;
(2) Rules dependent on the existence of a lien against real property for the same tax shall not apply; and
(3) The lien acquired by levy, garnishment, or attachment shall be inferior to any prior or simultaneous lien for property taxes acquired under the Machinery Act. (1971, c. 698, s. 1; 1973, c. 426, s. 29.)

§ 160A-208. Continuing taxes.

Except for taxes levied on property under the Machinery Act, a city may impose an authorized tax by a permanent ordinance that shall stand from year to year until amended or repealed, and it shall not be necessary to reimpose the tax in each annual budget ordinance. (1971, c. 698, s. 1; 1973, c. 426, s. 30.)

§ 160A-208.1. Disclosure of certain information prohibited.

(a) Disclosure Prohibited. — Notwithstanding Chapter 132 of the General Statutes or any other law regarding access to public records, local tax records that contain information about a taxpayer's income or receipts are not public records. A current or former officer, employee, or agent of a city who in the course of service to or employment by the city has access to information about the amount of a taxpayer's income or receipts may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

(1) To comply with a court order or a law.
(2) Review by the Attorney General or a representative of the Attorney General.
(3) To sort, process, or deliver tax information on behalf of the city, as necessary to administer a tax.
(4) **(Effective for taxes imposed for taxable years beginning on or after July 1, 2008)** To include on a property tax receipt the amount of property taxes due and the amount of property taxes deferred on a residence classified under G.S. 105-277.1B, the property tax homestead circuit breaker.

(b) Punishment. — A person who violates this section is guilty of a Class 1 misdemeanor. If the person committing the violation is an officer or employee, that person shall be dismissed from public office or public employment and may not hold any public office or public employment in this State for five years after the violation. (1993, c. 485, s. 34; 1994, Ex. Sess., c. 14, s. 67; 2008-35, s. 1.5.)

Effect of Amendments. — Session Laws 2008-35, s. 1.5, effective for taxes imposed for taxable years beginning on or after July 1, 2008, added subdivision (a)(4).

§ 160A-209. Property taxes.

(a) Pursuant to Article V, Sec. 2(5) of the Constitution of North Carolina, the General Assembly confers upon each city in this State the power to levy, within the limitations set out in this section, taxes on property having a situs within the city under the rules and according to the procedures prescribed in the Machinery Act (Chapter 105, Subchapter II).

(b) Each city may levy property taxes without restriction as to rate or amount for the following purposes:

(1) Debt Service. — To pay the principal of and interest on all general obligation bonds and notes of the city.

(2) Deficits. — To supply an unforeseen deficiency in the revenue (other than revenues of any of the enterprises listed in G.S. 160A-311), when revenues actually collected or received fall below revenue estimates made in good faith in accordance with the Local Government Budget and Fiscal Control Act.

(3) Civil Disorders. — To meet the cost of additional law-enforcement personnel and equipment that may be required to suppress riots or other civil disorders involving an extraordinary breach of law and order within the jurisdiction of the city.

(c) Each city may levy property taxes for one or more of the following purposes subject to the rate limitation set out in subsection (d):

(1) Administration. — To provide for the general administration of the city through the city council, the office of the city manager, the office of the city budget officer, the office of the city finance officer, the office of the city tax collector, the city purchasing agent, the city attorney, and for all other general administrative costs not allocated to a particular board, commission, office, agency, or activity.

(2) Air Pollution. — To maintain and administer air pollution control programs.

(3) Airports. — To establish and maintain airports and related aeronautical facilities.

(4) Ambulance Service. — To provide ambulance services, rescue squads, and other emergency medical services.

(5) Animal Protection and Control. — To provide animal protection and control programs.

(5a) Arts Programs and Museums. — To provide for arts programs and museums as authorized in G.S. 160A-488.

(6) Auditoriums, Coliseums, and Convention Centers. — To provide public auditoriums, coliseums, and convention centers.

(7) Beach Erosion and Natural Disasters. — To provide for shoreline protection, beach erosion control and flood and hurricane protection.

(8) Cemeteries. — To provide for cemeteries.

(9) Civil Defense. — To provide for civil defense programs.

(9a) Community Development. — To provide for community development as authorized by G.S. 160A-456 and 160A-457.

(10) Debts and Judgments. — To pay and discharge any valid debt of the city or any judgment lodged against it, other than debts or judgments evidenced by or based on bonds or notes.

(10a) Defense of Employees and Officers. — To provide for the defense of, and payment of civil judgments against, employees and officers or former employees and officers, as authorized by this Chapter.

(10b) Economic Development. — To provide for economic development as authorized by G.S. 158-7.1 and G.S. 158-12.

(10c) Drainage. — To provide for drainage projects or programs in accordance with Chapter 156 of the General Statutes or in accordance with this Chapter.

(11) Elections. — To provide for all city elections and referendums.

(12) Electric Power. — To provide electric power generation, transmission, and distribution services.

(13) Fire Protection. — To provide fire protection services and fire prevention programs.
(14) Gas. — To provide natural gas transmission and distribution services.
(15) Historic Preservation. — To undertake historic preservation programs and projects.
(15a) Housing. — To undertake housing projects as defined in G.S. 157-3, and urban homesteading programs under G.S. 160A-457.2.
(16) Human Relations. — To undertake human relations programs.
(17) Hospitals. — To establish, support and maintain public hospitals and clinics, and other related health programs and facilities, and to aid any private, nonprofit hospital, clinic, related facility, or other health program or facility.
(17a) Industrial Development. — To provide for industrial development as authorized by G.S. 158-7.1.
(18) Jails. — To provide for the operation of a jail and other local confinement facilities.
(19) Joint Undertakings. — To cooperate with any other county, city, or political subdivision of the State in providing any of the functions, services, or activities listed in this subsection.
(20) Libraries. — To establish and maintain public libraries.
(21) Mosquito Control.
(22) Off-Street Parking. — To provide off-street lots and garages for the parking and storage of motor vehicles.
(23) Open Space. — To acquire open space land and easements in accordance with Article 19, Part 4, of this Chapter.
(24) Parks and Recreation. — To establish, support and maintain public parks and programs of supervised recreation.
(25) Planning. — To provide for a program of planning and regulation of development in accordance with Article 19 of this Chapter.
(26) Police. — To provide for law enforcement.
(26a) Ports and Harbors. — To participate in programs with the North Carolina Ports Authority and to provide for harbor masters.
(27) Public Transportation. — To provide public transportation by rail, motor vehicle, or another means of conveyance other than a ferry, including any facility or equipment needed to provide the public transportation.
(27a) Railroad Corridor Preservation. — To acquire property for railroad corridor preservation.
(27b) Senior Citizens Programs. — To undertake programs for the assistance and care of its senior citizens.
(28) Sewage. — To provide sewage collection and treatment services as defined in G.S. 160A-311(3).
(29) Solid Waste. — To provide solid waste collection and disposal services, and to acquire and operate landfills.
(30) Streets. — To provide for the public streets, sidewalks, and bridges of the city.
(31) Traffic Control and On-Street Parking. — To provide for the regulation of vehicular and pedestrian traffic within the city, and for the parking of motor vehicles on the public streets.
(31a) Urban Redevelopment. — To provide for urban redevelopment.
(32) Water. — To provide water supply and distribution services.
(33) Water Resources. — To participate in federal water resources development projects.
(34) Watershed Improvement. — To undertake watershed improvement projects.

(d) Property taxes may be levied for one or more of the purposes listed in subsection (c) up to a combined rate of one dollar and fifty cents ($1.50) on the one hundred dollars' ($100.00) appraised value of property subject to taxation.

(e) With an approving vote of the people, any city may levy property taxes for any purpose for which the city is authorized by its charter or general law to appropriate money. Any property tax levy approved by a vote of the people shall not be counted for purposes of the rate limitation imposed in subsection (d).

The city council may call a referendum on approval of a property tax levy. The referendum may be held at the same time as any other city referendum or city election, but may not be otherwise held (i) on the day of any federal, State, district, or county election already validly called or scheduled by law at the time the tax referendum is called, or (ii) within the period of time beginning 30 days before and ending 10 days after the day of any other city referendum or city election already validly called or scheduled by law at the time the tax referendum is called. The referendum shall be conducted by the same board of elections that conducts regular city elections. A notice of referendum shall be published in accordance with G.S. 163-287. The notice shall state the date of the referendum, the purpose for which it is being held, and a statement as to the last day for registration for the referendum under the election laws then in effect.

The proposition submitted to the voters shall be substantially in one of the following forms:

(1) Shall the City/Town of __________ be authorized to levy annually a property tax at a rate not in excess of ______ cents on the one hundred dollars ($100.00) value of property subject to taxation for the purpose of __________?

(2) Shall the City/Town of __________ be authorized to levy annually a property tax at a rate not in excess of that which will produce $ __________ for the purpose of __________?

(3) Shall the City/Town of __________ be authorized to levy annually a property tax without restriction as to rate or amount for the purpose of __________?

If a majority of those participating in the referendum approve the proposition, the city council may proceed to levy annually a property tax within the limitations (if any) described in the proposition.

The board of elections shall canvass the referendum and certify the results to the city council. The council shall then certify and declare the result of the referendum and shall publish a statement of the result once, with the following statement appended: "Any action or proceeding challenging the regularity or validity of this tax referendum must be begun within 30 days after (date of publication)." The statement of results shall be filed in the clerk's office and inserted in the minutes of the council.

Any action or proceeding in any court challenging the regularity or validity of a tax referendum must be begun within 30 days after the publication of the results of the referendum. After the expiration of this period of limitation, no right of action or defense based upon the invalidity of or any irregularity in the referendum shall be asserted, nor shall the validity of the referendum be open to question in any court upon any ground whatever, except in an action or proceeding begun within the period of limitation prescribed herein.

Except for tax referendums on functions not included in subsection (c) of this section, any referendum held before July 1, 1973, on the levy of property taxes is not valid for the purposes of this subsection. Cities in which such referendums have been held may support programs formerly supported by voted property taxes within the general rate limitations set out in subsection (d) at any appropriate level and are not subject to the former voted rate limitation.

(f) With an approving vote of the people, any city may increase the property tax rate limitation imposed in subsection (c) and may call a referendum for that purpose. The referendum may be held at the same time as any other city referendum or election, but may not be otherwise held (i) on the day of any federal, State, district, or county election, or (ii) within the period of time beginning 30 days before and ending 30 days after the day of any other city referendum or city election. The election shall be conducted by the same board of elections that conducts regular city elections.

The proposition submitted to the voters shall be substantially in the following form: "Shall the property tax rate limitation applicable to the City/Town of ____________ be increased from ____________ on the one hundred dollars ($100.00) value of property subject to taxation to ________ on the one hundred dollars ($100.00) value of property subject to taxation?"

If a majority of those participating in the referendum approve the proposition, the rate limitation imposed in subsection (c) shall be increased for the city.

(g) With respect to any of the categories listed in subsections (b) and (c) of this section, the city may provide the necessary personnel, land, buildings, equipment, supplies, and financial support from property tax revenues for the program, function, or service.

(h) This section does not authorize any city to undertake any program, function, joint undertaking, or service not otherwise authorized by law. It is intended only to authorize the levy of property taxes within the limitations set out herein to finance programs, functions, or services authorized by other portions of the General Statutes or by city charters. (1917, c. 138, s. 37; 1919, c. 178, s. 3(37); C.S., s. 2963; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1947, c. 506; 1959, c. 1250, s. 3; 1971, c. 698, s. 1; 1973, c. 426, s. 31; c. 803, s. 2; 1975, c. 664, s. 7; 1977, c. 187, s. 2; c. 834, s. 2; 1979, c. 619, s. 5; 1979, 2nd Sess., c. 1247, s. 21; 1981, c. 66, s. 1; 1983, c. 511, ss. 3, 4; c. 828; 1985, c. 665, ss. 4, 7; 1987, c. 464, s. 6; 1989, c. 600, s. 8; 1989 (Reg. Sess., 1990), c. 1005, ss. 6, 7; 1991 (Reg. Sess., 1992), c. 896, s. 2; 2002-159, s. 50(b); 2002-172, s. 2.4(b); 2003-416, s. 2.)

Local Modification. — Town of Carrboro: 1987, c. 476, s. 1; town of Oak Ridge: 1998-113; town of Pleasant Garden: 1997-344, s. 1; town of Varnamtown: 1987 (Reg. Sess., 1988), c. 1003, s. 1; town of Walkertown: 1983 (Reg. Sess., 1984), c. 936; village of Clemmons: 1985, c. 437, s. 7.

Editor's Note. — Former subdivision (c)(27a) was renumbered as present (c)(27b) to facilitate alphabetization.

Legal Periodicals. — For survey of 1981 administrative law, see 60 N.C.L. Rev. 1165 (1982).

CASE NOTES

The word "property" includes moneys, credits, investments, and other choses in action. Redmond v. Commissioners of Tarboro, 106 N.C. 122, 10 S.E. 845 (1890), decided under former statutory provisions.

Cited in Homebuilders Ass'n v. City of Charlotte, 336 N.C. 37, 442 S.E.2d 45 (1994).

§ 160A-210: Repealed by Session Laws 1979, 2nd Session, c. 1247, s. 22.

§ 160A-211. Privilege license taxes.

(a) Authority. — Except as otherwise provided by law, a city shall have power to levy privilege license taxes on all trades, occupations, professions, businesses, and franchises carried on within the city. A city may levy privilege license taxes on the businesses that were formerly taxed by the State under the following sections of Article 2 of Chapter 105 of the General Statutes only to the extent the sections authorized cities to tax the businesses before the sections were repealed:

G.S. 105-36	Amusements — Manufacturing, selling, leasing, or distributing moving picture films.
G.S. 105-36.1	Amusements — Outdoor theatres.
G.S. 105-37	Amusements — Moving pictures — Admission.
G.S. 105-42	Private detectives and investigators.
G.S. 105-45	Collecting agencies.
G.S. 105-46	Undertakers and retail dealers in coffins.
G.S. 105-50	Pawnbrokers.
G.S. 105-51.1	Alarm systems.
G.S. 105-53	Peddlers, itinerant merchants, and specialty market operators.
G.S. 105-54	Contractors and construction companies.
G.S. 105-55	Installing elevators and automatic sprinkler systems.
G.S. 105-61	Hotels, motels, tourist courts and tourist homes.
G.S. 105-62	Restaurants.
G.S. 105-65	Music machines.
G.S. 105-65.1	Merchandising dispensers and weighing machines.
G.S. 105-66.1	Electronic video games.
G.S. 105-74	Pressing clubs, dry cleaning plants, and hat blockers.
G.S. 105-77	Tobacco warehouses.
G.S. 105-80	Firearms dealers and dealers in other weapons.
G.S. 105-85	Laundries.
G.S. 105-86	Outdoor advertising.
G.S. 105-89	Automobiles, wholesale supply dealers, and service stations.
G.S. 105-89.1	Motorcycle dealers.
G.S. 105-90	Emigrant and employment agents.
G.S. 105-91	Plumbers, heating contractors, and electricians.
G.S. 105-97	Manufacturers of ice cream.
G.S. 105-98	Branch or chain stores.
G.S. 105-99	Wholesale distributors of motor fuels.
G.S. 105-102.1	Certain cooperative associations.
G.S. 105-102.5	General business license.

(b) Barbershop and Salon Restriction. — A privilege license tax levied by a city on a barbershop or a beauty salon may not exceed two dollars and fifty cents ($2.50) for each barber, manicurist, cosmetologist, beautician, or other operator employed in the barbershop or beauty salon.

(c) Prohibition. — A city may not impose a license, franchise, or privilege tax on a person engaged in any of the businesses listed in this subsection. These businesses are subject to a State tax for which the city receives a share of the tax revenue.

(1) Supplying piped natural gas taxed under Article 5E of Chapter 105 of the General Statutes.

(2) Providing telecommunications service taxed under G.S. 105-164.4(a)(4c).

(3) Providing video programming taxed under G.S. 105-164.4(a)(6).

(d) Repealed by Session Laws 2006-151, s. 12, effective January 1, 2007. (R.C., c. 111, s. 13; 1862, c. 51; Code, s. 3800; Rev., s. 2924; C.S., s. 2677; 1949, c. 933; 1971, c. 698, s. 1; 1996, 2nd Ex. Sess., c. 14, s. 23; 1998-22, s. 12; 2001-430, s. 17; 2006-151, s. 12.)

Editor's Note. — Section 105-77, referred to in subsection (a), has been repealed.

CASE NOTES

Editor's Note. — *Many of the cases cited below were decided under former similar statutory provisions.*

Constitutionality. — Public Laws 1929, c. 345, s. 162, imposing a license tax of $50.00 for each store operated under the same ownership or management where there was more than one store so operated, was held constitutional and valid. Great Atl. & Pac. Tea Co. v. Maxwell, 199 N.C. 433, 154 S.E. 838 (1930), aff'd, 284 U.S. 575, 52 S. Ct. 26, 76 L. Ed. 500 (1931).

Purpose. — Former statute imposed a license tax for the purpose of raising revenue, and not an ad valorem tax. Nor did the statute seek to regulate chain stores under the police power, and the tax was in accord with the fiscal policy of the State of raising revenue for State purposes by the imposition of taxes on trades, professions, franchises and incomes, and leaving to the counties and municipalities for their support ad valorem taxes on real and personal property. Great Atl. & Pac. Tea Co. v. Maxwell, 199 N.C. 433, 154 S.E. 838 (1930), aff'd, 284 U.S. 575, 52 S. Ct. 26, 76 L. Ed. 500 (1931).

Prior Law Invalid. — Prior law which imposed a license tax of $50.00 each on stores operated in this State where there were six or more such stores under the same management, but which imposed no such tax on other mercantile establishments doing the same business when there were less than six stores under one management, was held an arbitrary classification and unconstitutional. Great Atl. & Pac. Tea Co. v. Doughton, 196 N.C. 145, 144 S.E. 701 (1928).

Corporation Operating Coal and Ice Yards Liable for Tax. — A corporation operating coal and ice yards at established places of business in several cities of the State, one or more yards being operated in each of the cities, and maintaining scales, bins, etc., and a staff composed of a yard foreman and other employees at each establishment, was held liable for the tax imposed by a similar statute, such coal and ice yards being "mercantile establishments" within the meaning of the statute. Atlantic Ice & Coal Co. v. Maxwell, 210 N.C. 723, 188 S.E. 381 (1936).

City's practice of referring all privilege license applicants to the zoning administrator does not convert a privilege license into a regulatory license; the city's zoning compliance process does not involve or permit any discretion on the part of the zoning administrator as to whether a particular use is allowed in a particular district, in contrast to the special conditional use scheme of this section. Mom N Pops, Inc. v. City of Charlotte, 979 F. Supp. 372 (W.D.N.C. 1997), aff'd, 162 F.3d 1155 (4th Cir. 1998).

Privilege taxes laid upon trades and professions have been laid expressly for revenue since the enactment of provisions similar to this section. State v. Irvin, 126 N.C. 989, 35 S.E. 430 (1900).

Power to levy a tax on all trades includes any employment or business embarked into for gain or profit. Lenoir Drug Co. v. Town of Lenoir, 160 N.C. 571, 76 S.E. 480 (1912).

Unless Inconsistent with Special Law or Charter. — Unless inconsistent with a special law or charter of a city, a tax may be levied on a person engaging in any trade within the city. Guano Co. v. Town of Tarboro, 126 N.C. 68, 35 S.E. 231 (1900).

Charter and General Statute Construed Together. — The charter of a city giving it certain powers in respect to the levying of franchise taxes on trades and professions, etc., and the general statute will be construed together in determining the legislative grant of power to the municipality to levy taxes of this class. Hilton v. Harris, 207 N.C. 465, 177 S.E. 411 (1934); State v. Bridgers, 211 N.C. 235, 189 S.E. 869 (1937).

Classification of Trades and Professions for Taxation to be Based on Reasonable Distinctions. — A municipal corporation is empowered to tax trades or professions carried on or enjoyed within the city, unless otherwise provided by law, but its classification of trades and professions for taxation must be based upon reasonable distinctions, and all persons similarly situated must be treated alike. Kenny Co. v. Brevard, 217 N.C. 269, 7 S.E.2d 542 (1940).

Classification Upheld. — The law of uniformity did not prohibit the classification by the municipality of dealers in a particular kind of merchandise separately from those whose business it was to sell other articles falling within the same generic term. Rosenbaum v. City of New Bern, 118 N.C. 83, 24 S.E. 1 (1896).

Classification Held Void. — An ordinance requiring a license of livery men, and providing that it should include any persons making contract for hire in town or "any person carrying any person with a vehicle out of town for hire" was void as being unreasonable. Town of Plymouth v. Cooper, 135 N.C. 1, 47 S.E. 129 (1904).

Tax on Firm Delivering Products in City Upheld. — Construing the charter of a city in pari materia with the general statute, the city was given power to tax a firm outside the city which delivered products inside the city to customers procured by its salesman and collected for its goods upon delivery, such trade being "carried on or enjoyed within the city." Hilton v. Harris, 207 N.C. 465, 177 S.E. 411 (1934).

A manufacturer of fertilizers maintaining its sales department in another state from which sales were exclusively made for fertilizer stored for distribution only in a city in this State was liable under an ordinance of the city levying a tax upon callings and professions, naming among others "fertilizer manufacturers' agents or dealers," the tax being for the protection afforded by the city in the exercise of such occupation, and the profits derived therefrom. Guano Co. v. City of New Bern, 158 N.C. 354, 74 S.E. 2 (1912).

Limitation on License Tax on Use of Motor Vehicle. — In light of G.S. 20-97, which expressly prohibited municipality from levying a license or privilege tax in excess of $1.00 upon the use of any motor vehicle licensed by the State, the provisions of a municipal ordinance imposing a license tax upon the operation of passenger vehicles for hire in addition to the $1.00 theretofore imposed by it upon motor vehicles generally was void, and could not be sustained upon the theory that it was a tax upon the business of operating a motor vehicle for hire rather than upon ownership of the vehicle, since the word "business" and the word "use," as used in the section, meant the same thing. Cox v. Brown, 218 N.C. 350, 11 S.E.2d 152 (1940).

City had the authority to allow the city tax collector to assess zoning compliance as part of the administration of the business privilege license tax and to deny a business privilege license to a sexually oriented business because the business sought to operate in violation of a zoning ordinance. Fantasy World, Inc. v. Greensboro Bd. of Adjustment, 162 N.C. App. 603, 592 S.E.2d 205, 2004 N.C. App. LEXIS 267 (2004), cert. denied, 358 N.C. 543, 599 S.E.2d 43 (2004).

Comity Principles Prevented Federal Court from Granting Declaratory Relief. — In a 42 U.S.C.S. § 1983 action in which direct broadcast satellite providers sought a declaratory judgment that 2006 N.C. Sess. Laws 2006-151, which revoked the authority of local governments to charge franchise taxes to cable providers and vested the state with franchising authority, violated the Dormant Commerce Clause of U.S. Const., Art. I, § 8, cl. 3, comity principles prevented the court from granting the relief sought because (1) the franchise charges levied on cable providers by North Carolina's political subdivisions prior to 2006 N.C. Sess. Laws 2006-151 were taxes; (2) court-ordered redistribution of intrastate taxation authority would have been an inappropriate intrusion by the federal courts into North Carolina's tax laws, and (3) state courts provided a plain, adequate, and complete remedy for the alleged constitutional violations. DIRECTV, Inc. v. Tolson, 513 F.3d 119, 2008 U.S. App. LEXIS 450 (4th Cir. 2008).

OPINIONS OF ATTORNEY GENERAL

***Editor's Note.** — The opinions below were rendered under former similar statutory provisions.*

Montgomery Ward Catalogue Sales Agency as "Chain Store" Subject to Privilege License Tax. — See opinion of Attorney General to Mr. Fred R. Harwell, Tax Collector, City of Washington, 41 N.C.A.G. 33 (1970).

Municipality May Levy Privilege License Tax on Court Reporters. — See opinion of Attorney General to Mr. William I. Thornton, Jr., Assistant Greensboro City Attorney, 41 N.C.A.G. 104 (1970), issued under former similar statutory provisions.

As to privilege license taxes on out-of-town beer wholesaler, see opinion of Attorney General to Mrs. Mary W. Moss, Clerk and Tax Collector, Town of Creedmoor, 40 N.C.A.G. 864 (1970), issued under former similar statutory provisions.

§ 160A-211.1. Privilege license tax on low-level radioactive and hazardous waste facilities.

(a) Cities in which hazardous waste facilities as defined in G.S. 130A-290 or low-level radioactive waste facilities as defined in G.S. 104E-5(9b) are located may levy an annual privilege license tax on persons or firms operating such facilities only in accordance with this section.

(b) The rate or rates of a tax levied under authority of this section shall be in an amount calculated to compensate the city for the additional costs incurred by it from having a hazardous waste facility or a low-level radioactive waste facility located in its jurisdiction to the extent to which compensation for such costs is not otherwise provided, which costs may include the loss of ad valorem property tax revenues from the property on which a facility is located, the cost of providing any additional emergency services, the cost of monitoring air, surface water, groundwater, and other environmental media to the extent other monitoring data is not available, and other costs the municipality established as being associated with the facilities and for which it is not otherwise compensated.

(c) Any person or firm taxed pursuant to this section may appeal the tax rate to the Board, but shall pay the tax when due, subject to a refund when the appeal is resolved by the Board or in the courts. (1981, c. 704, s. 15; 1985, c. 462, s. 10; 1987, c. 850, s. 22; 1989, c. 168, s. 35.)

§ 160A-212. Animal taxes.

A city shall have power to levy an annual license tax on the privilege of keeping any domestic animal, including dogs and cats, within the city. This section shall not limit the city's authority to enact ordinances under G.S. 160A-186. (R.C., c. 111, s. 13; 1862, c. 51; Code, s. 3800; Rev., s. 2924; C.S., s. 2677; 1949, c. 933; 1971, c. 698, s. 1.)

CASE NOTES

Tax on Privilege of Keeping Dog. — Although a dog is property, a dog tax is not directly on the dog as property, but is upon the privilege of keeping a dog. Mowery v. Town of Salisbury, 82 N.C. 175 (1880), decided under former similar provisions.

§ 160A-213. Motor vehicle taxes.

(a) A city may impose an annual license tax on motor vehicles as permitted by G.S. 20-97.

(b) By ordinance a city may provide that the annual license tax imposed under subsection (a) above may be waived for individuals serving as firemen or as members of emergency medical teams. A city may also provide such individuals with tags or decals with distinctive coloring, or other means, to identify the individual as a fireman or a member of an emergency medical team. (1971, c. 698, s. 1; 1979, c. 442.)

Cross References. — For further provisions as to motor vehicle license or privilege taxes in counties or municipalities, see G.S. 20-97.

§ 160A-214: Repealed by Session Laws 2006-151, s. 13, effective January 1, 2007.

§ 160A-214.1. Uniform penalties for local meals taxes.

(a) Penalties. — Notwithstanding any other provision of law, the civil and criminal penalties that apply to State sales and use taxes under Chapter 105 of the General Statutes apply to local meals taxes. The governing board of a taxing city has the same authority to waive the penalties for a meals tax that the Secretary of Revenue has to waive the penalties for State sales and use taxes.

(b) Scope. — This section applies to every city authorized by the General Assembly to levy a meals tax.

(c) Definitions. — The following definitions apply in this section:

(1) City. — A municipality.

(2) Meals tax. — A tax on prepared food and drink. (2001-264, s. 2.)

Editor's Note. — Session Laws 2001-264, s. 3, as amended by Session Laws 2002-72, s. 3, provides: "Any provision of a local act that conflicts with G.S. 153A-154.1 or G.S. 160A-214.1 is repealed. Any local meals tax penalty in addition to or greater than the corresponding penalty provided in G.S. 153A-154.1 or G.S. 160A-214.1 is repealed."

§ 160A-215. Uniform provisions for room occupancy taxes.

(a) Scope. — This section applies only to municipalities the General Assembly has authorized to levy room occupancy taxes. For the purpose of this section, the term "city" means a municipality.

(b) Levy. — A room occupancy tax may be levied only by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto. A room occupancy tax shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.

(c) Collection. — Every operator of a business subject to a room occupancy tax shall, on and after the effective date of the levy of the tax, collect the tax. The tax shall be collected as part of the charge for furnishing a taxable accommodation. If a taxable accommodation is furnished as part of a package, the bundled transaction provisions in G.S. 105-164.4D apply in determining the sales price of the taxable accommodation. If those provisions do not address the type of package offered, the operator may determine an allocated price for each item in the package based on a reasonable allocation of revenue that is supported by the operator's business records kept in the ordinary course of business and collect tax on the allocated price of the taxable accommodation. The tax shall be stated and charged separately from the sales records and shall be paid by the purchaser to the operator of the business as trustee for and on account of the taxing city. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business.

The taxing city shall design, print, and furnish to all appropriate businesses and persons in the city the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects a room occupancy tax may deduct from the amount remitted to the taxing city a discount equal to the discount the State allows the operator for State sales and use tax.

(d) Administration. — The taxing city shall administer a room occupancy tax it levies. A room occupancy tax is due and payable to the city finance officer in monthly installments on or before the 20th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 20th day of each month, prepare and render a return on a form prescribed by the taxing city. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied. A room occupancy tax return filed with the city finance officer is not a public record and may not be disclosed except in accordance with G.S. 153A-148.1 or G.S. 160A-208.1.

(e) Penalties. — A person, firm, corporation, or association who fails or refuses to file a room occupancy tax return or pay a room occupancy tax as required by law is subject to the civil and criminal penalties set by G.S. 105-236 for failure to pay or file a return for State sales and use taxes. The governing board of the taxing city has the same authority to waive the penalties for a room occupancy tax that the Secretary of Revenue has to waive the penalties for State sales and use taxes.

(f) Repeal or Reduction. — A room occupancy tax levied by a city may be repealed or reduced by a resolution adopted by the governing body of the city. Repeal or reduction of a room occupancy tax shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the resolution was adopted. Repeal or reduction of a room occupancy tax does not affect a liability for a tax that was attached before the effective date of the repeal or reduction, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal or reduction.

(f1) Use. — The proceeds of a room occupancy tax shall not be used for development or construction of a hotel or another transient lodging facility.

(g) This section applies only to Beech Mountain District W, to the Cities of Belmont, Conover, Eden, Elizabeth City, Gastonia, Goldsboro, Greensboro, Hickory, High Point, Jacksonville, Kings Mountain, Lenoir, Lexington, Lincolnton, Lowell, Lumberton, Monroe, Mount Airy, Mount Holly, Reidsville, Roanoke Rapids, Salisbury, Shelby, Statesville, Washington, and Wilmington, to the Towns of Ahoskie, Beech Mountain, Benson, Blowing Rock, Boiling Springs, Boone, Burgaw, Carolina Beach, Carrboro, Cramerton, Dallas, Dobson, Elkin, Franklin, Jonesville, Kenly, Kure Beach, Leland, McAdenville, Mooresville, Murfreesboro, North Topsail Beach, Pilot Mountain, Ranlo, Selma, Smithfield, St. Pauls, Troutman, Tryon, West Jefferson, Wilkesboro, Wrightsville Beach, Yadkinville, and Yanceyville, and to the municipalities in Avery and Brunswick Counties. (1997-361, s. 4; 1997-364, s. 5; 1997-410, s. 3; 1997-447, s. 2; 1998-112, s. 4; 1999-258, s. 3; 1999-302, s. 2; 2000-103, s. 9; 2001-11, s. 2; 2001-365, s. 3; 2001-434, s. 9; 2001-439, s. 18.1; 2002-94, s. 4; 2002-95, s. 3; 2002-138, s. 2; 2002-139, s. 2; 2002-159, s. 62; 2003-281, s. 14; 2004-105, s. 3; 2004-170, ss. 36(b), 42(b); 2004-199, s. 60(b); 2005-16, s. 3; 2005-46, s. 2.3; 2005-49, s. 3; 2005-220, s. 5; 2005-233, s. 6.2; 2005-435, s. 45; 2006-118, s. 4; 2006-120, ss. 8.2, 10.2; 2006-148, s. 3; 2006-162, s. 20(b); 2006-164, s. 3; 2006-167, s. 3; 2006-264, ss. 19, 81(a); 2007-224, s. 6; 2007-317, s. 3; 2007-340, s. 10; 2007-484, s. 43; 2007-527, s. 42; 2008-64, s. 2; 2008-134, s. 12(c); 2009-169, s. 8; 2009-291, s. 2; 2009-428, s. 4; 2009-429, s. 8.)

Local Modification. — City of Greensboro: 1999, c. 302, ss. 1, 2.

Editor's Note. — Session Laws 1997-361, s. 4 enacted this section and made it effective to the Cities of Lumberton and Shelby only. Session Laws 1997-364, s. 5 also enacted this section, making it effective to municipalities in Brunswick County. Session Laws 1997-410, s. 3 made this section applicable to the City of Mount Airy. Session Laws 1997-447, s. 2 made this section applicable to the Cities of Goldsboro, Lumberton, Mount Airy and Shelby and to the municipalities in Brunswick County. Session Laws 1998-112, s. 4 added the City of Statesville and the Town of St. Pauls to the list of localities to which this section applies. Session Laws 1999-258, s. 3 added the Town of Mooresville to this list, and Session Laws 1999-302, s. 2 added the City of Greensboro. The section has been codified at the direction of the Revisor of Statutes.

Session Laws 2002-94, s. 4 inserted "and Seven Devils District W" in subsection (g). Session Laws 2002-159, s. 62, repealed that amendment, and thus G.S. 160A-215(g) is set out without giving effect to Session Laws 2002-94, s. 4.

Session Laws 2006-120, s. 8.2, had inserted "Boiling Springs" in subsection (g); however, that insertion of "Boiling Springs" was repealed, pursuant to the terms of Session Laws 2006-120, s. 10.2, upon the passage of Session Laws 2006-148, s. 3, which also inserted "Boiling Springs" in subsection (g).

Tourism Promotion and Development. — Session Laws 2001-162, 2001-305, 2001-321, 2001-365, 2001-381, as amended by 2005-120 and 2005-435, s. 52, as rewritten and recodified by 2007-112, s. 1, 2001-434, 2001-439, 2001-480, as amended by Session Laws 2002-36, 2001-484, 2002-94, 2002-95, as amended by Session Laws 2007-340, s. 1, 2002-138 and 2002-139, Session Laws 2003-281, ss. 12, 13, and Session Laws 2009-169, authorize the affected localities (the counties of Anson, Avery, Buncombe, Cabarrus, Carteret, Cumberland, Dare, Durham, Montgomery, Pender, Richmond, Rowan, Stanly, and Vance, the cities of Conover, Gastonia, Hickory, Kings Mountain, Lincolnton, Monroe, Mount Airy, North Topsail Beach, and Wilmington, the towns in Avery county and the towns of Banner Elk, Beech Mountain, Blowing Rock, Carolina Beach, Carrsboro, Jonesville, Kure Beach, Selma, Smithfield, Wilkesboro, and Wrightsville Beach, and the Township of Averasboro in Harnett County) to levy additional occupancy taxes for tourism promotion and development.

Effect of Amendments. — Session Laws 2008-64, s. 2, effective July 8, 2008, inserted "Leland" in subsection (g).

Session Laws 2008-134, s. 12(c), effective July 28, 2008, in subsection (c), divided the subsection into the present three paragraphs, added the third and fourth sentences to the first paragraph, and made related changes.

Session Laws 2009-169, s. 8, effective June 25, 2009, inserted "Conovor" and "Hickory" in subsection (g).

Session Laws 2009-291, s. 2, effective July 13, 2009, inserted "Boone" in subsection (g).

Session Laws 2009-248, s. 4, effective August 6, 2009, inserted "Salisbury" and "Murfreesboro" in subsection (g).

Session Laws 2009-429, s. 8, effective August 6, 2009, inserted "Jacksonville," "Lenoir," "Lowell, " "Mount Holly," "Cramerton," "McAdenville," and "Ranlo" in subsection (g).

§ 160A-215.1. Gross receipts tax on short-term leases or rentals.

(a) As a substitute for and in replacement of the ad valorem tax, which is excluded by G.S. 105-275(42), a city may levy a gross receipts tax on the gross receipts from the short-term lease or rental of vehicles at retail to the general public. The tax rate shall not exceed one and one-half percent (1.5%) of the gross receipts from such short-term leases or rentals. This tax on gross receipts is in addition to the privilege taxes authorized by G.S. 160A-211.

(b) If a city enacts the substitute and replacement gross receipts tax pursuant to this section, any entity required to collect the tax shall include a provision in each retail short-term lease or rental agreement noting that the percentage amount enacted by the city of the total lease or rental price, excluding highway use tax, is being charged as a tax on gross receipts. For purposes of this section, the transaction giving rise to the tax shall be deemed to have occurred at the location of the entity from which the customer takes delivery of the vehicle. The tax shall be collected at the time of lease or rental and placed in a segregated account until remitted to the city.

(c) The collection and use of taxes under this section are not subject to highway use tax and are not included in the gross receipts of the entity. The proceeds collected under this section belong to the city and are not subject to creditor liens against the entity.

(d) A tax levied under this section shall be collected by the city but otherwise administered in the same manner as the tax levied under G.S. 105-164.4(a)(2).

(e) The following definitions apply in this section:

(1) Short-term lease or rental. — Defined in G.S. 105-187.1.

(2) Vehicle. — Any of the following:

a. A motor vehicle of the passenger type, including a passenger van, minivan, or sport utility vehicle.

b. A motor vehicle of the cargo type, including cargo van, pickup truck, or truck with a gross vehicle weight rating of 26,000 pounds or less used predominantly in the transportation of property for other than commercial freight and that does not require the operator to posses a commercial drivers license.

c. A trailer or semitrailer with a gross vehicle weight of 6,000 pounds or less.

(f) The penalties and remedies that apply to local sales and use taxes levied under Subchapter VIII of Chapter 105 of the General Statutes apply to a tax levied under this section. The governing body of the city may exercise any power the Secretary of Revenue may exercise in collecting local sales and use taxes. (2000-2, s. 3; 2000-140, s. 75(c); 2001-414, s. 51.)

Editor's Note. — The definitions in subsection (e) have been set out in alphabetical order at the direction of the Revisor of Statutes.

§ 160A-215.2. (For effective date, see note) Heavy equipment gross receipts tax in lieu of property tax.

(a) Definitions. — The following definitions apply in this section:

(1) Heavy equipment. — Defined in G.S. 153A-156.1.

(2) Short-term lease or rental. — Defined in G.S. 105-187.1.

(b) Tax Authorized. — A city may, by ordinance, impose a tax at the rate of eight tenths percent (0.8%) on the gross receipts from the short-term lease or rental of heavy equipment by a person whose principal business is the short-term lease or rental of heavy equipment at retail. The heavy equipment subject to this tax is exempt from property tax under G.S. 105-275, and this tax provides an alternative to a property tax on the equipment. A person is not considered to be in the short-term lease or rental business if the majority of the person's lease and rental gross receipts are derived from leases and rentals to a person who is a related person under G.S. 105-163.010.

The tax authorized by this section applies to gross receipts that are subject to tax under G.S. 105-164.4(a)(2). Gross receipts from the short-term lease or rental of heavy equipment are subject to a tax imposed by a city under this section if the place of business from which the heavy equipment is delivered is located in the city.

(c) Payment. — A person whose principal business is the short-term lease or rental of heavy equipment is required to remit a tax imposed by this section to the city. The tax is payable quarterly and is due by the last day of the month following the end of the quarter. The tax is intended to be added to the amount charged for the short-term lease or rental of heavy equipment and paid to the heavy equipment business by the person to whom the heavy equipment is leased or rented.

(d) Enforcement. — The penalties and collection remedies that apply to the payment of sales and use taxes under Article 5 of Chapter 105 of the General Statutes apply to a tax imposed under this section. The city finance officer has the same authority as the Secretary of Revenue in imposing these penalties and remedies.

(e) Effective Date. — A tax imposed under this section becomes effective on the date set in the ordinance imposing the tax. The date must be the first day of a calendar quarter and may not be sooner than the first day of the calendar quarter that begins at least two months after the date the ordinance is adopted.

(f) Repeal. — A city may, by ordinance, repeal a tax imposed under this section. The repeal is effective on the date set in the ordinance. The date must be the first day of a calendar quarter and may not be sooner than the first day of the calendar quarter that begins at least two months after the date the ordinance is adopted. (2008-144, s. 3; 2009-445, s. 27(a).)

Editor's Note. — Section Laws 2008-144, s. 5, made this section effective August 2, 2008, and provided, in part, that a tax imposed under G. S. 153A-156.1 or G.S. 160A-215.2 may not become effective before January 1, 2009.

Session Laws 2009-445, s. 27(b), provides: "A heavy equipment gross receipts tax levied by a city ordinance or a city resolution on or before the effective date of this act is valid and remains in effect until amended or repealed."

Effect of Amendments. — Session Laws 2009-445, s. 27(a), effective August 7, 2009, substituted "ordinance" for "resolution" throughout the section; and in subsection (c), substituted "to the city" for "to the city finance officer."

Article 10.

Special Assessments.

§ 160A-216. Authority to make special assessments.

Any city is authorized to make special assessments against benefited property within its corporate limits for:

(1) Constructing, reconstructing, paving, widening, installing curbs and gutters, and otherwise building and improving streets;

(2) Constructing, reconstructing, paving, widening, and otherwise building or improving sidewalks in any public street;

(3) Constructing, reconstructing, extending, and otherwise building or improving water systems;

(4) Constructing, reconstructing, extending, or otherwise building or improving sewage collection and disposal systems of all types, including septic tank systems or other on-site collection or disposal facilities or systems;

(5) Constructing, reconstructing, extending, and otherwise building or improving storm sewer and drainage systems. (1971, c. 698, s. 1; 1975, c. 664, s. 8; 1979, c. 619, s. 12.)

Local Modification. — (As to Article 10) city of Asheboro: 1989 (Reg. Sess., 1990), c. 921, s. 13; city of Belmont: 2005-111, s. 1; (As to Article 10) city of Hendersonville: 1991, c. 438; city of High Point: 1989 (Reg. Sess., 1990), c. 919; (as to Article 10) city of Kinston: 1987, c. 169, s. 1; (As to Article 10) city of Monroe: 2000-35, s. 1; (As to Article 10) city of Oxford: 1993, c. 240, s. 2; (As to Article 10) city of Reidsville: 1989 (Reg. Sess., 1990), c. 957, s. 1; city of Roanoke Rapids: 2007-266, s. 2; city of Sanford: 1987, c. 403, s. 1(12): 160A-216; 2008-70, s. 1; city of Southport: 1983, c. 659; city of Statesville: 1991, c. 698; city of Washington: 1983 (Reg. Sess., 1984), c. 951; (As to Article 10) city of Whiteville: 1987 (Reg. Sess., 1988), c. 1018, s. 1; town of Ahoskie: 1987, c. 262, s. 1; town of Apex: 1985, c. 356; town of Benson: 1999-91, s. 1; town of Calabash: 1987, c. 468, s. 5; (As to Article 10) town of Carrboro: 2007-266, s. 1; town of Caswell Beach: 1991 (Reg. Sess., 1992), c. 825, s. 1; town of Clayton: 1987 (Reg. Sess., 1988), c. 983, s. 1; town of Elon College: 1985, c. 109; town of Holden Beach: Session Laws 1981, c. 334; 1987 (Reg. Sess., 1988), c. 951; c. 954; (As to Article 10) town of Long Beach: 1991, c. 464; town of Marietta: 1985, c. 111; town of Ocean Isle Beach: 1989, c. 380, s. 1; (as to Article 10) 2001-478, s. 2.2; town of Sunset Beach: 1987 (Reg. Sess., 1988), c. 954, s. 1; 1989 (Reg. Sess., 1990), c. 875; town of Wake Forest: 1989 (Reg. Sess., 1990), c. 873; town of Wendell: 1985, c. 107; town of Yaupon Beach: 1998-206, s. 1.

Cross References. — As to property taxes to provide for drainage projects or programs, see G.S. 160A-209.

Legal Periodicals. — For article, "Transferring North Carolina Real Estate, Part I: How the Present System Functions," see 49 N.C.L. Rev. 413 (1971).

CASE NOTES

Editor's Note. — *Most of the cases cited below were decided under former G.S. 160-78 to 160-105 or prior similar provisions.*

As to separate construction of general statutes and special or local laws, see City of Kinston v. Atlantic & N.C.R.R., 183 N.C. 14, 110 S.E. 645 (1922). See also, § 160A-3.

In case a special or local law is invalid, the general statutes may be followed in making local improvements. But their provisions must be complied with. Cottrell v. Town of Lenoir, 173 N.C. 138, 91 S.E. 827 (1917).

Power to Impose Assessments Within Right of Taxation. — The power to impose assessments upon owners whose lands abut upon the streets of a city to be improved comes within the sovereign right of taxation, and no license, permit, or franchise from the legislature or a municipal board will be construed to establish an exemption from the proper exercise of this power, or in derogation of it, unless such bodies are acting clearly within their authority, and the grant itself is in terms so clear and explicit as to be free from substantial doubt. City of Durham v. Durham Pub. Serv. Co., 182 N.C. 333, 109 S.E. 40 (1921), aff'd, 261 U.S. 149, 43 S. Ct. 290, 67 L. Ed. 580 (1923).

Ownership of Street Prerequisite to As-

sessment for Improvement. — The ownership by the city of a street is a prerequisite to the power of the city to levy an assessment for street improvements against abutting owners thereon. Efird v. City of Winston-Salem, 199 N.C. 33, 153 S.E. 632 (1930).

Liability of Municipal Parks for Assessments. — Absent constitutional or statutory provisions to the contrary, the public property of a municipality, such as parks, etc., is subject to assessment for local improvements of its streets; hence, when there is no provision exempting same, a public park of a city was included within the intent and meaning of Laws 1915, Chapter 56, providing that lands abutting on a street to be paved or improved should be assessed for such improvements to the extent of the respective frontage of the lots thereon, in a certain proportionate part of the cost, by the "front foot" rule. Town of Tarboro v. Forbes, 185 N.C. 59, 116 S.E. 81 (1923).

School Property Held Subject to Assessment. — Lands owned by "The School Committee of Raleigh Township, Wake County" and used exclusively for public school purposes were liable for assessment for street improvements made by the City of Raleigh. City of Raleigh v. Raleigh City Admin. Unit, 223 N.C. 316, 26 S.E.2d 591 (1943).

Interference by Courts. — Where an act allows assessments to be made by a city on property abutting on a street for pavement or improvements thereon, the legislative declaration on the subject is conclusive as to the necessity and benefit of the proposed improvements, and in applying the principle and estimating the amount as against the owners, individual or corporate, the court may interfere only in case of palpable and gross abuse. Kinston v. Atlantic & N.C.R.R., 183 N.C. 14, 110 S.E. 645 (1922).

Applied in Abbott v. Town of Highlands, 52 N.C. App. 69, 277 S.E.2d 820 (1981); Cockrell v. City of Raleigh, 306 N.C. 479, 293 S.E.2d 770 (1982); In re Dunn, 73 N.C. App. 243, 326 S.E.2d 309 (1985).

Cited in Cutting v. Foxfire Village, 75 N.C. App. 161, 330 S.E.2d 210 (1985); Ricks v. Town of Selma, 99 N.C. App. 82, 392 S.E.2d 437 (1990).

§ 160A-217. Petition for street or sidewalk improvements.

(a) A city shall have no power to levy special assessments for street or sidewalk improvements unless it receives a petition for the improvements signed by at least a majority in number of the owners of property to be assessed, who must represent at least a majority of all the lineal feet of frontage of the lands abutting on the street or portion thereof to be improved. Unless the petition specifies another percentage, not more than fifty percent (50%) of the cost of the improvement may be assessed (not including the cost of improvements made at street intersections).

(b) Property owned by the United States shall not be included in determining the lineal feet of frontage on the improvement, nor shall the United States be included in determining the number of owners of property abutting the improvement. Property owned by the State of North Carolina shall be included in determining frontage and the number of owners only if the State has consented to assessment in the manner provided in G.S. 160A-221. Property owned by railroad companies shall be included in determining frontage and the number of owners to the extent that the property is subject to assessment under G.S. 160A-222. Property owned by railroad companies that is not subject to assessment shall not be included in determining frontage and the number of owners. If it is necessary to exclude property owned by the United States, the State of North Carolina, or a railroad company in order to obtain a valid petition under subsection (a), not more than fifty percent (50%) of the cost (not including the cost of improvement at street intersections) may be assessed unless all of the owners subject to assessment agree to a higher percentage.

(c) No right of action or defense asserting the invalidity of street or sidewalk assessments on grounds that the city did not comply with this section in securing a valid petition shall be asserted except in an action or proceeding begun within 90 days after publication of the notice of adoption of the preliminary assessment resolution. (1915, c. 56, ss. 4, 5; C.S., ss. 2706, 2707; 1955, c. 675; 1963, c. 1000, s. 1; 1971, c. 698, s. 1; 1973, c. 426, s. 33.)

Local Modification. — City of Beech Mountain: 1995, c. 133, s. 1; City of Laurinburg: 2000-13, s. 1; city of Oxford: 1993, c. 240, s. 1; town of Ahoskie: 1987, c. 261; 1987 (Reg. Sess., 1988), c. 962; town of Carrboro: 1987, c. 476, s. 1; town of Tabor City: 2002-13; town of Wake Forest: 1989, c. 347, s. 1. City of Beech Mountain: 1995, c. 133, s. 1; City of Laurenburg: 2000-13, s. 1; city of Oxford: 1993, c. 240, s. 1; town of Ahoskie: 1987, c. 261; 1987 (Reg. Sess., 1988), c. 962; town of Carrboro: 1987, c. 476, s. 1; town of Tabor City: 2002-13, s. 1; town of Wake Forest: 1989, c. 347, s. 1.

CASE NOTES

Editor's Note. *— Many of the cases cited below were decided under former similar statutory provisions.*

Procedure Must Fulfill Essential Requirements. — While a slight informality of procedure or a failure to observe a provision which is merely directory will not generally affect the validity of an assessment, it is nevertheless true that any substantial and material departure from the essential requirements of the law under which the improvement is made will render an assessment therefor invalid. Town of Tarboro v. Forbes, 185 N.C. 59, 116 S.E. 81 (1923).

Invalidity of Assessment Absent Proper Petition. — An assessment for widening a street under contract with the Highway Commission (now Board of Transportation) without petition of a majority of the owners is invalid. Sechriest v. City of Thomasville, 202 N.C. 108, 162 S.E. 212 (1932).

Absence of Petition Cured by Legislation. — When improvements are made under an assessment, and there has been no petition as required by statute, the assessments are invalid. However, this defect may be cured by a validating act of the legislature although the act is retrospective. Holton v. Town of Mockville, 189 N.C. 144, 126 S.E. 326 (1925); Gallimore v. City of Thomasville, 191 N.C. 648, 132 S.E. 657 (1926).

Where levies are made without a petition, the assessments are invalid but not void, and the legislature has the power to validate the assessments by subsequent legislative act, since the legislature had the power to authorize the assessments in the first instance. Crutchfield v. City of Thomasville, 205 N.C. 709, 172 S.E. 366 (1934).

The General Assembly, which has the power to confer upon the authorities of a municipal corporation the power to improve its streets and sidewalks and to assess the owners of abutting property with a part of the cost of such improvements without a petition, as indicated by this section, also has the power to validate proceedings for the improvement of streets and sidewalks which were begun and which have been concluded without an initial petition. Crutchfield v. City of Thomasville, 205 N.C. 709, 172 S.E. 366 (1934).

When Governing Body's Determination as to Sufficiency of Petition Is Conclusive. — Where it appears upon the face of a petition, as a matter of law, that the signers of the petition do not represent a majority of the lineal feet of the total frontage on the street proposed to be improved, the determination of the governing body as to the sufficiency of the petition is not final or conclusive. Insofar as the sufficiency of the petition involves only questions of fact, the determination of the governing body, in the absence of fraud, and when acting in good faith, is final and conclusive. City of Tarboro v. Forbes, 185 N.C. 59, 116 S.E. 81 (1923); Gallimore v. City of Thomasville, 191 N.C. 648, 132 S.E. 657 (1926).

Where municipal authorities have approved the petition of owners of land abutting upon a street proposed to be improved in accordance with the statute, their approval and order for the improvements to be made is final, except where it appears from the face of the petition, as a matter of law, that the signers do not represent a majority of the owners or of the lineal feet required by statute. Jones v. City of Durham, 197 N.C. 127, 147 S.E. 824 (1929).

Complaint Alleging Invalidity of Petition Held Insufficient. — In an action to have an assessment levied against plaintiff's property declared invalid, a complaint alleging that only one of the signatures of abutting property owners to the petition for improvements was valid, without alleging that the assessment was based on the petition, what other signatures appeared on the petition, or facts supporting the conclusion that the other signatures were invalid, was insufficient to state a cause of action, and demurrer to the complaint was properly sustained. Broadway v. Town of Asheboro, 250 N.C. 232, 108 S.E.2d 441 (1959).

When City Owns Part of Abutting Land. — A town is subject to assessment on its abutting property, and the rule of a majority of lineal feet and number of owners will apply just the same when a city owns a part of the abutting land as any other time. And if the city fails to sign when its signature is necessary to have a majority of lineal feet, the assessment is a nullity. Town of Tarboro v. Forbes, 185 N.C. 59, 116 S.E. 81 (1923).

Improvement of Only One Side of Street. — An assessment levied for street improvements on abutting property owners is not void on the ground that the assessment was for improving only one side of a street. Town of Waxhaw v. Seaboard A.L. Ry., 195 N.C. 550, 142 S.E. 761 (1928).

Signatures as Evidence of Agency. — Where wife owned the locus in quo and petition for public improvements was signed by both husband and wife, the signature of the wife as the owner of the property along with the signature of the husband was sufficient evidence to be submitted to the jury on the issue of whether wife constituted her husband her agent to subsequently act for her in the premises, rendering the listing of the property in his name on the assessment roll and the special assessment book and the giving of the statutory notices to him sufficient, and thus rendering the lien against the property valid and enforceable as against her and as against her subsequent grantee. Town of Wadesboro v. Coxe, 218 N.C. 729, 12 S.E.2d 223 (1940).

Resolution as Evidence. — In an action by a municipality to enforce a lien for public improvements, objection that plaintiff failed to introduce in evidence the petition for improvements signed by the owners of a majority of the lineal feet frontage abutting the improvements was held untenable where the original resolution of the city, introduced in evidence, recited a proper petition and that it was duly certified by the clerk, since if such finding was erroneous, the remedy for correction was by appeal. Town of Asheboro v. Miller, 220 N.C. 298, 17 S.E.2d 105 (1941).

§ 160A-218. Basis for making assessments.

Assessments may be made on the basis of:

(1) The frontage abutting on the project, at an equal rate per foot of frontage, or

(2) The area of land served, or subject to being served, by the project, at an equal rate per unit of area, or

(3) The value added to the land served by the project, or subject to being served by it, being the difference between the appraised value of the land without improvements as shown on the tax records of the county, and the appraised value of the land with improvements according to the appraisal standards and rules adopted by the county at its last revaluation, at an equal rate per dollar of value added; or

(4) The number of lots served, or subject to being served, where the project involves extension of an existing system to a residential or commercial subdivision, at an equal rate per lot; or

(5) A combination of two or more of these bases.

Whenever the basis selected for assessment is either area or value added, the council may provide for the laying out of benefit zones according to the distance of benefited property from the project being undertaken, and may establish differing rates of assessment to apply uniformly throughout each benefit zone.

For each project, the council shall endeavor to establish an assessment method from among the bases set out in this section which will most accurately assess each lot or parcel of land according to the benefit conferred upon it by the project. The council's decision as to the method of assessment shall be final and conclusive and not subject to further review or challenge. (1971, c. 698, s. 1.)

Local Modification. — Town of Benson: 1999-91, s. 1; town of Santeetlah: 1993, c. 546, s. 1; village of Bald Head Island: 1989 (Reg. Sess., 1990), c. 925, s. 2.

CASE NOTES

Assessments for constructing drains need not be the same, for costs will be different because of difference in location and slope of the several lots. Gallimore v. Town of Thomasville, 191 N.C. 648, 132 S.E. 657 (1926), decided under former statutory provisions.

Method used to determine amount of value added to individual lots served by water system construction, calculating the average value of the improvement to all unimproved lots and establishing a nominal percentage thereof as the increase in value to improved lots, was not a method sanctioned by subdivision (3). This subdivision clearly prescribes a before and after improvement appraisal of the property, with the assessment based on a set rate per value added to the land served, an amount which may necessarily vary due to the nature of the individual lots themselves. Cutting v. Foxfire Village, 75 N.C. App. 161, 330 S.E.2d 210, cert. denied, 314 N.C. 664, 335 S.E.2d 499 (1985).

Decisions as to Benefits to Property Are Final. — The decisions of the city council as to the method of assessment and the total cost of an improvement are final and conclusive and not subject to further review or challenge. This includes decisions as to whether and how much a property is benefitted by the improvements. In re Dunn, 73 N.C. App. 243, 326 S.E.2d 309, cert. denied, 313 N.C. 602, 332 S.E.2d 180 (1985).

§ 160A-219. Corner lot exemptions.

The council shall have authority to establish schedules of exemptions from assessments for corner lots when a project is undertaken along both sides of such lots. The schedules of exemptions shall be based on categories of land use (residential, commercial, industrial, or agricultural) and shall be uniform for each category. The schedule of exemptions may not provide exemption of more than seventy-five percent (75%) of the frontage of any side of a corner lot, or 150 feet, whichever is greater. (1971, c. 698, s. 1.)

Local Modification. — Forsyth: 1999-89, s. 1; city of Winston-Salem: 1999-89, s. 1; town of Pittsboro: 1987, c. 460, s. 30.

§ 160A-220. Lands exempt from assessment.

No lands within a city, except as herein provided, shall be exempt from special assessments except lands belonging to the United States that are exempt under the provisions of federal statutes. (1971, c. 698, s. 1.)

OPINIONS OF ATTORNEY GENERAL

Charitable Corporation Not Exempt from Special Assessments. — See opinion of Attorney General to Dr. H. G. Jones, Director, Department of Archives and History, 40 N.C.A.G. 454 (1970), issued under former statutory provisions.

§ 160A-221. Assessments against lands owned by the State.

When any city proposes to make local improvements that would benefit lands owned by the State of North Carolina or any board, agency, commission, or institution thereof, the council may request the Council of State to consent to special assessments against the property. The Council of State may authorize the Secretary of Administration to give consent for special assessments against State property, but the city may appeal to the Council of State if the Secretary of Administration refuses to give consent. When consent is given for special assessments against State lands, the Council of State may direct that the assessment be paid from the Contingency and Emergency Fund of the State of North Carolina or from any other available funds. If consent to the assessment is refused, the state-owned property shall be exempt from assessment. (1971, c. 698, s. 1; 1975, c. 879, s. 46.)

§ 160A-222. Assessments against railroads.

Assessments shall not be made against land owned, leased or controlled by a railroad company, except that if there is a building on the land, the portion of railroad property subject to assessment shall be a lot whose frontage equals the actual front footage occupied by the building plus 25 feet on each side thereof, but not more than the amount of land owned, leased, or controlled by the railroad. If a building is placed on land that would have been subject to assessment but for the limitations imposed by this section after an improvement is made, then the railroad company shall be subject to an assessment without interest on the same basis as if the building had been on the property when the improvement was made.

It is the intent of this section to make uniform the law concerning assessments against railroads. To this end, all provisions of law, whether general or local, in conflict with this section are repealed; and no local act taking effect on or after January 1, 1972, shall be construed to modify, amend, or repeal any portion of this section unless it shall specifically so provide by reference hereto. (1965, c. 839, s. 2; 1971, c. 698, s. 1.)

CASE NOTES

Editor's Note. *— The cases cited below were decided under former G.S. 160-520 and 160-521.*

Constitutionality. — Section exempting railroad right-of-way property from assessment for local improvements was not unconstitutional on grounds that it was not authorized by N.C. Const., Art. V, § 2, since those provisions deal with the power of taxation and not with assessments for local improvements. Southern Ry. v. City of Raleigh, 9 N.C. App. 305, 176 S.E.2d 21 (1970), aff'd, 277 N.C. 709, 178 S.E.2d 422 (1971).

Exemption Not Arbitrary. — The General Assembly did not act arbitrarily when, by enactment of former Article 42 of Chapter 160, it determined that railroad right-of-way property was not benefited by and should not be assessed for described local improvements. Southern Ry. v. City of Raleigh, 9 N.C. App. 305, 176 S.E.2d 21 (1970), aff'd, 277 N.C. 709, 178 S.E.2d 422 (1971).

Local Assessments Not "Taxes." — Local assessments may be a species of tax but they are not taxes within the meaning of the term as generally understood in constitutional restrictions and exemptions. These assessments proceed upon the theory that when a local improvement enhances the value of neighboring property, it is reasonable and competent for the legislature to provide that such property shall pay for the improvement. Southern Ry. v. City of Raleigh, 277 N.C. 709, 178 S.E.2d 422 (1971).

Purpose. — The only purpose of former similar section was to withdraw from municipalities the right to levy an assessment against vacant city lots over which railroads operate their trains. The language was plain, and did not require interpretation. Southern Ry. v. City of Raleigh, 277 N.C. 709, 178 S.E.2d 422 (1971).

General Application. — The language employed by the legislature in former similar section clearly manifested a legislative intent that it be of general application. Southern Ry. v. City of Raleigh, 9 N.C. App. 305, 176 S.E.2d 21 (1970), aff'd, 277 N.C. 709, 178 S.E.2d 422 (1971).

Legislature has power to determine by statute what property is benefited by local improvements, and the legislative declaration on the subject, in the absence of arbitrary action, is conclusive, notwithstanding provisions of municipal charter. Southern Ry. v. City of Raleigh, 9 N.C. App. 305, 176 S.E.2d 21 (1970), aff'd, 277 N.C. 709, 178 S.E.2d 422 (1971).

And to Determine What Property Is Not Benefited. — The right of the legislature to determine what property is benefited by a street improvement includes the right to determine what property is not benefited thereby. The right to include involves the right to exclude, and the General Assembly, by providing that a municipality shall not assess railroad right-of-way property for local improvement "unless there is a building on such right-of-way," acted within its power. Southern Ry. v. City of Raleigh, 277 N.C. 709, 178 S.E.2d 422 (1971).

Street pavement would increase the value of a building by adding to its availability for profitable uses, and the municipality may assess the cost of paving frontage occupied by a building. Southern Ry. v. City of Raleigh, 277 N.C. 709, 178 S.E.2d 422 (1971).

But Not Railroad Right-of-Way. — A street pavement adjacent to a railroad right-of-way ordinarily would not increase the value of the right-of-way for railway purposes. Southern Ry. v. City of Raleigh, 277 N.C. 709, 178 S.E.2d 422 (1971).

§ 160A-223. Preliminary resolution; contents.

Whenever the council decides to finance a proposed project by special assessments, it shall first adopt a preliminary resolution that shall contain the following:

(1) A statement of intent to undertake the project;
(2) A general description of the nature and location of the project;
(3) A statement as to the proposed basis for making assessments, which shall include a general description of the boundaries of the area benefited if the basis of assessment is either area or value added;
(4) A statement as to the percentage of the cost of the work that is to be assessed;
(5) A statement as to which, if any, assessments shall be held in abeyance and for how long;
(6) A statement as to the proposed terms of payment of the assessment; and
(7) An order setting a time and place for a public hearing on all matters covered by the preliminary resolution which shall be not earlier than three weeks nor later than 10 weeks from the date of the adoption of the preliminary resolution. (1971, c. 698, s. 1.)

§ 160A-224. Notice of preliminary resolution.

At least 10 days before the date set for the public hearing, the council shall publish a notice that a preliminary assessment resolution has been adopted and that a public hearing will be held on it at a specified time and place. The notice shall generally describe the nature and location of the improvement. In addition, at least 10 days prior to the hearing, the council shall cause a copy of the preliminary resolution to be mailed to the owners, as shown on the county tax records, of all property subject to assessment if the project should be undertaken. The person designated to mail these resolutions shall file with the council a certificate showing that they were mailed by first-class mail and on what date. The certificate shall be conclusive as to compliance with the mailing provisions of this section in the absence of fraud. (1971, c. 698, s. 1.)

Local Modification. — Town of Calabash: 1987, c. 468, s. 1.

§ 160A-225. Hearing on preliminary resolution; assessment resolution.

At the public hearing, the council shall hear all interested persons who appear with respect to any matter covered by the preliminary resolution. After the public hearing, the council may adopt a resolution directing that the project or portions thereof be undertaken. The assessment resolution shall describe the project in general terms (which may be by reference to projects described in the preliminary resolution) and shall set forth the following:

(1) The basis on which the special assessments shall be levied, together with a general description of the boundaries of the area benefited if the basis of assessment is either area or value added;
(2) The percentage of the cost to be specially assessed;
(3) The terms of payment, including the conditions under which assessments are to be held in abeyance, if any.

The percentage of cost to be assessed may not be different from the percentage proposed, and the projects authorized may not be greater in scope than the projects described in the preliminary resolution. If the council decides that a different percentage of the cost should be assessed than that proposed in the preliminary resolution, or that any project should be enlarged, it shall adopt and advertise a new preliminary resolution as herein provided. (1915, c. 56, s. 6; C.S., s. 2708; 1971, c. 698, s. 1.)

§ 160A-226. Determination of costs.

When the project is complete, the council shall ascertain the total cost. In addition to construction costs, the cost of all necessary legal services, the amount of interest paid during construction, costs of rights-of-way, and the costs of publication of notices and resolutions may be included. The determination of the council as to the total cost of any project shall be conclusive. (1915, c. 56, s. 9; C.S., s. 2711; 1971, c. 698, s. 1.)

Local Modification. — City of Durham: 1973, c. 413; city of Salisbury: 1973, c. 190.

CASE NOTES

Decisions as to Benefits to Property Are Final. — The decisions of the city council as to the method of assessment and the total cost of an improvement are final and conclusive and not subject to further review or challenge. This includes decisions as to whether and how much a property is benefitted by the improvements. In re Dunn, 73 N.C. App. 243, 326 S.E.2d 309, cert. denied, 313 N.C. 602, 332 S.E.2d 180 (1985).

§ 160A-226.1. Discounts authorized.

The council is authorized to establish a schedule of discounts to be applied to assessments paid before the expiration of 30 days from the date that notice is published of confirmation of the assessment roll pursuant to G.S. 160A-229. Such a schedule of discounts may be established even though it was not included among the terms of payment as specified in the preliminary assessment resolution or assessment resolution. The amount of any discount may not exceed thirty percent (30%). (1983, c. 381, s. 4.)

CASE NOTES

Applied in In re Dunn, 73 N.C. App. 243, 326 S.E.2d 309 (1985).

§ 160A-227. Preliminary assessment roll; publication.

When the total cost of a project has been determined, the council shall have a preliminary assessment roll prepared. The preliminary roll shall contain a brief description of each lot, parcel, or tract of land assessed, the basis for the assessment, the amount assessed against each, the terms of payment, including the schedule of discounts, if such a schedule is to be established and the name of the owner of each parcel of land as far as this can be ascertained from the county tax records. A map of the project on which is shown each parcel assessed with the basis of its assessment, the amount assessed against it, and the name of the owner, as far as this can be ascertained from the county tax records, shall be a sufficient assessment roll.

After the preliminary assessment roll has been completed, it shall be filed in the city clerk's office where it shall be available for public inspection. A notice of the completion of the assessment roll, setting forth in general terms a description of the project, noting the availability of the assessment roll in the clerk's office for inspection, and stating the time and place for a hearing on the preliminary assessment roll, shall be published at least 10 days before the date set for the hearing on the preliminary assessment roll. The council shall also cause a notice of the hearing on the preliminary assessment roll to be mailed to the owners of property listed thereon at least 10 days before the hearing. The notice mailed to each property owner shall give notice of the time and place of the hearing, shall note the availability of the preliminary assessment roll for inspection in the city clerk's office and shall state the amount of the assessment against the property of the owner as shown on the preliminary assessment roll. The person designated to mail these notices shall file with the council a certificate showing they were mailed by first-class mail and on what date. Such a certificate shall be conclusive as to compliance with the mailing provisions of this section in the absence of fraud. (1915, c. 56, s. 9; C.S., s. 2712; 1971, c. 698, s. 1; 1983, c. 381, s. 5.)

CASE NOTES

Editor's Note. *— Most of the cases cited below were decided under prior similar statutory provisions.*

Sufficiency of Description of Land. — Assessments made upon the lands of an owner adjoining a street improved by the authorities of a city or town would not be declared invalid on the grounds of the insufficiency of the description in the assessment roll at the suit of such property owners, when it was in substantial compliance with the statute. Vester v. Town of Nashville, 190 N.C. 265, 129 S.E. 593 (1925).

Map as Sufficient Description. — A map made by the city engineer and duly approved by the city commissioners was in sufficient compliance with the requirements of the statute. Holton v. Town of Mockville, 189 N.C. 144, 126 S.E. 326 (1925).

As to notice of filing under former statute, see Town of Wake Forest v. Holding, 206 N.C. 425, 174 S.E. 296 (1934).

Failure to Publish Notice of First Hearing Held Immaterial. — Where notice of hearing on the confirmation of an assessment roll was not published, but on the date set for the hearing the municipal board met and adopted the required resolution in amplified form and fixed the time and place for hearing of objections, and notice of the hearing on the second date set was duly published, on which date hearing was duly had, necessary corrections were made, and the assessment roll as corrected was duly approved and confirmed, the fact that notice of hearing on the first date set was not published as required was rendered immaterial. Town of Asheboro v. Miller, 220 N.C. 298, 17 S.E.2d 105 (1941).

§ 160A-228. Hearing on preliminary assessment roll; revision; confirmation; lien.

At the public hearing, which may be adjourned from time to time until all persons have had an opportunity to be heard, the council shall hear objections to the preliminary assessment roll from all interested persons who appear. Then or thereafter, the council shall annul, modify, or confirm the assessments, in whole or in part, either by confirming the preliminary assessments against any or all of the lots or parcels described in the preliminary assessment roll, or by canceling, increasing, or reducing them as may be proper in compliance with the basis of assessment. If any property is omitted from the preliminary assessment roll, the council may place it on the roll and levy the proper assessment. Whenever the council confirms assessments for any project, the city clerk shall enter in the minutes of the council the date, hour, and minute of confirmation. From and after the time of confirmation, the assessments shall be a lien on the property assessed of the same nature and to the same extent as the lien for county and city property taxes, according to the priorities set out in G.S. 160A-233(c). After the assessment roll is confirmed, a copy of it shall be delivered to the city tax collector for collection in the same manner as property taxes, except as herein provided. (1915, c. 56, s. 9; C.S., s. 2713; 1971, c. 698, s. 1; 1973, c. 426, s. 34.)

CASE NOTES

Editor's Note. *— The cases cited below were decided under prior similar statutory provisions.*

Assessments as Liens on Property. — Assessments made upon property for street and sidewalk improvements by a town, in all respects under the authority conferred on the municipality by statute, to be paid in partial payments over a designated period of time, are to be regarded in the nature of a statutory mortgage when due and payable; they constitute liens on the property within the warranty clause against encumbrances contained in a deed, and are recoverable in grantee's action against grantor to the extent he has been required to pay them. Coble v. Dick, 194 N.C. 732, 140 S.E. 745 (1927).

Within Meaning of Warranty Against Encumbrances. — The lien for street assessments is an encumbrance within the meaning of the warranty clause against encumbrances contained in a deed. Coble v. Dick, 194 N.C. 732, 140 S.E. 745 (1927); City of Winston-Salem v. Powell Paving Co., 7 F. Supp. 424 (M.D.N.C. 1934).

Lien Amounts to Statutory Mortgage. — The lien given under former similar statute, when properly established, amounts to a statutory mortgage. City of Kinston v. Atlantic & N.C.R.R., 183 N.C. 14, 110 S.E. 645 (1922); Town of Saluda v. Polk County, 207 N.C. 180, 176 S.E. 298 (1934).

And Is Based on Theory of Special Benefit to Property. — The lien against property for street improvements is a lien in rem against the land itself, but is not strictly a tax lien and is based upon the theory of special benefit to the property itself. Town of Saluda v. Polk County, 207 N.C. 180, 176 S.E. 298 (1934).

Lien Not Enforceable Against Estate of Decedent. — An assessment made upon adjoining land for a street improvement by a town is a charge upon the land constituting a lien superior to all others, but is not enforceable against the personalty or other lands of the owner; and when the owner of land has been thus assessed, payable in installments, and he subsequently dies, such assessment is not a debt of the deceased payable by his personal representative, but a charge against the land itself. The provisions of G.S. 28A-19-6, as to the order of payment of debts of the deceased, have no application. Carawan v. Barnett, 197 N.C. 511, 149 S.E. 740 (1929). See also, City of Statesville v. Jenkins, 199 N.C. 159, 154 S.E. 15 (1930); City of High Point v. Brown, 206 N.C. 664, 175 S.E. 169 (1934); City of Winston-Salem v. Powell Paving Co., 7 F. Supp. 424 (M.D.N.C. 1934).

When Lien Attaches. — The lien for street assessments does not attach to land until confirmation of the assessments; thus, where such assessments are not confirmed by the governing body of the town until after the execution of a deed to the property, the subsequently attaching lien for the assessments does not violate the warranty and covenant in the deed, in the usual language, against encumbrances. Oliver v. Hecht, 207 N.C. 481, 177 S.E. 399 (1934).

Owner's Ratification as Sufficient Compliance with Statute. — Where property owner signs the petition and has notice that improvements are to be made and notice that the assessment roll giving the amount of the assessment against his property has been filed in the office of the city clerk, and he accepts the benefits and pays installments of the assessments without objection, he ratifies same and the statute is sufficiently complied with. Town of Wake Forest v. Holding, 206 N.C. 425, 174 S.E. 296 (1934).

Statute of Limitations. — Assessment against abutting lands for street improvements is made a lien on the land superior to all other liens and encumbrances, and the 10-year statute of limitation, not the three-year statute, is applicable thereto. City of High Point v. Clinard, 204 N.C. 149, 167 S.E. 690 (1933).

Cited in First Am. Fed. Sav. & Loan Ass'n v. Royall, 77 N.C. App. 131, 334 S.E.2d 792 (1985).

§ 160A-229. Publication of notice of confirmation of assessment roll.

After the expiration of 20 days from the confirmation of the assessment roll, the city tax collector shall publish once a notice that the assessment roll has been confirmed, and that assessments may be paid without interest at any time before the expiration of 30 days from the date that the notice is published, and that if they are not paid within this time, all installments thereof shall bear interest as provided in G.S. 160A-233. The notice shall also state the schedule of discounts, if one has been established, to be applied to assessments paid before the expiration date for payment of assessments without interest. (1971, c. 698, s. 1; 1983, c. 381, s. 6.)

§ 160A-230. Appeal to General Court of Justice.

If the owner of, or any person interested in, any lot or parcel of land against which an assessment is made is dissatisfied with the amount of the assessment, he may, within 10 days after the confirmation of the assessment roll, file a notice of appeal to the appropriate division of the General Court of Justice. He shall then have 20 days after the confirmation of the assessment roll to serve on the council or the city clerk a statement of facts upon which the appeal is based. The appeal shall be tried like other actions at law. (1915, c. 56, s. 9; C.S., s. 2714; 1971, c. 698, s. 1.)

CASE NOTES

Editor's Note. *— Many of the cases cited below were decided under prior similar statutory provisions.*

Right of Appeal Makes Statute Constitutional. — The right of appeal to the courts being provided in case of dissatisfaction by an owner of land abutting on a street assessed by the governing body of a municipality for street improvement, the objection that the owner's property is taken for a public use in contravention of the due process clause of the Constitution is untenable. Leak v. Town of Wadesboro, 186 N.C. 683, 121 S.E. 12 (1923).

Jurisdiction of Court is Derivative. — The jurisdiction of the court upon appeal from a levy of assessments for street improvements by the governing body of a town, as provided by statute, is entirely derivative, and where a town has no jurisdiction to condemn land the court on appeal likewise has no jurisdiction to do so. Atlantic Coast Line R.R. v. Town of Ahoskie, 207 N.C. 154, 176 S.E. 264 (1934).

Original jurisdiction to determine questions of fact involved in assessment proceedings is derived from the General Assembly and vested in the city council. Since a property owner's right of appeal from the city council to the courts is created and governed by statute, the jurisdiction acquired is derivative. On appeal to the courts, the owner of assessed property has no right to be heard there on the question of whether the lands are benefitted or not, but only on the validity of the assessment, its proper apportionment and other questions of law. In re Dunn, 73 N.C. App. 243, 326 S.E.2d 309, cert. denied, 313 N.C. 602, 332 S.E.2d 180 (1985).

Superior court may not determine de novo questions within the city council's original jurisdiction. In re Dunn, 73 N.C. App. 243, 326 S.E.2d 309, cert. denied, 313 N.C. 602, 332 S.E.2d 180 (1985).

While a petition is a prerequisite, it is not jurisdictional, and if the finding by the municipal board is erroneous, it should be corrected by appeal. Town of Asheboro v. Miller, 220 N.C. 298, 17 S.E.2d 105 (1941).

The language providing that appeals "shall be tried as other actions at law," serves merely to distinguish those actions from special proceedings for purposes of determining the applicable procedural rules. In re Dunn, 73 N.C. App. 243, 326 S.E.2d 309, cert. denied, 313 N.C. 602, 332 S.E.2d 180 (1985).

Appeal Not Limited to Amount of Assessment. — Former similar statute did not limit the property owner's appeal from an assessment for public improvements solely to the amount to be charged against his land. Smith v. City of Rockingham, 268 N.C. 697, 151 S.E.2d 568 (1966).

Existence of Street as Issue. — Under the provisions of former similar statute, it was necessary that there be an existing street in order for a valid assessment for improvements to be laid on the property of abutting owners, and this could be made an issue in an appeal, with the adjoining owner introducing his evidence to show to the contrary. Atlantic Coast Line R.R. v. Town of Ahoskie, 192 N.C. 258, 134 S.E. 653 (1926).

Collateral Attack in Action to Enforce Lien Precluded. — In an action to enforce a lien for public improvements, a defendant who had notice and ample opportunity to be heard and to appeal from the order confirming the assessment roll cannot impeach the validity of the ordinance or of the assessment for any alleged irregularities which are not jurisdictional. Town of Asheboro v. Miller, 220 N.C. 298, 17 S.E.2d 105 (1941).

Injunctive Relief Not Available After Failure to Appeal. — The remedy of abutting owners assessed for street improvements is given by the provisions for the right of appeal, and when no appeal has been taken and the work has been completed, injunctive relief against the collection of the assessments by the city will not lie. Jones v. City of Durham, 197 N.C. 127, 147 S.E. 824 (1929).

The owner of land abutting on a street which the municipality proposes to improve has his remedy in objecting to the local assessment on his property because of the insufficiency of the petition, and he may not enjoin the issuance of bonds for this necessary expense on that ground when he has failed to pursue his statutory remedy. Brown v. Town of Hillsboro, 185 N.C. 368, 117 S.E. 41 (1923).

Untimely Application for Writ of Certiorari. — An abutting property owner who failed to appeal from a final order of the board of aldermen affirming the assessment roll was not entitled to a writ of certiorari where application for the writ was filed more than eight months after his time for appeal had expired. Sanford v. Southern Oil Co., 244 N.C. 388, 93 S.E.2d 560 (1956).

Estoppel to Assert Errors in Assessments. — Where the property owner failed to object and avail himself of the specific remedy for review and correction of the assessment, but made payments on the assessment, he is estopped to show error in the assessment. Town of Wake Forest v. Gulley, 213 N.C. 494, 196 S.E. 845 (1938).

§ 160A-231. Reassessment.

The council shall have the power, when in its judgment any irregularity, omission, error or lack of jurisdiction in any of the proceedings related thereto, has occurred, to set aside the whole of any special assessment made by it and thereupon to make a reassessment. In that case, all additional interest paid, or to be paid, as a result of the delay in confirming the assessment shall be included as a part of the project cost. The proceeding shall, as far as practicable, in all respects take place as it had with the original assessments, and the reassessment shall have the same force as if it had originally been properly made. (1915, c. 56, s. 9; C.S., s. 2715; 1971, c. 698, s. 1.)

CASE NOTES

***Editor's Note.** — The cases cited below were decided under prior similar statutory provisions.*

Reduction of Assessment Held Unavailable on Grounds Urged. — Where the board of aldermen granted a petition for street improvements requesting the assessment of a larger proportion of the costs of the improvements against the lots of land abutting directly thereon than was otherwise required by statute, after the confirmation of the assessment roll a subsequent board of aldermen was without power to grant a petition of the abutting landowners for a reduction of the assessment upon the ground alone that the amount of the assessments exceeded that which they had originally anticipated, and a suit by other taxpayers of the town to enjoin the granting of such petition was proper. McClester v. Town of China Grove, 196 N.C. 301, 145 S.E. 562 (1928).

Extension resolution providing a new series of installment payments did not invalidate lien of a municipality for an assessment for public improvements, where the sums of the new installments in the aggregate exceeded the amount actually due at the time of the extension. Differences could be adjusted. City of Salisbury v. Arey, 224 N.C. 260, 29 S.E.2d 894 (1944).

§ 160A-232. Payment of assessments in cash or by installments.

The owners of assessed property shall have the option, within 30 days after the publication of the notice that the assessment roll has been confirmed, of paying the assessment either in cash or in not more than 10 annual installments, as may have been determined by the council in the resolution directing the project giving rise to the assessment to be undertaken. With respect to payment by installment, the council may provide

(1) That the first installment with interest shall become due and payable on the date when property taxes are due and payable, and one subsequent installment and interest shall be due and payable on the same date in each successive year until the assessment is paid in full, or

(2) That the first installment with interest shall become due and payable 60 days after the date that the assessment roll is confirmed, and one subsequent installment and interest shall be due and payable on the

same day of the month in each successive year until the assessment is paid in full. (1915, c. 56, s. 10; C.S., s. 2716; 1971, c. 698, s. 1.)

Local Modification. — City of Fayetteville: 1995 (Reg. Sess., 1996), c. 718, s. 1; Village of Pinehurst: 2003-259, s. 2(a) (applicable only to assessments for repair and rehabilitation of a dam in the village).

§ 160A-233. Enforcement of assessments; interests; foreclosure; limitations.

(a) Any portion of an assessment that is not paid within 30 days after publication of the notice that the assessment roll has been confirmed shall bear interest until paid at a rate to be fixed in the assessment resolution but not more than eight percent (8%) per annum.

(b) If any installment of an assessment is not paid on or before the due date, all of the installments remaining unpaid shall immediately become due and payable, unless the council waives acceleration. The council may waive acceleration and permit the property owner to pay all installments in arrears together with interest due thereon and the cost to the city of attempting to obtain payment. If this is done, the remaining installments shall be reinstated so that they fall due as if there had been no default. Waiver of acceleration and reinstatement of future installments may be done at any time before foreclosure proceedings have been instituted.

(c) Assessment liens may be foreclosed under any procedure prescribed by law for the foreclosure of property tax liens, except that lien sales and lien sale certificates shall not be required, and foreclosure may be begun at any time after 30 days after the due date. The city shall not be entitled to a deficiency judgment in an action to foreclose an assessment lien. The lien of special assessments shall be inferior to all prior and subsequent liens for State, local, and federal taxes, and superior to all other liens.

(d) No city may maintain an action or proceeding to enforce any remedy for the foreclosure of special assessment liens unless the action or proceeding is begun within 10 years from the date that the assessment or the earliest installment thereof included in the action or proceeding became due. Acceleration of installments under subsection (b) shall not have the effect of shortening the time within which foreclosure may be begun, but in that event the statute of limitations shall continue to run as to each installment as if acceleration had not occurred. (1915, c. 56, s. 11; C.S., s. 2717; 1923, c. 87; 1929, c. 331, s. 1; 1971, c. 698, s. 1.)

Local Modification. — Forsyth: 1977, c. 203; 1993, c. 380, s. 1; city of Winston-Salem: 1993, c. 380, s. 1; town of Carrboro: 2007-266, s. 1; town of Madison: 1985, c. 91.

Legal Periodicals. — For comment, "Offer to Purchase and Contract: Buyer Beware," see 8 Campbell L. Rev. 473 (1986).

CASE NOTES

Editor's Note. — *Many of the cases cited below were decided under former similar statutory provisions.*

Passing of Installment Option to Municipality. — Provisions giving property owner 30 days in which to pay assessments for local improvements in cash without interest or the election to pay the same in installments are for the benefit of the property owner, and when exercised, become mandatory upon the municipality; but when property owner remains silent and neither pays in cash nor elects to pay in installments, the option passes to the municipality to foreclose or to collect in installments. City of Salisbury v. Arey, 224 N.C. 260, 29 S.E.2d 894 (1944).

The interest rate on street assessments is fixed by statute, and the courts are without authority at law or in equity to prescribe a lesser interest rate. Zebulon v. Dawson, 216

N.C. 520, 5 S.E.2d 535 (1939).

Right to Accelerate. — Provision that upon failure to pay any installment when due all installments remaining unpaid should at once become due and payable gives the municipality the optional right to declare all installments due and payable upon default; absent its declaration to invoke the acceleration provision, the statute of limitations will not begin to run against unpaid installments not then due. Town of Farmville v. Paylor, 208 N.C. 106, 179 S.E. 459 (1935). See also, City of Salisbury v. Arey, 224 N.C. 260, 29 S.E.2d 894 (1944).

Judgment for Installments. — Where the owner of land abutting on the street has refused to pay the assessments lawfully made on him for street improvements, a judgment allowing him to pay by installments may be entered. City of Durham v. Durham Pub. Serv. Co., 182 N.C. 333, 109 S.E. 40 (1921), aff'd, 261 U.S. 149, 43 S. Ct. 290, 67 L. Ed. 580 (1923).

As to enforcement of lien by decree of sale, see City of Kinston v. Atlantic & N.C.R.R., 183 N.C. 14, 110 S.E. 645 (1922); Town of Saluda v. Polk County, 207 N.C. 180, 176 S.E. 298 (1934).

Attorneys' Fee. — Construed together, subsection (c) of this section and G.S. 105-374(i) provide for an award of one reasonable attorneys' fee, in the court's discretion, in a foreclosure of an assessment lien by action in the nature of an action to foreclose a mortgage. Guilford County v. Boyan, 42 N.C. App. 627, 257 S.E.2d 463 (1979), cert. denied, 303 N.C. 311, 278 S.E.2d 252 (1981).

Construction of Subsection (d) as to Limitations of Actions. — The inherent illogic of the literal meaning of the first sentence of subsection (d), the sentence's context, and the statute's history all show that the legislature did not intend to bar an action for installments of assessments falling due within the 10-year limitation period, even when installments which became due more than 10 years before the institution of the action were sought to be included in the action. Guilford County v. Boyan, 42 N.C. App. 627, 257 S.E.2d 463 (1979), cert. denied, 303 N.C. 311, 278 S.E.2d 252 (1981).

The second sentence of subsection (d) makes plain that the legislature intended the statute of limitations to run anew from the due date of each individual installment. Guilford County v. Boyan, 42 N.C. App. 627, 257 S.E.2d 463 (1979), cert. denied, 303 N.C. 311, 278 S.E.2d 252 (1981).

As to running of statute of limitations under former provisions, see City of Charlotte v. Kavanaugh, 221 N.C. 259, 20 S.E.2d 97 (1942); City of Raleigh v. Mechanics & Farmers Bank, 223 N.C. 286, 26 S.E.2d 573 (1943).

Applied in City of Greensboro v. Harris, 27 N.C. App. 585, 219 S.E.2d 537 (1975).

Cited in City of Durham v. Herndon, 61 N.C. App. 275, 300 S.E.2d 460 (1983).

§ 160A-234. Assessments on property held by tenancy for life or years.

(a) Assessments upon real property in the possession or enjoyment of a tenant for life, or a tenant for a term of years, shall be paid by the holder of the remainder or reversion, as the case may be.

(b) Repealed by Session Laws 1979, c. 107, s. 12. (1911, c. 7, ss. 1, 2, 3; C.S., ss. 2718, 2719, 2720; 1971, c. 698, s. 1; 1979, c. 107, s. 12; 2003-232, s. 6.)

Editor's Note. — Subsection (a), as amended by Session Laws 2003-232, s. 6, effective January 1, 2004, is applicable to every trust or decedent's estate existing on that date or coming into existence after that date, except as otherwise expressly provided in the will or terms of the trust or in the provisions of Chapter 37A of the General Statutes, as enacted in Session Laws 2003-232.

CASE NOTES

Assessments Not Preference Against Estate of Deceased Life Tenant. — Since street and sidewalk assessments constitute a lien against the property not collectible out of other properties belonging to the owner, and since a life tenant is not liable for the whole assessment, being entitled to have it proportioned, upon the death of a life tenant such assessments made prior to his death do not constitute a preference against his estate payable as a tax assessed on the estate prior to his death. Rigsbee v. Brogden, 209 N.C. 510, 184 S.E. 24 (1936), decided under former similar statutory provisions.

§ 160A-235. Lien in favor of a cotenant or joint owner paying special assessments.

Any one of several tenants in common, or joint tenants, or copartners shall have the right to pay the whole or any part of any special assessment levied against property held jointly or in common, and all sums by him so paid in excess of his share of the assessment, interests, costs, and amounts required for redemption, shall constitute a lien upon the shares of his cotenants or associates, which he may enforce in proceedings for partition, actual or by sale, or in any other appropriate judicial proceeding. The lien herein provided for shall not be effective against an innocent purchaser for value unless and until notice thereof is filed in the office of the clerk of superior court in the county in which the land lies and indexed and docketed in the same manner as other liens required by law to be filed in the clerk's office. (1935, c. 174; 1971, c. 698, s. 1.)

§ 160A-236. Apportionment of assessments.

When special assessments are made against property which has been or is about to be subdivided, the council may, with the consent of the owner of the property, apportion the assessment among the lots or tracts within the subdivision, or release certain lots or tracts from the assessments if, in the opinion of the council, some of the lots or tracts in the subdivision are not benefited by the project. Upon an apportionment, each of the lots and tracts in the subdivision shall be released from the lien of the original assessment, and the portions of the original assessment assessed against each lot or tract shall have the same force and effect as the original assessment as to the particular lot or tract assessed. At the time of making an apportionment under this section, the council shall enter on its minutes a statement to the effect that the apportionment is made with the consent of the owners of the property affected, and this entry shall be conclusive in the absence of fraud. Reassessments made under this section may include past due installments of principal and interest as well as installments not then due, and any installments not then due shall fall due at the same dates as they would have under the original assessment. The council may delegate authority to make apportionment of assessments to the chief financial officer, but apportionments shall in all cases be reported to the council at its next regular meeting and entered in the minutes. (1929, c. 331, s. 1; 1935, c. 125; 1971, c. 698, s. 1.)

§ 160A-237. Authority to hold water and sewer assessments in abeyance.

The assessment resolution may provide that assessments levied under this Article for water or sewer improvements be held in abeyance without interest until improvements on the assessed property are actually connected to the water or sewer system for which the assessment was levied, or a date certain not more than 10 years from the date of confirmation of the assessment roll, whichever event first occurs. Upon termination of the period of abeyance, the assessment shall be paid in accordance with the terms set out in the assessment resolution. If assessments are to be held in abeyance, the assessment resolution shall classify the property assessed according to general land use, location with respect to the water or sewer system, or other relevant factors, and shall provide that the period of abeyance shall be the same for all assessed property in the same class.

All statutes of limitations are suspended during the time that any assessment is held in abeyance without interest. (1973, c. 426, s. 35.)

Local Modification. — Cities of Belmont, Gastonia, and Mount Holly: 1995, c. 341, s. 1; town of Stanley: 1995, c. 341, s. 1.

CASE NOTES

Applied in Abbott v. Town of Highlands, 52 N.C. App. 69, 277 S.E.2d 820, cert. denied and appeal dismissed, 303 N.C. 710, 283 S.E.2d 136 (1981).

§ 160A-238. Authority to make assessments for beach erosion control and flood and hurricane protection works.

A city may make special assessments, according to the procedures of this Article, against benefited property within the city for all or part of the costs of acquiring, constructing, reconstructing, extending, or otherwise building or improving beach erosion control or flood and hurricane protection works. Assessments for these projects may be made on the basis of:

(1) The frontage abutting on the project, at an equal rate per foot of frontage; or
(2) The frontage abutting on a beach or shoreline protected or benefited by the project, at an equal rate per foot of frontage; or
(3) The area of land benefited by the project, at an equal rate per unit of area; or
(4) The valuation of land benefited by the project, being the value of the land without improvements as shown on the tax records of the county, at an equal rate per dollar of valuation; or
(5) A combination of two or more of these bases.

Whenever the basis selected for assessment is either area or valuation, the council shall provide for the laying out of one or more benefit zones according to the distance from the shoreline, the distance from the project, the elevation of the land, or other relevant factors. If more than one benefit zone is established, the council shall establish differing rates of assessment to apply uniformly throughout each benefit zone. (1973, c. 822, s. 7.)

Local Modification. — Town of Holden Beach: 1979, c. 440; 1981, c. 318; 1983, c. 490; town of Oak Island: 2008-115, s. 1; town of Ocean Isle Beach: 1979, c. 440; 1981, c. 318; town of Sunset Beach: 1985, c. 725.

§ 160A-239: Reserved for future codification purposes.

Article 10A.

Special Assessments for Critical Infrastructure Needs.

(Expires July 1, 2013)

§ 160A-239.1. (Expires July 1, 2013) Purpose.

This Article enables cities that face increased demands for infrastructure improvements as a result of rapid growth and development to issue revenue bonds payable from special assessments imposed under this Article on benefited property. This Article supplements the authority cities have in Article 10 of this Chapter. The provisions of Article 10 of this Chapter apply to this Article, to the extent they do not conflict with this Article. (2008-165, s. 3.)

Editor's Note. — Session Laws 2008-165, s. 5, provides: "This act is effective when it becomes law [August 3, 2008]. Sections 2 and 3 of this act expire July 1, 2013. The expiration does not affect the validity of assessments imposed or bonds issued or authorized under the provisions of this act prior to the effective date of the expiration."

Session Laws 2008-165, s. 4, is a severability clause.

§ 160A-239.2. (Expires July 1, 2013) Assessments.

(a) Projects. — The council of a city may make special assessments as provided in this Article against benefited property within the city for the purpose of financing the capital costs of projects for which project development financing debt instruments may be issued under G.S. 159-103 or for the purpose of financing the installation of distributed generation renewable energy sources or energy efficiency improvements that are permanently fixed to residential, commercial, industrial, or other real property.

(b) Costs. — The city council must determine a project's total estimated cost. In addition to the costs allowed under G.S. 153A-193, the costs may include any expenses allowed under G.S. 159-84. A preliminary assessment roll may be prepared before the costs are incurred based on the estimated cost of the project.

(c) Method. — The city council must establish an assessment method that will most accurately assess each lot or parcel of land according to the benefits conferred upon it by the project for which the assessment is made. In addition to the bases upon which assessments may be made under G.S. 160A-218, the council may select any other method designed to allocate the costs in accordance with benefits conferred. (2008-165, s. 3; 2008-187, s. 47.5(b); 2009-525, s. 2(a).)

Editor's Note. — Session Laws 2008-165, s. 5, provides: "This act is effective when it becomes law [August 3, 2008]. Sections 2 and 3 of this act expire July 1, 2013. The expiration does not affect the validity of assessments imposed or bonds issued or authorized under the provisions of this act prior to the effective date of the expiration."

Session Laws 2008-187, s. 47.5(b), amended G.S. 160A-239.2, as enacted by House Bill 1770 of the 2007 Regular Session of the General Assembly, contingent on that act becoming law. House Bill 1770 was enacted as Session Laws 2008-165.

Effect of Amendments. — Session Laws 2008-187, s. 47.5(b), effective August 7, 2008, inserted "as provided in this Article" in the introductory paragraph of subsection (a); rewrote the second sentence of subsection (b), which formerly read: "An assessment may be imposed before the costs are incurred, based on the estimated cost"; and substituted "G.S. 160A-218" for "G.S. 153A-186" in subsection (c).

Session Laws 2009-525, s. 2(a), effective August 26, 2009, rewrote subsection (a).

§ 160A-239.3. (Expires July 1, 2013) Petition required.

(a) Petition. — The city council may not impose a special assessment under this Article unless it receives a petition for the project to be financed by the assessment signed by at least a majority of the owners of real property to be assessed who must represent at least sixty-six percent (66%) of the assessed value of all real property to be assessed. The petition must include the following:

(1) A statement of the project proposed to be financed in whole or in part by the imposition of an assessment under this Article.
(2) An estimate of the cost of the project.
(3) An estimate of the portion of the cost of the project to be assessed.

(b) Petition Withdrawn. — The city council must wait at least 10 days after the public hearing on the preliminary assessment resolution before adopting a final assessment resolution. A petition submitted under subsection (a) of this section may be withdrawn if notice of petition withdrawal is given in writing to the council signed by at least a majority of the owners who signed the petition submitted under subsection (a) of this section representing at least fifty percent (50%) of the assessed value of all real property to be assessed. The council may not adopt a final assessment resolution if it receives a timely notice of petition withdrawal.

(c) Validity of Assessment. — No right of action or defense asserting the invalidity of an assessment on grounds that the city did not comply with this section may be asserted except in an action or proceeding begun within 90 days after publication of the notice of adoption of the preliminary assessment resolution. (2008-165, s. 3.)

Editor's Note. — Session Laws 2008-165, s. 5, provides: "This act is effective when it becomes law [August 3, 2008]. Sections 2 and 3 of this act expire July 1, 2013. The expiration does not affect the validity of assessments imposed or bonds issued or authorized under the provisions of this act prior to the effective date of the expiration."

§ 160A-239.4. (Expires July 1, 2013) Financing a project for which an assessment is imposed.

(a) Financing Sources. — A city council may provide for the payment of the cost of a project for which an assessment may be imposed under this Article from one or more financing sources listed in this subsection. The assessment resolution must include the estimated cost of the project and the amount of the cost to be derived from the respective financing source.

(1) Revenue bonds issued under G.S. 160A-239.6.
(2) Project development financing debt instruments issued under the North Carolina Project Development Financing Act, Article 6 of Chapter 159 of the General Statutes.
(3) General obligation bonds issued under the Local Government Bond Act, Article 4 of Chapter 159 of the General Statutes.
(4) General revenues.

(b) Assessments Pledged. — An assessment imposed under this Article may be pledged to secure revenue bonds under G.S. 153A-210.6 or as additional security for a project development financing debt instrument under G.S. 159-111. If an assessment imposed under this Article is pledged to secure financing, the city council must covenant to enforce the payment of the assessments. (2008-165, s. 3; 2009-525, s. 2(b).)

Editor's Note. — Session Laws 2008-165, s. 5, provides: "This act is effective when it becomes law [August 3, 2008]. Sections 2 and 3 of this act expire July 1, 2013. The expiration does not affect the validity of assessments imposed or bonds issued or authorized under the provisions of this act prior to the effective date of the expiration."

Effect of Amendments. — Session Laws 2009-525, s. 2(b), effective August 26, 2009, rewrote the section.

§ 160A-239.5. (Expires July 1, 2013) Payment of assessments by installments.

An assessment imposed under this Article is payable in annual installments. The city council must set the number of annual installments, which may not be more than 30. The installments are due on the date that property taxes are due. (2008-165, s. 3.)

Editor's Note. — Session Laws 2008-165, s. 5, provides: "This act is effective when it becomes law [August 3, 2008]. Sections 2 and 3 of this act expire July 1, 2013. The expiration does not affect the validity of assessments imposed or bonds issued or authorized under the provisions of this act prior to the effective date of the expiration."

§ 160A-239.6. (Expires July 1, 2013) Revenue bonds.

(a) Authorization. — A city council that imposes an assessment under this Article may issue revenue bonds under Article 5 of Chapter 159 of the General Statutes to finance the project for which the assessment is imposed and use the proceeds of the assessment imposed as revenues pertaining to the project.

(b) Modifications. — This Article specifically modifies the authority of a city to issue revenue bonds under Article 5 of Chapter 159 of the General Statutes by extending the authority in that Article to include a project for which an assessment may be imposed under this Article. In applying the provisions of Article 5, the following definitions apply:

(1) Revenue bond project. — Defined in G.S. 159-81(3). The term includes projects for which an assessment is imposed under this Article.

(2) Revenues. — Defined in G.S. 159-81(4). The term includes assessments imposed under this Article to finance a project allowed under this Article. (2008-165, s. 3.)

Editor's Note. — Session Laws 2008-165, s. 5, provides: "This act is effective when it becomes law [August 3, 2008]. Sections 2 and 3 of this act expire July 1, 2013. The expiration does not affect the validity of assessments imposed or bonds issued or authorized under the provisions of this act prior to the effective date of the expiration."

§ 160A-239.7. (Expires July 1, 2013) Project implementation.

A city may act directly, through one or more contracts with other public agencies, through one or more contracts with private agencies, or by any combination thereof to implement the project financed in whole or in part by the imposition of an assessment imposed under this Article. If no more than twenty-five percent (25%) of the estimated cost of a project is to be funded from the proceeds of general obligation bonds or general revenue, a private agency that enters into a contract with a city for the implementation of all or part of the project is subject to the provisions of Article 8 of Chapter 143 of the General Statutes only to the extent specified in the contract. In the event any contract relating to construction a substantial portion of which is to be performed on publicly owned property is excluded from the provisions of Article 8 of Chapter 143, the city or any trustee or fiduciary responsible for disbursing funds shall obtain certification acceptable to the city in the amount due for work done or materials supplied for which payment will be paid from such disbursement. If the city or any trustee or fiduciary responsible for disbursing funds receives notice of a claim from any person who would be entitled to a mechanic's or materialman's lien but for the fact that the claim relates to work performed on or supplies provided to publicly owned property, then either no disbursement of funds may be made until the city, trustee, or fiduciary receives satisfactory proof of resolution of the claim or funds in the amount of the claim shall be set aside for payment thereof upon resolution of the claim. (2009-525, s. 2(c).)

Editor's Note. — Session Laws 2009-525, s. 4, made this section effective August 26, 2009.

Session Laws 2008-165, s. 5, provides: "This act is effective when it becomes law [August 3, 2008]. Sections 2 and 3 of this act expire July 1, 2013. The expiration does not affect the validity of assessments imposed or bonds issued or authorized under the provisions of this act prior to the effective date of the expiration."

ARTICLE 11.

Eminent Domain.

§ 160A-240: Repealed by Session Laws 1981, c. 919, s. 28.

Cross References. — For present provisions as to eminent domain, see Chapter 40A.

§ 160A-240.1. Power to acquire property.

A city may acquire, by gift, grant, devise, bequest, exchange, purchase, lease, or any other lawful method, the fee or any lesser interest in real or personal property for use by the city or any department, board, commission or agency of the city. In exercising the power of eminent domain a city shall use the procedures of Chapter 40A. (1981, c. 919, s. 29; 1983, c. 768, s. 23.)

Local Modification. — City of Monroe: 1985, c. 177; 2000-35, s. 1; city of Rocky Mount: 2003-327, s. 1; city of Wilson: 1989, c. 348, s. 1; town of Cary: 1993, c. 137, s. 1.

Cross References. — As to counties in which the consent of the board of commissioners is required before land may be condemned or acquired by a local governmental unit outside the county, see G.S. 153A-15.

CASE NOTES

Power Not Restricted Where Land and City in Same County. — Summary judgment was properly entered in a declaratory action regarding the applicability of G.S. 153A-15(b) because a condemnation action by a city in order to facilitate the construction of a water supply and distribution facility did not require any approval since the city and the land were located in the same county; moreover, the evidence showed that the real and substantial benefits of the condemnation accrued to the city in question, and not other parties in the case that were located in different counties. Caswell County v. Town of Yanceyville, 170 N.C. App. 124, 611 S.E.2d 451, 2005 N.C. App. LEXIS 898 (2005).

Proper Exercise of Police Power. — In condemnation proceeding brought pursuant to city's power of eminent domain under G.S. 160A-240.1, partial summary judgment was properly granted precluding property owners from recovering for diminution in value caused by the city's construction of a median restricting access to lanes in only one direction of travel; the separation of lanes of traffic was an exercise of police power, and the means used to accomplish the legitimate objective were reasonable in light of the fact that the owners still had free ingress and egress to their property, and injury to property caused by such an exercise of police power was not compensable. City of Concord v. Stafford, 173 N.C. App. 201, 618 S.E.2d 276, 2005 N.C. App. LEXIS 1915 (2005), cert. dismissed, — N.C. —, 625 S.E.2d 784 (2005), cert. denied, — N.C. —, 625 S.E.2d 785 (2005).

§§ 160A-241 through 160A-261: Repealed by Session Laws 1981, c. 919, s. 28.

Cross References. — For present provisions as to eminent domain, see Chapter 40A.

§ 160A-262: Repealed by Session Laws 1973, c. 426, s. 42.

§ 160A-263: Repealed by Session Laws 1981, c. 919, s. 28.

Cross References. — For present provisions as to eminent domain, see Chapter 40A.

§ 160A-264: Reserved for future codification purposes.

ARTICLE 12.

Sale and Disposition of Property.

§ 160A-265. Use and disposal of property.

In the discretion of the council, a city may: (i) hold, use, change the use thereof to other uses, or (ii) sell or dispose of real and personal property, without regard to the method or purpose of its acquisition or to its intended or actual governmental or other prior use. (1981 (Reg. Sess., 1982), c. 1236.)

Local Modification. — (As to Article 12) Bladen: 1993 (Reg. Sess., 1994), c. 721, ss. 1, 2; (As to Article 12) Burke: 1987 (Reg. Sess., 1988), c. 1002; Burlington: 1989, c. 6; Cherokee: 1983 (Reg. Sess., 1984), c. 939; Clay: 1983, c. 353; (As to Article 12) Cleveland: 1995, c. 201, s. 1; Cumberland: 1983 (Reg. Sess., 1984), c. 1079; Craven: 1985, c. 13; Dare: 1987, c. 241; Duplin: 1989, c. 411, ss. 1.1, 1.2; 1989 (Reg. Sess., 1990), c. 1006, s. 1; Edgecombe: 1981, c. 971; Gaston: 1983, c. 405; Graham and Graham County Industrial Development Authority: 1985 (Reg. Sess., 1986), c. 824; Halifax: 1987, c. 238; Harnett: 1985, c. 16; Haywood and Jackson: 1981, c. 137; Johnston: 1989, c. 597, s. 1; Jones: 1983 (Reg. Sess., 1984), c. 960; Lee: 1987 (Reg. Sess., 1988), c. 933; (As to Article 12) 2002-81, s. 1; Lenoir: 1981, c. 176; 1987 (Reg. Sess., 1988), c. 1002; 2000-48, s. 2; Macon: 1979, c. 235; 1989 (Reg. Sess., 1990), c. 998; Madison: 1981, c. 174; McDowell: 1987 (Reg. Sess., 1988), c. 909; 1989 (Reg. Sess., 1990), c. 833, s. 2; Pamlico: 1985, c. 386; 1987, c. 214; (As to Article 12) Pasquotank: 1979, c. 129; 1991, c. 61; Pender: 1989, c. 503, s. 1; 1989 (Reg. Sess., 1990), c. 847, s. 1; 1993, c. 52, s. 1; Pitt: 1983 (Reg. Sess., 1984), c. 942; Rowan: 1987, c. 157; Sampson: 1985 (Reg. Sess., 1986), c. 894; c. 943, s. 2; (As to Article 12) Sanford: 1995, c. 154, s. 1; Scotland: 1987, c. 57; Swain: 1981, c. 137; Transylvania: 1989, c. 4; (As to Article 12) 2009-154, s. 1(a)-(e) (as to construction and provision of affordable housing for certain employees); (As to Article 12) Tyrrell: 1987, c. 9; 2001-32; Washington: 1979, 2nd Sess., c. 1120; 1985, c. 134; Wayne: 1987 (Reg. Sess., 1988), c. 1006, s. 7; (As to Article 12) 1997-170, s. 1; 2004-94; city of Asheboro: 1987, c. 593; city of Asheville: 1979, c. 317; 1981, c. 631; 1985, c. 721; (As to Article 12) 2007-239, s. 2; city of Bessemer City: 1995 (Reg. Sess., 1996), c. 563, s. 1; city of Brevard: 1985, c. 79; 1987 (Reg. Sess., 1988), c. 905; 1999-8, s. 1; (As to Article 12) 1995 (Reg. Sess., 1996), c. 671, s. 1; 2009-154, s. 1(a)-(e) (as to construction and provision of affordable housing for certain employees); city of Burlington: 1985 (Reg. Sess., 1986), c. 829; 1987, c. 121; 1989 (Reg. Sess., 1990), cc. 831, 832; (As to Article 12) 1991, c. 198; 1993, c. 276, s. 1; c. 277, s. 3; 1995 (Reg. Sess., 1996) c. 610, s. 1; 1997-445, s. 2; (As to Article 12) 2001-190, s. 4; city of Charlotte: (As to Article 12) 1981, c. 55; 1983, c. 92; 2000-26, s. 1, as amended by 2007-255, s. 1; city of Clinton: 1985 (Reg. Sess., 1986), c. 943, s. 2; city of Conover: (As to Article 12) 2006-165, s. 1; city of Durham: 1987, c. 756, s. 4; city of Elizabeth City: 1979, c. 129; (As to Article 12) city of Goldsboro: 2004-94; city of Kinston: 1981, c. 176; 1987 (Reg. Sess., 1988), c. 918; c. 1002; (As to Article 12) 1993, c. 265, s. 1; 2000-48, s. 2; city of Lenoir: 1985, c. 493; (As to Article 12) city of Lincolnton: 1995, c. 57, s. 1; city of Lumberton: 1983 (Reg. Sess., 1984), c. 996; city of Morganton: 1987, c. 265, s. 2; 1987 (Reg. Sess., 1988), c. 1002; city of Mount Airy: 1985, c. 282; 1998-82; 2003-281, s. 1 (as to Article 12); city of New Bern: 1998-29; city of Oxford: 1989 (Reg. Sess., 1990), c. 833, s. 1; city of Raleigh: 1997-39, s. 1; city of Roanoke Rapids: 1997-39, s. 1; (As to Article 12) 1991, c. 197; 2003-43, s. 1; city of Salisbury: 1987, c. 205, s. 1; city of Shelby: 1999-5, s. 1; city of Statesville: 1987, c. 265, s. 2; 1989, c. 241, s. 1; (As to Article 12) city of Thomasville: 2002-53, s. 1; city of Washington: 1983 (Reg. Sess., 1984), c. 941; (As to Article 12) 1993, c. 133, s. 1; city of Whiteville: 1987 (Reg. Sess., 1988), c. 1018, s. 1; city of Wilson: 1983, c. 748; town of Ayden: 1991, c. 58; town of Black Creek: 1985, c. 286; (As to Article 12) town of Butner: 2007-269, s. 3; town of Cerro Gordo: 1995 (Reg. Sess. 1996), c. 708; town of Carrboro: 1987, c. 476, s. 1; 1989, c. 97,

s. 1; town of Chadbourn: 1989 (Reg. Sess., 1990), c. 895, s. 11.1; town of Elkin: 1997-130; 1997-131; (As to Article 12) town of Fairmont: 2001-2; (As to Article 12) town of Faison: 1998-40, s. 3; (As to Article 12) town of Farmville: 2005-29, s. 1; town of Garner: 1989, c. 270, s. 1; town of Greenevers: 1985, c. 34; town of Kernersville: 1987 (Reg. Sess., 1988), c. 920; 1989 (Reg. Sess., 1990), c. 983; (As to Article 12) 2001-80; 2005-433, s. 7(a), (b) (as to Article 12); (As to Article 12) town of Maxton: 1995 (Reg. Sess., 1996), c. 576, s. 1; town of Pilot Mountain: 1985, c. 291, ss. 6, 8; (as to Article 12) town of Pinebluff: 2003-48, s. 1, as amended by 2004-53, s. 1; (as to Article 12) town of Red Springs: 1995, c. 203, s. 1; (As to Article 12) town of Rosman: 2009-154, s. 1(a)-(e) (as to construction and provision of affordable housing for certain employees); town of Tabor City: 1987 (Reg. Sess., 1988), c. 919; town of Tryon: 1987, c. 56; town of Wake Forest: 1985, c. 195; (As to Article 12) town of Wallace: 1998-40, s. 1; town of Waynesville: 1997-139, s. 1; village of Pinehurst: 1989, c. 375, ss. 1, 1.1; (As to Article 12) Asheville-Buncombe Technical Community College: 2000-99, s. 1; (As to Article 12) Asheville City Board of Education: 2007-239, s. 2; (As to Article 12) Bladen County Board of Education: 2003-122, ss. 1, 2; (As to Article 12) Burlington City Board of Education: 1993 (Reg. Sess., 1994), c. 639, s. 1; (As to Article 12) Clinton City Board of Education: 2004-69; Clinton-Sampson Agri-Civic Center Commission: 1985 (Reg. Sess., 1986), c. 943, s. 2; (As to Article 12) Edgecombe County Board of Education: 2009-161, ss. 1-4 (as to construction and provision of affordable housing for certain employees); Foothills Regional Airport Authority: 2000-9, s. 7; (As to Article 12) Hertford County Board of Education: 2006-86, ss. 1-3 (as to construction, provision or maintenance of affordable rental housing on property owned or leased by Hertford County Board of Education and rent of housing units owned by the Board with priority for teachers); (As to Article 12) High Point Alcoholic Beverage Control Board: 2006-89, s. 1; (As to Article 12) Iredell-Statesville Schools: 2006, c. 45, ss. 1, 1.1; Mayland Community College: 2003-320, s. 1, as amended by 2004-203, s. 81, and as amended by 2006-5, s. 1; Moore County Board of Education: 1999-176, s. 1 (use of buses for tournament June 12, 1999-June 20, 1999); 2004-68; New Hanover County Board of Education: 1985 (Reg. Sess., 1986), c. 917; Pender County Board of Education: 1996, 2nd Ex. Sess., c. 16, s. 1; (As to Article 12) Transylvania County Board of Education: 2009-154, s. 1(a)-(e) (as to construction and provision of affordable housing for certain employees); (As to Article 12) Wilkes County Board of Education: 2001-58.

Editor's Note. — Session Laws 1997-39 would have amended Session Laws 1993, c. 650, s. 2, to add the cities of Raleigh and Roanoke Rapids and the Town of Waynesville to that local modification; however, Session Laws 1993, c. 650, was repealed by Session Laws 1997-180, s. 2.

Session Laws 1999-386, s. 4, effective August 4, 1999, provides that, notwithstanding the requirements of G.S. 131E-8, G.S. 131E-13, G.S. 131E-14, G.S. 153A-176, and Article 12 of Chapter 160A of the General Statutes, and any past compliance or failure to comply with those requirements, the prior conveyance by a municipality as defined in G.S. 131E-6(5), or by a hospital authority as defined in G.S. 131E-16(14), of a hospital facility that currently serves as collateral in a transaction involving North Carolina Medical Care Commission bonds issued under Part 10 of Article 3 of Chapter 143B of the General Statutes is hereby validated. Section 5 of the act provides that Section 4 shall not apply to litigation pending on or before the effective date.

Session Laws 2001-29, ss. 1 and 2, as amended by Session Laws 2001-386, s. 3, provide: "Section 1. This act is for the public purposes of benefiting citizens who were adversely affected by the floods accompanying Hurricane Floyd, promoting economic and community development, and strengthening the tax base.

"Section 2. A county may sell any improvements affixed to or located on real property that it has purchased through the Hazard Mitigation Grant Program related to Hurricane Floyd. These improvements may be sold and are exempt from the restrictions and limitations required to effectuate sales of real or personal property provided for in Article 12 of Chapter 160A of the General Statutes. No dwelling may be sold pursuant to this section unless the following requirements are met:

"(1) The dwelling may be sold only to the verifiable owner of the dwelling at the time of Hurricane Floyd, September 15, 1999, and must initially be reoccupied by the same owner.

"(2) The dwelling must have been properly repaired in compliance with the North Carolina Building Code as verified by the county Planning and Development Department by issuance of a building permit, subsequent inspections, and a certificate of occupancy.

"(3) The dwelling must be sold on or before December 31, 2002."

CASE NOTES

Applied in Watts v. Town of Valdese, 65 N.C. App. 822, 310 S.E.2d 152 (1984).

Cited in Concrete Mach. Co. v. City of Hickory, 134 N.C. App. 91, 517 S.E.2d 155 (1999).

§ 160A-266. Methods of sale; limitation.

(a) Subject to the limitations prescribed in subsection (b) of this section, and according to the procedures prescribed in this Article, a city may dispose of real or personal property belonging to the city by:

(1) Private negotiation and sale;
(2) Advertisement for sealed bids;
(3) Negotiated offer, advertisement, and upset bid;
(4) Public auction; or
(5) Exchange.

(b) Private negotiation and sale may be used only with respect to personal property valued at less than thirty thousand dollars ($30,000) for any one item or group of similar items. Real property, of any value, and personal property valued at thirty thousand dollars ($30,000) or more for any one item or group of similar items may be exchanged as permitted by G.S. 160A-271, or may be sold by any method permitted in this Article other than private negotiation and sale, except as permitted in G.S. 160A-277 and G.S. 160A-279.

Provided, however, a city may dispose of real property of any value and personal property valued at thirty thousand dollars ($30,000) or more for any one item or group of similar items by private negotiation and sale where (i) said real or personal property is significant for its architectural, archaeological, artistic, cultural or historical associations, or significant for its relationship to other property significant for architectural, archaeological, artistic, cultural or historical associations, or significant for its natural, scenic or open condition; and (ii) said real or personal property is to be sold to a nonprofit corporation or trust whose purposes include the preservation or conservation of real or personal properties of architectural, archaeological, artistic, cultural, historical, natural or scenic significance; and (iii) where a preservation agreement or conservation agreement as defined in G.S. 121-35 is placed in the deed conveying said property from the city to the nonprofit corporation or trust. Said nonprofit corporation or trust shall only dispose of or use said real or personal property subject to covenants or other legally binding restrictions which will promote the preservation or conservation of the property, and, where appropriate, secure rights of public access.

(c) A city council may adopt regulations prescribing procedures for disposing of personal property valued at less than thirty thousand dollars ($30,000) for any one item or group of items in substitution for the requirements of this Article. The regulations shall be designed to secure for the city fair market value for all property disposed of and to accomplish the disposal efficiently and economically. The regulations may, but need not, require published notice, and may provide for either public or private exchanges and sales. The council may authorize one or more city officials to declare surplus any personal property valued at less than thirty thousand dollars ($30,000) for any one item or group of items, to set its fair market value, and to convey title to the property for the city in accord with the regulations. A city official authorized under this section to dispose of property shall keep a record of all property sold under this section and that record shall generally describe the property sold or exchanged, to whom it was sold, or with whom exchanged, and the amount of money or other consideration received for each sale or exchange.

(d) A city may discard any personal property that: (i) is determined to have no value; (ii) remains unsold or unclaimed after the city has exhausted efforts to sell the property using any applicable procedure under this Article; or (iii) poses a potential threat to the public health or safety. (1971, c. 698, s. 1; 1973, c. 426, s. 42.1; 1983, c. 130, s. 1; c. 456; 1987, c. 692, s. 2; 1987 (Reg. Sess., 1988), c. 1108, s. 9; 1997-174, s. 6; 2001-328, s. 4; 2005-227, s. 3.)

Local Modification. — Durham: 1993 (Reg. Sess., 1994), c. 627, s. 2; Gaston: 2000-96; Macon: 1989 (Reg. Sess., 1990), c. 998; Mecklenburg: 2000-65, as amended by 2001-102, as reenacted by 2003-49, s. 1, as amended by 2005-158 and as amended by 2007-33, s. 1; city of Durham: 1993 (Reg. Sess., 1994), c. 627, s. 1; town of Rutherfordton: 1979, c. 350; town of Saluda: 1985 (Reg. Sess., 1986), c. 984; Durham County School Administrative Unit: 1993 (Reg. Sess., 1994), c. 627, s. 2.

Editor's Note. — Session Laws 1997-174, s. 8, provides: "This act raises the threshold amount in G.S. 143-129 and G.S. 160A-266. If any local act provides a threshold amount for the subjects addressed in these statutes that is less than the amount provided in this act, this act prevails to the extent of that conflict."

Session Laws 2005-227, s. 5, provides: "This act raises the threshold amount [$30,000] in G.S. 143-131 and G.S. 160A-266. If any local act provides a threshold amount for the subjects addressed in these statutes that is less than the amount provided in this act, this act prevails to the extent of that conflict."

CASE NOTES

Editor's Note. *— The cases cited below were decided prior to enactment of this Article.*

Relationship to G.S. 1A-1, N.C. R. Civ. P. 8(a). — Language of a letter attached to pleadings controlled over plaintiff's allegations and refuted his argument that an exchange of properties contemplated by an interlocal agreement was hastily arranged; therefore the claim failed to overcome the presumption of legality afforded to acts by public officials. The allegations were grievances, rather than allegations sufficient to demonstrate bad faith circumvention of the statutory requirements of G.S. 160A-266. Reese v. Charlotte-Mecklenburg Bd. of Educ. & Mecklenburg, — N.C. App. —, 676 S.E.2d 481, 2009 N.C. App. LEXIS 532 (2009).

What Real Estate May Be Sold. — Town or city authorities may sell any personal property, or sell or lease any real estate which belongs to such town or city, as the surplus of the original acreage ceded for the town or city site, or such land as may have been subsequently acquired or purchased. But in no case may such power be extended to the sale or lease of any real estate which is to be held in trust for the use of the town, or any real estate which is devoted to the purpose of government. To enable the town to sell such real estate there must be a special act of the General Assembly authorizing such sale or lease. Southport v. Stanly, 125 N.C. 464, 34 S.E. 641 (1899); Brockenbrough v. Board of Water Comm'rs, 134 N.C. 1, 46 S.E. 28 (1903).

Conveyance of Land Dedicated for Street. — When a city conveys land bounded by an established street, and the grantee enters upon and improves the land, a subsequent conveyance by the corporation of the land covered by the street, whereby the easement of the appurtenant owner is interfered with, is void. But where there have been no improvements made on a dedicated street and the dedicated land has never been used as a street, a city by an act of legislature conferring authority may sell and convey the land so dedicated to it for street purposes. Moose v. Carson, 104 N.C. 431, 10 S.E. 689 (1889); Church v. Dula, 148 N.C. 262, 61 S.E. 639 (1908).

Contract for removal of sludge from city's sewerage disposal plant related to a service and not a sale of city property within the meaning of the statute requiring sale of city property to be made by auction. Plant Food Co. v. City of Charlotte, 214 N.C. 518, 199 S.E. 712 (1938).

Employment of Real Estate Agent. — Municipality has the authority, in the exercise of its discretion in determining the means for selling, at public auction, parcels of land acquired by foreclosure of tax and street assessment liens, to employ a real estate agent upon commission to obtain a responsible bidder at the sale to bid a sum sufficient to protect the municipality's interest. Cody Realty & Mtg. Co. v. City of Winston-Salem, 216 N.C. 726, 6 S.E.2d 501 (1940).

City and County Had Authority to Enter Agreement. — Property transactions encompassed by an Interlocal Cooperation Agreement between a city and a county were authorized by G.S. 160A-461, G.S. 160A-460(1), G.S. 160A-274(b), and G.S. 160A-266(a). The city and the county entered into the agreement to achieve the specific government-related goals of the development of an urban park; the development of a mixed-use, residential-commercial community; the development of a baseball stadium; and the sale of a city square to fund infrastructure improvements for the baseball facility. Reese v. City of Charlotte, — N.C. App. —, 676 S.E.2d 493, 2009 N.C. App. LEXIS 506 (2009).

OPINIONS OF ATTORNEY GENERAL

Municipality may not convey real estate to a non-profit corporation without consideration so that said property may be restored as an historic site. See opinion of Attorney General to Mr. Kyle Hayes, North Wilkesboro Town Attorney, 40 N.C.A.G. 500 (1969), issued under former G.S. 160-59.

§ 160A-267. Private sale.

When the council proposes to dispose of property by private sale, it shall at a regular council meeting adopt a resolution or order authorizing an appropriate city official to dispose of the property by private sale at a negotiated price. The resolution or order shall identify the property to be sold and may, but need not, specify a minimum price. A notice summarizing the contents of the resolution or order shall be published once after its adoption, and no sale shall be consummated thereunder until 10 days after its publication. (1971, c. 698, s. 1; 1979, 2nd Sess., c. 1247, s. 24.)

Local Modification. — Mecklenburg: 1981, c. 510; town of Wake Forest: 1987, c. 160.

§ 160A-268. Advertisement for sealed bids.

The sale of property by advertisement for sealed bids shall be done in the manner prescribed by law for the purchase of property, except that in the case of real property the advertisement for bids shall be begun not less than 30 days before the date fixed for opening bids. (1971, c. 698, s. 1.)

§ 160A-269. Negotiated offer, advertisement, and upset bids.

A city may receive, solicit, or negotiate an offer to purchase property and advertise it for upset bids. When an offer is made and the council proposes to accept it, the council shall require the offeror to deposit five percent (5%) of his bid with the city clerk, and shall publish a notice of the offer. The notice shall contain a general description of the property, the amount and terms of the offer, and a notice that within 10 days any person may raise the bid by not less than ten percent (10%) of the first one thousand dollars ($1,000) and five percent (5%) of the remainder. When a bid is raised, the bidder shall deposit with the city clerk five percent (5%) of the increased bid, and the clerk shall readvertise the offer at the increased bid. This procedure shall be repeated until no further qualifying upset bids are received, at which time the council may accept the offer and sell the property to the highest bidder. The council may at any time reject any and all offers. (1971, c. 698, s. 1; 1979, 2nd Sess., c. 1247, s. 25.)

Local Modification. — City of Charlotte: 2000-26, s. 1, as amended by 2007-255, s. 1.

§ 160A-270. Public auction.

(a) Real Property. — When it is proposed to sell real property at public auction, the council shall first adopt a resolution authorizing the sale, describing the property to be sold, specifying the date, time, place, and terms of sale, and stating that any offer or bid must be accepted and confirmed by the council before the sale will be effective. The resolution may, but need not, require the highest bidder at the sale to make a bid deposit in a specified amount. The council shall then publish a notice of the sale at least once and not less than 30 days before the sale. The notice shall contain a general description of the land sufficient to identify it, the terms of the sale, and a reference to the authorizing resolution. After bids have been received, the highest bid shall be reported to the council, and the council shall accept or reject it within 30 days thereafter. If the bid is rejected, the council may readvertise the property for sale.

(b) Personal Property. — When it is proposed to sell personal property at public auction, the council shall at a regular council meeting adopt a resolution or order authorizing an appropriate city official to dispose of the property at public auction. The resolution or order shall identify the property to be sold and set out the date, time, place, and terms of the sale. The resolution or order (or a notice summarizing its contents) shall be published at least once and not less than 10 days before the date of the auction.

(c) The council may conduct auctions of real or personal property electronically by authorizing the establishment of an electronic auction procedure or by authorizing the use of existing private or public electronic auction services. Notice of an electronic auction of property shall identify, in addition to the information required in subsections (a) and (b) of this section, the electronic address where information about the property to be sold can be found and the electronic address where electronic bids may be posted. Notice may be published in a newspaper having general circulation in the political subdivision or by electronic means, or both. A decision to publish notice solely by electronic means for a particular auction or for all auctions under this subsection shall be approved by the governing board of the political subdivision. Except as provided in this subsection, all requirements of subsections (a) and (b) of this section apply to electronic auctions. (1971, c. 698, s. 1; 1973, c. 426, s. 43; 2001-328, s. 5; 2005-227, s. 4; 2006-264, s. 74.)

CASE NOTES

Editor's Note. *— The cases cited below were decided under former similar provisions.*

Requirement of public notice has no application to actual partition of land in which a municipality owns an interest. Actual partition between tenants in common involves no sale or disposal of land or any interest therein. Craven County v. First-Citizens Bank & Trust Co., 237 N.C. 502, 75 S.E.2d 620 (1953).

Effect of Noncompliance with Notice Requirements. — If the publication of notice fails to comply in substance with the law, especially as to the time of publication, a purchaser does not acquire a marketable title. Bagwell v. Town of Brevard, 267 N.C. 604, 148 S.E.2d 635 (1966).

Advertisement Held Not to Relate Back to Prior Publication of Notice. — An advertisement for the sale of municipal property on a date less than 30 days after the first publication of notice could not relate back to a prior publication of notice, even though the prior notice related to substantially the same land, when the prior notice stipulated a different date for the sale and contained material differences in the terms of payment, as well as a discrepancy in the quantity of land to be sold and whether the land would be offered for sale as a whole or in separate tracts; therefore, the purported sale on the date specified in the second advertisement was a nullity. Bagwell v. Town of Brevard, 267 N.C. 604, 148 S.E.2d 635 (1966).

§ 160A-271. Exchange of property.

A city may exchange any real or personal property belonging to the city for other real or personal property by private negotiation if the city receives a full and fair consideration in exchange for its property. A city may also exchange facilities of a city-owned enterprise for like facilities located within or outside the corporate limits. Property shall be exchanged only pursuant to a resolution authorizing the exchange adopted at a regular meeting of the council upon 10 days' public notice. Notice shall be given by publication describing the properties to be exchanged, stating the value of the properties and other consideration changing hands, and announcing the council's intent to authorize the exchange at its next regular meeting. (1971, c. 698, s. 1; 1973, c. 426, s. 42.1.)

§ 160A-272. Lease or rental of property.

Any property owned by a city may be leased or rented for such terms and upon such conditions as the council may determine, but not for longer than 10 years (except as otherwise provided herein) and only if the council determines that the property will not be needed by the city for the term of the lease. In determining the term of a proposed lease, periods that may be added to the original term by options to renew or extend shall be included. Property may be rented or leased only pursuant to a resolution of the council authorizing the execution of the lease or rental agreement adopted at a regular council meeting upon 10 days' public notice. Notice shall be given by publication describing the property to be leased or rented, stating the annual rental or lease payments, and announcing the council's intent to authorize the lease or rental at its next regular meeting.

No public notice need be given for resolutions authorizing leases or rentals for terms of one year or less, and the council may delegate to the city manager or some other city administrative officer authority to lease or rent city property for terms of one year or less. Leases for terms of more than 10 years shall be treated as a sale of property and may be executed by following any of the procedures authorized for sale of real property. (1971, c. 698, s. 1; 1979, 2nd Sess., c. 1247, s. 26.)

Local Modification. — Cabarrus: 2000-88, s. 2; Columbus: 1995 (Reg. Sess., 1996), c. 709, s. 1; Duplin: 1987, c. 50; 1987 (Reg. Sess., 1988), c. 1006, s. 6; Durham: 2005-172, s. 1; Lincoln: 1983 (Reg. Sess., 1984), c. 944; 1989, c. 411, s. 1; Montgomery: 2001-485, s. 3.1; Pasquotank: 1991, c. 382; Sampson: 1985 (Reg. Sess., 1986), c. 943, s. 2; Tyrrell: 1987, c. 781, s. 1.1; Wake: 1979, c. 275; Wilson: 1983, c. 239; city of Asheboro: 1989 (Reg. Sess., 1990), c. 867; city of Charlotte: 2000-26, s. 1, as amended by 2007-255, s. 1; city of Concord: 1985, c. 355, as amended by 2000-88, s. 2; city of Gastonia: 1991, c. 557, s. 1; city of Mount Airy: 2003-281, s. 1; city of Raleigh: 2009-149, s. 2; city of Salisbury: 1987, c. 205, s. 1; city of Statesville: 1983 (Reg. Sess., 1984), c. 940; 1987 (Reg. Sess., 1988), c. 883; city of Winston-Salem: 2009-149, s. 2; town of Beaufort: 1979, c. 371; town of Columbia: 1987, c. 781, s. 1.1; town of Hope Mills: 1985, c. 285; town of Huntersville: 2009-298; town of Kenansville: 1987, c. 50; town of Manteo: 1985 (Reg. Sess., 1986), c. 808; town of Matthews: 2001-102; town of Newport: 1998-30; village of Wesley Chapel: (as to lease of property to YMCA) 2008-60, s. 1; Carteret County Board of Education: 2002-35, s. 1 (as to lease of property to Boys and Girls Club); Duplin County Board of Education: 1987, c. 50; Elizabeth City—Pasquotank County Airport Authority: 1991, c. 26; Goldsboro-Wayne Airport Authority: 1987 (Reg. Sess., 1988), c. 1006, s. 5; Warren Field Airport Commission: 2002-84, s. 1.

CASE NOTES

A municipal corporation has a twofold character and dual powers. The one is variously designated as public, governmental, political or legislative, in which the municipal corporation acts as an agency of the State. The other is variously designated as municipal, private, quasi-private, or proprietary. Lewis v. City of Washington, 63 N.C. App. 552, 305 S.E.2d 752, modified on other grounds, 309 N.C. 818, 310 S.E.2d 610 (1983).

This section empowers a city to lease or rent any property owned by the city for such terms and upon such conditions as the council may determine. This power is to be exercised by the governing body of the municipality acting in its proprietary, rather than its governmental capacity. Lewis v. City of Washington, 63 N.C. App. 552, 305 S.E.2d 752, modified on other grounds, 309 N.C. 818, 310 S.E.2d 610 (1983).

The city's proprietary or corporate power to contract for the leasing of its

property is limited. It cannot be exercised so as to disadvantageously affect the governing body's governmental powers. The true test is whether the contract itself deprives a governing body, or its successor, of a discretion which public policy demands should be left unimpaired. Lewis v. City of Washington, 63 N.C. App. 552, 305 S.E.2d 752, modified on other grounds, 309 N.C. 818, 310 S.E.2d 610 (1983).

Leasing Property is a Proprietary Activity. — The rule of governmental immunity did not bar plaintiff's claim against the town because the town's execution of a lease of town property was proprietary in nature. Stephenson v. Town of Garner, 136 N.C. App. 444, 524 S.E.2d 608, 2000 N.C. App. LEXIS 54 (2000).

Applied in National Medical Enters., Inc. v. Sandrock, 72 N.C. App. 245, 324 S.E.2d 268 (1985).

Cited in BellSouth Telecomms., Inc. v. City of Laurinburg, 168 N.C. App. 75, 606 S.E.2d 721, 2005 N.C. App. LEXIS 164.

§ 160A-272.1. Lease of utility or enterprise property.

Subject to G.S. 160A-321, a city-owned utility or public service enterprise, or part thereof, may be leased. (1979, 2nd Sess., c. 1247, s. 27.)

§ 160A-273. Grant of easements.

A city shall have authority to grant easements over, through, under, or across any city property or the right-of-way of any public street or alley that is not a part of the State highway system. Easements in a street or alley right-of-way shall not be granted if the easement would substantially impair or hinder the use of the street or alley as a way of passage. A grant of air rights over a street right-of-way or other property owned by the city for the purpose of erecting a building or other permanent structure (other than utility wires or pipes) shall be treated as a sale of real property, except that a grant of air rights over a street right-of-way for the purpose of constructing a bridge or passageway between existing buildings on opposite sides of the street shall be treated as a grant of an easement..(1971, c. 698, s. 1.)

CASE NOTES

Constitutionality. — This section is not a special act and does not violate N.C. Const., Art. II, § 24, which prohibits the enactment of any local, private, or special act or resolution regulating labor, trade, mining, or manufacturing. Cheape v. Town of Chapel Hill, 320 N.C. 549, 359 S.E.2d 792 (1987).

§ 160A-274. Sale, lease, exchange and joint use of governmental property.

(a) For the purposes of this section, "governmental unit" means a city, county, school administrative unit, sanitary district, fire district, the State, or any other public district, authority, department, agency, board, commission, or institution.

(b) Any governmental unit may, upon such terms and conditions as it deems wise, with or without consideration, exchange with, lease to, lease from, sell to, or purchase from any other governmental unit any interest in real or personal property.

(c) Action under this section shall be taken by the governing body of the governmental unit. Action hereunder by any State agency, except the Department of Transportation, shall be taken only after approval by the Department of Administration. Action with regard to State property under the control of the Department of Transportation shall be taken by the Department of Transportation or its duly authorized delegate. Provided, any county board of education or board of education for any city administrative unit may, upon such terms and conditions as it deems wise, lease to another governmental unit for one dollar ($1.00) per year any real property owned or held by the board which has been determined by the board to be unnecessary or undesirable for public school purposes. (1969, c. 806; 1971, c. 698, s. 1; 1973, c. 507, s. 5; 1975, c. 455; c. 664, s. 9; c. 879, s. 46; 1977, c. 464, s. 34; 2001-328, s. 6.)

Local Modification. — Cabarrus: 1991 (Reg. Sess., 1992), c. 848, ss. 2, 3; Carteret: 1991 (Reg. Sess., 1992), c. 1001, s. 2; Duplin: 1991 (Reg. Sess., 1992), c. 1001, s. 2; Iredell: 1991 (Reg. Sess., 1992), c. 1001, s. 2; New Hanover: 1977, c. 97; 1981, c. 437; Rowan: 1991 (Reg. Sess., 1992), c. 848, ss. 2, 3; Stanly: 1991 (Reg. Sess., 1992), c. 848, ss. 2, 3; Hertford County Board of Education: 1985, c. 123.

Cross References. — As to the sale, exchange or lease of school property, see G.S. 115C-518. For provisions regarding Ashe, Avery, Brunswick, Chowan, Forsyth, Harnett, Haywood, Lee, Macon, Nash, Orange, Pasquotank, Richmond and Sampson Counties and local boards of education for school administrative units in or for Ashe, Avery, Brunswick, Chowan, Forsyth, Harnett, Haywood, Lee, Macon, Nash, Orange, and Pasquotank Counties, see the editor's note under G.S. 153A-158.1.

Editor's Note. — Session Laws 1999-115, s. 4, provides that s. 3, which repealed local modifications to this section, becomes effective January 1, 2000, and shall not be construed to alter any agreements entered into before that date.

CASE NOTES

Presumption of Legality and Correctness. — Board of education's resolution to authorize its chairman to approve an interlocal agreement was afforded a presumption of legality and correctness: (1) G.S. 160A-274, G.S. 153A-158, G.S. 115C-36, and G.S. 115C-518 authorized the board, upon such terms and conditions as it deemed wise, to exchange property owned by the board, based upon a determination that the property was no longer suitable and necessary for public school purposes; (2) the board determined that the replacement office space in the Government Center was more suitable for its needs; (3) this determination was adequate to meet the unnecessary or unsuitable requirement of G.S. 115C-518, (4) plaintiff failed to overcome the presumption of legality afforded public officials; therefore (5) plaintiff's complaint did not state a cause of action, as required by G.S. 1A-1, N.C. R. Civ. P. 8(a), for which relief could be granted. Reese v. Charlotte-Mecklenburg Bd. of Educ. & Mecklenburg, — N.C. App. —, 676 S.E.2d 481, 2009 N.C. App. LEXIS 532 (2009).

Authority to Act. — Although plaintiff's complaint alleged that public officials acted to the detriment of other interested parties, there were no allegations that those officials acted to enrich themselves or in wanton disregard of the public good. The complaint did not allege, nor did answers admit, that either a city or a county had agreed, hastily or otherwise, to pay or exchange property for less than the appraised or fair market value, in violation of G.S. 160A-274. Reese v. Charlotte-Mecklenburg Bd. of Educ. & Mecklenburg, — N.C. App. —, 676 S.E.2d 481, 2009 N.C. App. LEXIS 532 (2009).

While the acts described in G.S. 160A-274 were not as transaction specific as the legislation described in Carter, they were sufficiently broad enough to encompass the transactions that were the subject of this litigation and to meet the requirements of Dillon's Rule. Reese v. Charlotte-Mecklenburg Bd. of Educ. & Mecklenburg, — N.C. App. —, 676 S.E.2d 481, 2009 N.C. App. LEXIS 532 (2009).

Purchase and Gift of Property Improper. — County exceeded its statutory authority where it purchased land and gave it to the State as an enticement for the building of a State prison. Carter v. Stanly County, 125 N.C. App. 628, 482 S.E.2d 9 (1997), cert. denied, 346 N.C. 276, 487 S.E.2d 540 (1997).

City and County Had Authority to Enter Agreement. — Property transactions encompassed by an Interlocal Cooperation Agreement between a city and a county were authorized by G.S. 160A-461, G.S. 160A-460(1), G.S. 160A-274(b), and G.S. 160A-266(a). The city and the county entered into the agreement to achieve the specific government-related goals of the development of an urban park; the development of a mixed-use, residential-commercial community; the development of a baseball stadium; and the sale of a city square to fund infrastructure improvements for the baseball facility. Reese v. City of Charlotte, — N.C. App. —, 676 S.E.2d 493, 2009 N.C. App. LEXIS 506 (2009).

OPINIONS OF ATTORNEY GENERAL

Town had authority to lease land to town ABC Board on which to build a building, unless some contrary provision of the town's charter controlled. See opinion of Attorney General to Mr. W.F. Southern, Mayor Pro Tempore, Town of Walnut Cove, 40 N.C.A.G. 483 (1969), issued under former G.S. 160-61.2.

§ 160A-275. Warranty deeds.

Any city, county, or other municipal corporation is authorized to execute and deliver deeds to any real property with full covenants of warranty, without regard to how the property was acquired, when, in the opinion of the governing body, it is in the best interest of the city, county, or other municipal corporation to convey by warranty deed. Members of the governing boards of counties, cities, and other municipal corporations are hereby relieved of any personal or individual liability by reason of the execution of warranty deeds to governmentally owned property unless they act in fraud, malice, or bad faith. (1945, c. 962; 1955, c. 935; 1969, cc. 48, 223, 332; c. 1003, s. 5; 1971, c. 698, s. 1.)

Local Modification. — Cumberland: 1991, c. 57.

§ 160A-276. Sale of stocks, bonds, and other securities.

A city may sell through a broker without complying with the preceding sections of this Article shares of common and preferred stock, bonds, options, and warrants or other rights with respect to stocks and bonds, and other securities, when the stock, bond, or other right or security has an established market and is traded in the usual course of business on a national stock exchange or over-the-counter by reputable brokers and securities dealers. The city may pay the usual fees and taxes incident to such transactions. Nothing in this section authorizes a city to deal in its own bonds in any manner inconsistent with Chapter 159 of the General Statutes, nor to invest in any securities not authorized by G.S. 159-30. (1973, c. 426, s. 44.)

§ 160A-277. Sale of land to volunteer fire departments and rescue squads; procedure.

(a) A city, upon such terms and conditions as it deems wise, with or without monetary consideration may lease, sell or convey to a volunteer fire department or to a volunteer rescue squad any land or interest in land, for the purpose of constructing or expanding fire department or rescue squad facilities, if the volunteer fire department or volunteer rescue squad provides fire protection or rescue services to the city.

(b) Any lease, sale or conveyance under this section must be approved by the city council by resolution adopted at a regular meeting of the council upon 10 days' public notice. Notice shall be given by publication describing the property to be leased or sold, stating the value of the properties, the proposed monetary consideration or lack thereof, and the council's intent to authorize the lease, sale or conveyance. (1979, c. 583.)

Local Modification. — Onslow: 1981, c. 115.

§ 160A-278. Lease of land for housing.

A city may lease land upon such terms and conditions as it deems wise to any person, firm or corporation who will use the land to construct housing for the benefit of persons of low income, or moderate income, or low and moderate income. Such a housing project may also provide housing to persons of other than low or moderate income, as long as at least twenty percent (20%) of the units in the project are set aside for the exclusive use of persons of low income. Despite the provisions of G.S. 160A-272, a lease authorized pursuant to this section may be made by private negotiation and may extend for longer than 10 years. Property may be leased under this section only pursuant to a resolution of the council authorizing the execution of the lease adopted at a regular council meeting upon 10 days' public notice. Notice shall be given by publication describing the property to be leased, stating the value of the property, stating the proposed consideration for the lease, and stating the council's intention to authorize the lease. (1987, c. 464, s. 9.)

§ 160A-279. Sale of property to entities carrying out a public purpose; procedure.

(a) Whenever a city or county is authorized to appropriate funds to any public or private entity which carries out a public purpose, the city or county may, in lieu of or in addition to the appropriation of funds, convey by private sale to such an entity any real or personal property which it owns; provided no property acquired by the exercise of eminent domain may be conveyed under this section; provided that no such conveyance may be made to a for-profit corporation. The city or county shall attach to any such conveyance covenants or conditions which assure that the property will be put to a public use by the recipient entity. The procedural provisions of G.S. 160A-267 shall apply. Provided, however, that a city or county may convey to any public or private entity, which is authorized to receive appropriations from a city or county, surplus automobiles without compensation or without the requirement that the automobiles be used for a public purpose. Provided, however, this conveyance is conditioned upon conveyance by the public or private entity to Work First participants selected by the county department of social services under the rules adopted by the local department of social services. In the discretion of the public or private entity to which the city or county conveys the surplus automobile, when that entity conveys the vehicle to a Work First participant it may arrange for an appropriate security interest in the vehicle, including a lien or lease, until such time as the Work First participant satisfactorily completes the requirements of the Work First program. This subsequent conveyance by the public or private entity to the Work First participant may be without compensation. The participant may be required to pay for license, tag, and/or title.

(b) Notwithstanding any other provision of law, this section applies only to cities and counties and not to any other entity which this Article otherwise applies to.

(c) Repealed by Session Laws 1993, c. 491, s. 1.

(d) This section does not limit the right of any entity to convey property by private sale when that right is conferred by another law, public, or local. (1987, c. 692, s. 1; 1993, c. 491, s. 1; 1998-195, s. 1.)

Local Modification. — Mecklenburg: 1989, c. 354, s. 1; 1993, c. 491, s. 1; city of Charlotte: 1989, c. 354, s. 1; 1993, c. 491, s. 1; city of Durham: 1993 (Reg. Sess., 1994), c. 658, s. 1; city of Monroe: 1991, c. 319, s. 2; city of New Bern: 1993, c. 277, ss. 1, 2; c. 553, s. 76.

Legal Periodicals. — Legal Periodicals. - See Legislative Survey, 21 Campbell L. Rev. 323 (1999).

CASE NOTES

Cited in County of Moore v. Humane Soc'y of Moore County, Inc., 157 N.C. App. 293, 578 S.E.2d 682, 2003 N.C. App. LEXIS 644 (2003).

§ 160A-280. Donations of personal property to other governmental units.

(a) A city may donate to another governmental unit within the United States, a sister city, or a nonprofit organization incorporated by (i) the United States, (ii) the District of Columbia, or (iii) one of the United States, any personal property, including supplies, materials, and equipment, that the governing board deems to be surplus, obsolete, or unused. The governing board of the city shall post a public notice at least five days prior to the adoption of a resolution approving the donation. The resolution shall be adopted prior to making any donation of surplus, obsolete, or unused personal property. For purposes of this section a sister city is a city in a nation other than the United States that has entered into a formal, written agreement or memorandum of understanding with the donor city for the purposes of establishing a long term partnership to promote communication, understanding, and goodwill between peoples and to develop mutually beneficial activities, programs, and ideas. The agreement or memorandum of understanding establishing the sister city relationship shall be signed by the mayors or chief elective officer of both the donor and recipient cities.

(b) For the purposes of this section, the term "governmental unit" shall have the same meaning as defined by G.S. 160A-274(a) and shall include North Carolina charter schools.

(c) The authority granted to a city under this section is in addition to any authority granted under any other provision of law. (2007-430, s. 1; 2009-141, ss. 1, 2, 3.)

Effect of Amendments. — Session Laws 2009-141, ss. 1-3, effective June 19, 2009, in subsection (a), in the first sentence, deleted "a" following "donate to" near the beginning, and in the second sentence, deleted "or county" following "the city" near the beginning; in subsection (b), added "and shall include North Carolina charter schools" at the end; and in subsection (c), substituted "a city" for "a city, county, or governmental unit."

ARTICLE 13.

Law Enforcement.

§ 160A-281. Policemen appointed.

A city is authorized to appoint a chief of police and to employ other police officers who may reside outside the corporate limits of the city unless the council provides otherwise. (R.C., c. 111, s. 16; Code, c. 3803; Rev., s. 2926; C.S., s. 2641; 1969, c. 23, s. 1; 1971, c. 698, s. 1; 1973, c. 426, s. 45.)

Local Modification. — (As to Article 13) Eastern Band of the Cherokee: 1987, c. 427.

Legal Periodicals. — For comment, "Municipal Tort Liability for Negligent Failure to Provide Adequate Police Protection," see 20 Wake Forest L. Rev. 697 (1984).

CASE NOTES

Power to Send Policemen to Youth Development Center. — The explicit power of a municipality to appoint and employ police contemplates that the persons so engaged be qualified and competent, and therefore a municipality has implied authority, exercisable within the discretion of its governing body, to send its policemen to a police youth development center and to make proper expenditures for this purpose. Green v. Kitchin, 229 N.C. 450, 50 S.E.2d 545 (1948), decided prior to the enactment of § 160A-289, and commented on in 27 N.C.L. Rev. 500 (1949).

Cited in Isenhour v. Hutto, 350 N.C. 601, 517 S.E.2d 121 (1999).

OPINIONS OF ATTORNEY GENERAL

Company police officers were not properly municipal police officers of a town and could not hold themselves out as town officers or enforce state law on the streets and highways of the town. See opinion of Attorney General to Mr. G. Dewey Hudson, District Attorney, Fourth Prosecutorial District, 2001 N.C. AG LEXIS 4 (2/23/2001).

§ 160A-282. Auxiliary law-enforcement personnel; workers' compensation benefits.

(a) A city may by ordinance provide for the organization of an auxiliary police department made up of volunteer members.

(b) A city, by enactment of an ordinance, may provide that, while undergoing official training and while performing duties on behalf of the city pursuant to orders or instructions of the chief of police of the city, auxiliary law-enforcement personnel shall be entitled to benefits under the North Carolina Workers' Compensation Act and to any fringe benefits for which such volunteer personnel qualify.

(c) The board of commissioners of any county may provide that persons who are deputized by the sheriff of the county as special deputy sheriffs or persons who are serving as volunteer law-enforcement officers at the request of the sheriff and under his authority, while undergoing official training and while performing duties on behalf of the county pursuant to orders or instructions of the sheriff, shall be entitled to benefits under the North Carolina Workers' Compensation Act and to any fringe benefits for which such persons qualify. (1969, c. 206, s. 1; 1971, c. 698, s. 1; 1973, c. 1263, s. 1; 1979, c. 714, s. 2; 1979, 2nd Sess., c. 1247, s. 28.)

Local Modification. — Columbus: 1973, c. 1263, s. 2.

§ 160A-283. Joint county and city auxiliary police.

The governing body of any city, town, or county is hereby authorized to create and establish a joint law-enforcement officers' auxiliary force with one or more cities, towns, or counties. Each participating city, town, or county shall, by resolution or ordinance, establish the joint auxiliary police force. The resolution or ordinance shall specify whether the members of the joint auxiliary police force shall be volunteers or shall be paid. Members shall be appointed by the respective governmental units and shall take the oath required for regular police officers. The joint auxiliary force may be called into active service at any time by the mayor or chief of police of the participating town or city or the chairman of the board of commissioners or sheriff of a participating county. Members of the joint auxiliary force, while undergoing official training and while on active duty shall be members of the unit which called the auxiliary force into active duty and shall be entitled to all powers, privileges and immunities afforded by law to regularly employed law-enforcement officers of that unit including benefits under the Workers' Compensation Act. Members of the joint auxiliary force shall not be considered as public officers within the meaning of the North Carolina Constitution. Such members shall be dressed in the uniform prescribed by such auxiliary force at any time such members or member exercises any of the duties or authority herein provided for. (1971, c. 607; c. 896, s. 4; 1979, c. 714, s. 2.)

Cross References. — As to authority of counties under this section, see also G.S. 153A-212.

Editor's Note. — This section was enacted as G.S. 160-20.4. It was transferred to its present position by Session Laws 1971, c. 896, s. 4.

§ 160A-284. Oath of office; holding other offices.

Each person appointed or employed as chief of police, policeman, or auxiliary policeman shall take and subscribe before some person authorized by law to administer oaths the oath of office required by Article VI, Sec. 7, of the Constitution. The oath shall be filed with the city clerk. The offices of policeman, chief of police, and auxiliary policeman are hereby declared to be offices that may be held concurrently with any other appointive office pursuant to Article VI, Sec. 9, of the Constitution. The office of auxiliary policeman is hereby declared to be an office that may be held concurrently with any elective office pursuant to Article VI, Sec. 9, of the Constitution. (1971, c. 698, s. 1; c. 896, s. 4; 1975, c. 664, s. 10.)

Editor's Note. — This section was enacted as G.S. 160A-283. It was renumbered G.S. 160A-284 by Session Laws 1971, c. 896, s. 4.

CASE NOTES

Cited in Isenhour v. Hutto, 350 N.C. 601, 517 S.E.2d 121 (1999).

OPINIONS OF ATTORNEY GENERAL

Person holding appointive office as police officer can hold position as elected officer in either State or local government, including as a school board member. See opinion of Attorney General to Captain Bobby Kilgore, Monroe Public Safety Department, 55 N.C.A.G. 34 (1985).

§ 160A-285. Powers and duties of policemen.

As a peace officer, a policeman shall have within the corporate limits of the city all of the powers invested in law-enforcement officers by statute or common law. He shall also have power to serve all civil and criminal process that may be directed to him by any officer of the General Court of Justice and may enforce the ordinances and regulations of the city as the council may direct. (Code, s. 3811; Rev., s. 2927; C.S., s. 2642; 1971, c. 698, s. 1; c. 896, s. 4.)

Editor's Note. — This section was enacted as G.S. 160A-284. It was renumbered G.S. 160A-285 by Session Laws 1971, c. 896, s. 4.

CASE NOTES

Editor's Note. — *Some of the cases cited below were decided under former similar provisions.*

A policeman has the authority under general statute to deputize a citizen to aid him in serving a warrant for breach of the peace, a policeman being given the same authority, within the town limits, in making arrests as a sheriff. Tomlinson v. Norwood, 208 N.C. 716, 182 S.E. 659 (1935).

Service of Process Held Valid. — Where a town charter provided for the appointment of a chief of police or marshal and declared that, in the execution of process, he should have the same power, etc., which sheriffs and constables have, the service by such officer of a summons directed to "the sheriff of W. county or town constable of W. town" was valid. Lowe v. Harris, 121 N.C. 287, 28 S.E. 535 (1897).

Cited in State v. Gaines, 332 N.C. 461, 421 S.E.2d 569 (1992); Isenhour v. Hutto, 350 N.C. 601, 517 S.E.2d 121 (1999).

OPINIONS OF ATTORNEY GENERAL

Policemen Have the Duty to Serve Summonses and Petitions in Juvenile Cases. — See opinion of Attorney General to Mr. William Y. Bicketty, 41 N.C.A.G. 892 (1972).

§ 160A-286. Extraterritorial jurisdiction of policemen.

In addition to their authority within the corporate limits, city policemen shall have all the powers invested in law-enforcement officers by statute or common law within one mile of the corporate limits of the city, and on all property owned by or leased to the city wherever located.

Any officer pursuing an offender outside the corporate limits or extraterritorial jurisdiction of the city shall be entitled to all of the privileges, immunities, and benefits to which he would be entitled if acting within the city, including coverage under the workers' compensation laws. (1971, c. 698, s. 1; c. 896, s. 4; 1973, c. 426, s. 46; c. 1286, s. 24; 1991, c. 636, s. 3.)

Local Modification. — Gaston: 1985 (Reg. Sess., 1986), c. 836, s. 2; Sampson: 1985, c. 292; city of Clinton: 1985, c. 292, s. 1; town of Norwood: 1983, c. 91; town of Pittsboro: 1983, c. 348; Eastern Band of the Cherokee: 1987, c. 427, s. 3.

Editor's Note. — This section was enacted as G.S. 160A-285. It was renumbered G.S. 160A-286 by Session Laws 1971, c. 896, s. 4.

CASE NOTES

This section extends the extraterritorial power of city police officers beyond the mere power to arrest found in subsection (c) of G.S. 15A-402. State v. Treants, 60 N.C. App. 203, 298 S.E.2d 438 (1982), cert. denied, 307 N.C. 702, 301 S.E.2d 395 (1983).

This section and G.S. 15A-402 must be analyzed to determine what area the territorial jurisdiction of a municipal law-enforcement officer actually encompasses. State v. Treants, 60 N.C. App. 203, 298 S.E.2d 438 (1982), cert. denied, 307 N.C. 702, 301 S.E.2d 395 (1983).

Where police officer is acting within his territorial jurisdiction, the defendant has no right to resist, delay, or obstruct a search being conducted pursuant to a warrant. State v. Treants, 60 N.C. App. 203, 298 S.E.2d 438 (1982), cert. denied, 307 N.C. 702, 301 S.E.2d 395 (1983).

Applied in State v. Dark, 22 N.C. App. 566, 207 S.E.2d 290 (1974).

Cited in State v. Mangum, 30 N.C. App. 311, 226 S.E.2d 852 (1976); State v. Williams, 31 N.C. App. 237, 229 S.E.2d 63 (1976); State v. Proctor, 62 N.C. App. 233, 302 S.E.2d 812 (1983).

§ 160A-287. City lockups.

A city shall have authority to establish, erect, repair, maintain and operate a lockup for the temporary detention of prisoners pending their transferal to the county or district jail or the State Department of Correction. (Code, ss. 704, 3117; 1901, c. 283; 1905, c. 526; Rev., s. 2916; 1907, c. 978; P.L. 1917, c. 223; C.S., s. 2623; Ex. Sess. 1921, c. 58; 1927, c. 14; 1933, c. 69; 1949, c. 938; 1955, c. 77; 1959, c. 391; 1961, c. 308; 1967, c. 100, s. 2; c. 1122, s. 1; 1969, c. 944; 1971, c. 698, s. 1; c. 896, s. 4.)

Editor's Note. — This section was enacted as G.S. 160A-286. It was renumbered G.S. 160A-287 by Session Laws 1971, c. 896, s. 4.

CASE NOTES

Applied in Craven County Hosp. Corp. v. Lenoir County, 75 N.C. App. 453, 331 S.E.2d 690 (1985).

§ 160A-288. Cooperation between law-enforcement agencies.

(a) In accordance with rules, policies, or guidelines officially adopted by the governing body of the city or county by which he is employed, and subject to any conditions or restrictions included therein, the head of any law-enforcement agency may temporarily provide assistance to another agency in enforcing the laws of North Carolina if so requested in writing by the head of the requesting agency. The assistance may comprise allowing officers of the agency to work temporarily with officers of the requesting agency (including in an undercover capacity) and lending equipment and supplies. While working with the requesting agency under the authority of this section, an officer shall have the same jurisdiction, powers, rights, privileges and immunities (including those relating to the defense of civil actions and payment of judgments) as the officers of the requesting agency in addition to those he normally possesses. While on duty with the requesting agency, he shall be subject to the lawful operational commands of his superior officers in the requesting agency, but he shall for personnel and administrative purposes, remain under the control of his own agency, including for purposes of pay. He shall furthermore be entitled to workers' compensation and the same benefits when acting pursuant to this section to the same extent as though he were functioning within the normal scope of his duties.

(b) As used in this section:

(1) "Head" means any director or chief officer of a law-enforcement agency including the chief of police of a local department, chief of police of county police department, and the sheriff of a county, or an officer of one of the above named agencies to whom the head of that agency has delegated authority to make or grant requests under this section, but only one officer in the agency shall have this delegated authority at any time.

(2) "Law-enforcement agency" means only a municipal police department, a county police department, or a sheriff's department. All other State and local agencies are exempted from the provisions of this section.

(c) This section in no way reduces the jurisdiction or authority of State law-enforcement officers.

(d) For purposes of this section, the following shall be considered the equivalent of a municipal police department:

(1) Campus law-enforcement agencies established pursuant to G.S. 115D-21.1(a) or G.S. 116-40.5(a).

(2) Colleges or universities which are licensed, or exempted from licensure, by G.S. 116-15 and which employ company police officers

commissioned by the Attorney General pursuant to Chapter 74E or Chapter 74G of the General Statutes.

(3) Law enforcement agencies operated or eligible to be operated by a municipality pursuant to G.S. 63-53(2).

(4) Butner Public Safety.

(5) A Company Police agency of the Department of Agriculture and Consumer Services commissioned by the Attorney General pursuant to Chapter 74E of the General Statutes. (1967, c. 846; 1971, c. 698, s.1; c. 896, s.4; 1977, c. 534; 1981, c. 93, s. 2; 1987, c. 671, s. 4; 1989, c. 518, s. 2; 1991, c. 636, s. 3; 1991 (Reg. Sess., 1992), c. 1043, s. 6; 1997-143, s. 1; 1999-68, s. 4; 2005-231, s. 8; 2006-159, s. 4; 2009-94, s. 1.)

Cross References. — As to applicability to special peace officers employed by the Department of Environment and Natural Resources, see G.S. 113-28.2A. As to the employment of special police officers for the territory of the Butner Advisory Council Jurisdiction, see G.S. 122C-408. As to authority of counties under this section, see also G.S. 153A-212.

Editor's Note. — This section was enacted as G.S. 160A-287. It was renumbered G.S. 160A-288 by Session Laws 1971, c. 896, s. 4.

Effect of Amendments. — Session Laws 2009-94, s. 1, effective June 11, 2009, added subdivision (d)(5), and made related stylistic and punctuation changes.

CASE NOTES

State Must Show That Officer Was a Government Officer. — The State did not meet its burden of showing that the officer was a government officer at the time of the incident because the officer was outside the jurisdiction of his city police department pursuant to G.S. 15A-402, and the State failed to show that the requirements of this section and the emergency assistance provisions of the Mutual Aid Agreement were followed. State v. Locklear, 136 N.C. App. 716, 525 S.E.2d 813, 2000 N.C. App. LEXIS 138 (2000).

OPINIONS OF ATTORNEY GENERAL

A company operating a private prison cannot be a party to a "mutual aid agreement" authorized by this section. See opinion of Attorney General to Senator Frank W. Ballance, Jr. and Representative E. David Redwine, 2001 N.C. AG LEXIS 5 (3/28/2001).

§ 160A-288.1. Assistance by State law-enforcement officers; rules; cost.

(a) The governing body of any city or county may request the Governor to assign temporarily State law-enforcement officers with statewide authority to provide law-enforcement protection when local law-enforcement officers: (i) are engaged in a strike; (ii) are engaged in a slowdown; (iii) otherwise refuse to fulfill their law-enforcement responsibilities; or (iv) submit mass resignations. The request from the governing body of the city or county shall be in writing. The request from a county governing board shall be upon the advice of the sheriff of the county.

(b) The Governor shall formulate such rules, policies or guidelines as may be necessary to establish a plan under which temporary State law-enforcement assistance will be provided to cities and counties. The Governor may delegate the responsibility for developing appropriate rules, policies or guidelines to the head of any State department. The Governor may also delegate to a department head the authority to determine the number of officers to be assigned in a particular case, if any, and the length of time they are to be assigned.

(c) While providing assistance to a city or county, a State law-enforcement officer shall be considered an employee of the State for all purposes, including compensation and fringe benefits.

(d) While providing assistance to the city or county, a State officer shall be subject to the lawful operational commands of his State superior officers. The ranking representative of each State law-enforcement agency providing assistance shall consult with the appropriate city or county officials prior to deployment of the State officers under his command. (1979, c. 639, s. 1.)

OPINIONS OF ATTORNEY GENERAL

A company operating a private prison cannot be a party to a "mutual aid agreement" authorized by this section. See opinion of Attorney General to Senator Frank W. Ballance, Jr. and Representative E. David Redwine, 2001 N.C. AG LEXIS 5 (3/28/2001).

§ 160A-288.2. Assistance to State law-enforcement agencies.

(a) In accordance with rules, policies, or guidelines officially adopted by the governing body of the city or county by which he is employed, and subject to any conditions or restrictions included therein, the head of any local law-enforcement agency may temporarily provide assistance to a State law-enforcement agency in enforcing the laws of North Carolina if so requested in writing by the head of the State agency. The assistance may comprise allowing officers of the local agency to work temporarily with officers of the State agency (including in an undercover capacity) and lending equipment and supplies. While working with the State agency under the authority of this section, an officer shall have the same jurisdiction, powers, rights, privileges and immunities (including those relating to the defense of civil actions and the payment of judgments) as the officers of the State agency in addition to those he normally possesses. While on duty with the State agency, he shall be subject to the lawful operational commands of his superior officers in the State agency, but he shall for personnel and administrative purposes, remain under the control of the local agency, including for purposes of pay. He shall furthermore be entitled to workers' compensation and the same benefits when acting pursuant to this section to the same extent as though he were functioning within the normal scope of his duties.

(b) As used in this section:

(1) "Head" means any director or chief officer of any State or local law-enforcement agency including the chief of police of a local department, chief of police of a county police department, and the sheriff of a county, or an officer of the agency to whom the head of that agency has delegated authority to make or grant requests under this section, but only one officer in the agency shall have this delegated authority at any time.

(2) "Local law-enforcement agency" means any municipal police department, a county police department, or a sheriff's department.

(3) "State law-enforcement agency" means any State agency, force, department, or unit responsible for enforcing criminal laws.

(c) This section in no way reduces the jurisdiction or authority of State law-enforcement officers.

(d) For the purposes of this section, the following shall be considered the equivalent of a municipal police department:

(1) Campus law-enforcement agencies established pursuant to G.S. 116-40.5(a), and G.S. 116-40.5(a).

(2) Colleges or universities which are licensed, or exempted from licensure, by G.S. 116-15 and which employ company police officers commissioned by the Attorney General pursuant to Chapter 74E or Chapter 74G of the General Statutes.

(3) Butner Public Safety. (1981, c. 878; 1989, c. 518, s. 3; 1991, c. 636, s. 3; 1991 (Reg. Sess., 1992), c. 1043, s. 7; 2005-231, s. 9; 2006-159, s. 5.)

Cross References. — As to the employment of special police officers for the territory of the Butner Advisory Council Jurisdiction, see G.S. 122C-408.

CASE NOTES

Sheriff's Department is Local Governmental Entity. — In the injured party's suit against a sheriff and individual detention officers arising out of a five-day episode in the county detention center where she alleged that they ignored her requests for medical treatment, the trial court properly concluded that the office of North Carolina sheriff was a "person" under 42 U.S.C.S. § 1983 because: (1) the state constitution created the office of sheriff, N.C. Const. art. VII, § 2, but included that provision within the article governing local governments, along with provisions for counties, cities, towns, and other governmental subdivisions, N.C. Const. art. VII, § 1; (2) state statutes, including G.S. 17E-1, 160A-288.2, 143-166.50, and 97-2, characterized a sheriff's department as a local governmental entity; (3) there was no contention that the State would be potentially liable for any monetary judgment entered against the sheriff and the detention officers; and (4) the State did not have, with respect to a sheriff, the minimum degree of control required for Eleventh Amendment immunity. Boyd v. Robeson County, — N.C. App. —, 615 S.E.2d 296, 2005 N.C. App. LEXIS 520 (2005), cert. denied, — N.C. —, 615 S.E.2d 866 (2005).

OPINIONS OF ATTORNEY GENERAL

Inspection of ABC licensed business. — A mutual aid agreement is not required for an Alcohol Law Enforcement Officer to ask for the assistance of municipal officers in conducting an inspection of an ABC licensed business within the territorial jurisdiction of the municipality. See opinion of Attorney General to Chief George L. Sweat, — N.C.A.G. — (July 19, 1994).

§ 160A-289. Training and development programs for law enforcement.

A city shall have authority to plan and execute training and development programs for law-enforcement agencies, and for that purpose may

(1) Contract with other cities, counties, and the State and federal governments and their agencies;
(2) Accept, receive, and disburse funds, grants and services;
(3) Create joint agencies to act for and on behalf of participating counties and cities;
(4) Make applications for, receive, administer, and expend federal grant funds; and
(5) Appropriate and expend available tax or nontax funds. (1969, c. 1145, s. 3; 1971, c. 698, s. 1; c. 896, s. 4.)

Editor's Note. — This section was enacted as G.S. 160A-288. It was renumbered as G.S. 160A-289 by Session Laws 1971, c. 896, s. 4.

CASE NOTES

Power to Send Policemen to Youth Development Center. — The explicit power of a municipality to appoint and employ police contemplates that the persons so engaged be qualified and competent, and therefore a municipality has implied authority, exercisable within the discretion of its governing body, to send its policemen to a police youth development center to make proper expenditures for this purpose. Green v. Kitchin, 229 N.C. 450, 50 S.E.2d 545

(1948), decided prior to the enactment of this section, and commented on in 27 N.C.L. Rev. 500 (1949).

§ 160A-289.1. Resources to protect the public.

Subject to the requirements of G.S. 7A-41, 7A-44.1, 7A-64, 7A-102, 7A-133, and 7A-498.7, a city may appropriate funds under contract with the State for the provision of services for the speedy disposition of cases involving drug offenses, domestic violence, or other offenses involving threats to public safety. Nothing in this section shall be construed to obligate the General Assembly to make any appropriation to implement the provisions of this section. Further, nothing in this section shall be construed to obligate the Administrative Office of the Courts or the Office of Indigent Defense Services to maintain positions or services initially provided for under this section. (1999-237, s. 17.17(c); 2000-67, s. 15.4(f); 2001-424, s. 22.11(f).)

§ 160A-289.2. Neighborhood crime watch programs.

A city may establish neighborhood crime watch programs within the city to encourage residents and business owners to promote citizen involvement in securing homes, businesses, and personal property against criminal activity and to report suspicious activities to law enforcement officials. (2006-181, s. 2.)

Cross References. — As to harassment of participants in neighborhood crime watch programs, see G.S. 14-226.2. As to the establishment of neighborhood crime watch programs, see G.S. 153A-212.2.

Editor's Note. — Session Laws 2006-181, s. 4, made this section effective August 1, 2006.

§ 160A-290: Reserved for future codification purposes.

Article 14.

Fire Protection.

§ 160A-291. Firemen appointed.

A city is authorized to appoint a fire chief; to employ other firemen; to establish, organize, equip, and maintain a fire department; and to prescribe the duties of the fire department. (1917, c. 136, subch. 8, s. 1; C.S., s. 2801; 1969, c. 1065, s. 3; 1971, c. 698, s. 1.)

CASE NOTES

Editor's Note. — *Many of the cases cited below were decided under former similar provisions.*

Organization and operation of a fire department is a governmental, not a private or proprietary function. Great Am. Ins. Co. v. Johnson, 257 N.C. 367, 126 S.E.2d 92 (1962).

City Not Required to Provide Fire Protection. — While a city is allowed to provide fire protection as a municipal service, it is not required by statute to provide such protection or to pay another for the provision of fire protection. Orange Water & Sewer Auth. v. Town of Carrboro, 58 N.C. App. 676, 294 S.E.2d 757, cert. denied, 307 N.C. 127, 297 S.E.2d 400 (1982).

No Liability for Failure to Furnish Adequate Pressure or Service. — The maintenance of a fire department for extinguishing fire without cost to the property owner is a governmental function, and there is no liability for failure to provide adequate pressure or service in extinguishing a fire. Howland v. City of Asheville, 174 N.C. 749, 94 S.E. 524 (1917).

The power to regulate and prevent fire is governmental, and a failure to exercise this power does not subject a city to action for negligence which causes loss by fire. Harrington v. Town of Greenville, 159 N.C. 632, 75 S.E. 849 (1912).

Nor for Negligence. — A city, in the absence of statutory provisions to the contrary, is not liable for any damage occasioned by the negligence of its fire department. Mack v. City Water Works, 181 N.C. 383, 107 S.E. 244 (1921).

The extinguishment of fires is a function which a municipal corporation undertakes in its governmental capacity, and in connection with which, in the absence of statutory provision to the contrary, it incurs no civil liability, either for inadequacy in equipment or for the negligence of its employees. See Seales v. City of Winston-Salem, 189 N.C. 469, 127 S.E. 543 (1925); Mabe v. City of Winston-Salem, 190 N.C. 486, 130 S.E. 169 (1925).

As to liability for injuries to firemen under former provisions, see Peterson v. City of Wilmington, 130 N.C. 76, 40 S.E. 853 (1902).

Liability of City for Hydrant Fees. — Even absent statutory or express contractual liability to pay another for fire protection, justice and equity require a city to pay fire hydrant fees to a water and sewer authority where the authority intended to maintain hydrants for the city's use, the city granted a 60-year franchise to the authority to install and maintain hydrants, free service was explicitly proscribed, the city knew of the hydrant charges, and the city paid such charges until the rate was increased. The law implies a promise by the city to pay for such service. Otherwise, it would be unjustly enriched at the expense of the authority. Orange Water & Sewer Auth. v. Town of Carrboro, 58 N.C. App. 676, 294 S.E.2d 757, cert. denied, 307 N.C. 127, 297 S.E.2d 400 (1982).

§ 160A-292. Duties of fire chief.

Where not otherwise prescribed, the duties of the fire chief shall be to preserve and care for fire apparatus, have charge of fighting and extinguishing fires and training the fire department, seek out and have corrected all places and conditions dangerous to the safety of the city and its citizens from fire, and make annual reports to the council concerning these duties. If these duties include State Building Code enforcement, they shall follow the provisions as defined in G.S. 143-151.13. (1969, c. 1065, s.3; 1971, c. 698, s. 1; 1989, c. 681, s. 13.)

CASE NOTES

Scope of Liability. — A fire chief is a public official and, as such, his governmental immunity defense, in his official capacity, is waived to the extent of insurance coverage purchased by the town he serves; however, not he but the town is liable for the acts of ordinary negligence of its public officials to the extent it has waived its immunity by purchasing insurance. Willis v. Town of Beaufort, 143 N.C. App. 106, 544 S.E.2d 600, 2001 N.C. App. LEXIS 227 (2001).

Fallen Power Line. — The city did not owe a special duty to a cable television repairman who was electrocuted by a fallen unmarked power line, and as plaintiff did not allege any intentional misconduct on the part of the city which would survive application of the public duty doctrine, the city was immune to liability. Vanasek v. Duke Power Co., 132 N.C. App. 335, 511 S.E.2d 41 (1999).

§ 160A-293. Fire protection outside city limits; immunity; injury to firemen.

(a) A city may install and maintain water mains, pipes, hydrants, buildings and equipment outside its corporate limits and may send its firemen and equipment outside its corporate limits to provide fire protection to rural or unincorporated areas pursuant to agreements between the city and the county, or between the city and the owner of the property to be protected. Counties are hereby authorized to enter into these agreements and to make from tax funds any payments agreed upon for rural fire protection.

(b) No city or any officer or employee thereof shall be held to answer in any civil action or proceeding for failure or delay in answering calls for fire protection outside the corporate limits, nor shall any city be held to answer in any civil action or proceeding for the acts or omissions of its officers or employees in rendering fire protection services outside its corporate limits.

(c) Any employee of a city fire department, while engaged in any duty or activity outside the corporate limits of the city pursuant to orders of the fire chief or council, shall have all of the jurisdiction, authority, rights, privileges, and immunities, including coverage under the workers' compensation laws, which they have within the corporate limits of the city. (1919, c. 244; C.S., s. 2804; 1941, c. 188; 1947, c. 669; 1949, c. 89; 1971, c. 698, s. 1; 1991, c. 636, s. 3.)

CASE NOTES

A city's purchase of liability insurance does not deprive it of immunity under subsection (b). Askew Kawasaki, Inc. v. City of Elizabeth City, 124 N.C. App. 453, 477 S.E.2d 85 (1996).

Agreement to Furnish Fire Protection as Compensation for Easement Authorized. — A municipality has the authority to compensate landowners for a water and sewer line easement across a tract of land located outside the municipal limits by an agreement to furnish fire protection for any buildings located on such tract. Valevais v. City of New Bern, 10 N.C. App. 215, 178 S.E.2d 109 (1970) decided under former § 160-238.

And Does Not Constitute Waiver of Governmental Immunity. — An agreement by a municipality to furnish fire protection for property lying outside the municipality as compensation for a water line and sewer easement across such property does not constitute a waiver of the municipality's governmental immunity with respect to torts committed in the maintenance or operation of its fire department. Valevais v. City of New Bern, 10 N.C. App. 215, 178 S.E.2d 109 (1970) decided under former § 160-238.

Profit Does Not Make Municipality's Function Proprietary. — The fact that a water and sewer easement obtained by a municipality in exchange for its promise to furnish fire protection permitted the municipality to sell water at a profit did not make the furnishing of such fire protection a proprietary rather than a governmental function. Valevais v. City of New Bern, 10 N.C. App. 215, 178 S.E.2d 109 (1970) decided under former § 160-238.

Failure to Promptly Respond to Call from Outside Municipal Limits. — Although a municipality contracted to furnish fire protection for property of plaintiffs lying outside municipal limits, alleged failure of members of the municipal fire department to respond promptly to a call for assistance in fighting a fire upon such property would constitute a negligent omission, not a breach of contract, for which the municipality had governmental immunity. Valevais v. City of New Bern, 10 N.C. App. 215, 178 S.E.2d 109 (1970) decided under former § 160-238.

Fire Department's Alleged Role as 911 Dispatcher in Relation to Accident Where Decedent Burned to Death. — Trial court properly denied a city's summary judgment motion pursuant to G.S. 1A-1, N.C. R. Civ. P. 56, in a wrongful death action; there was an issue of fact on whether the city was entitled to immunity pursuant to G.S. 160A-293(b), as it was unclear whether the city fire department also acted as a 911 dispatcher in relation to an accident in which the decedent was burned to death. Williams v. Scotland County, 167 N.C. App. 105, 604 S.E.2d 334, 2004 N.C. App. LEXIS 2076 (2004), cert. denied, 359 N.C. 327, 611 S.E.2d 168 (2005).

Department Not Negligent. — Where the fire department's alleged acts of negligence could not fairly be characterized as either a "failure" or a "delay" under the statute in answering plaintiffs' 911 call, this section was inapplicable to the circumstances set forth in plaintiffs' complaint. Davis v. Messer, 119 N.C. App. 44, 457 S.E.2d 902 (1995), overruled on other grounds, Willis v. Town of Beaufort, 544 S.E.2d 600 (N.C. Ct. App. 2001).

Immunity of Municipalities. — While this statute establishes immunity for a municipality in certain circumstances, its purview is limited only to the municipality and not to officers and employees thereof. Davis v. Messer, 119 N.C. App. 44, 457 S.E.2d 902 (1995), overruled on other grounds, Willis v. Town of Beaufort, 544 S.E.2d 600 (N.C. Ct. App. 2001).

OPINIONS OF ATTORNEY GENERAL

Town May Furnish Fire Protection for Property Outside Its Corporate Limits. — See opinion of Attorney General to Mr. E.M. Johnson, Pembroke Town Attorney, 40 N.C.A.G. 473 (1969), issued under former statutory provisions.

§ 160A-294. Loss of rural fire employment.

(a) Whenever a city annexes any territory under Parts 2 or 3 of Article 4A of this Chapter, and because of the annexation the rural fire department must terminate the employment of any full-time employee, then the annexing city must take one of the three actions listed below with respect to any person who has been in such full-time employment for two years or more at the time of adoption of the resolution of intent:

(1) The annexing city may offer employment without loss of salary or seniority and place the person in a position as near as possible in type to the position that was held in the rural fire department; or

(2) The annexing city may offer employment in some other department of the city at a comparable salary and seniority; or

(3) The city may choose to pay to the person a sum equal to the person's salary for one year as the equivalent of severance pay. For the purpose of this subsection, the person's salary was his total salary with the rural fire department for the 12-month period ending on the last pay period before the resolution of consideration was adopted, plus any increased salary due to reasonable cost-of-living increases and bona fide promotions; provided that if no resolution of consideration was required to be adopted because of either G.S. 160A-37(j) or G.S. 160A-49(j), or because the resolution of intent was adopted prior to July 1, 1984, the person's salary was his total salary with the rural fire department for the 12-month period ending on the last pay period before the resolution of intent was adopted, plus any increased salary due to reasonable cost-of-living increases and bona fide promotions.

(b) This section is effective with respect to all annexations where an annexation ordinance is adopted on or after January 1, 1983, except that it is also effective with respect to all annexations where an annexation ordinance was adopted before January 1, 1983, but on January 1, 1983, the annexation ordinance:

(1) Was under review under G.S. 160A-38 or G.S. 160A-50, and a stay is in effect under G.S. 160A-38(e) or G.S. 160A-50(e); or

(2) Was subject to the Voting Rights Act of 1965 but had not yet been approved under that act. (1983, c. 636, s. 25.)

Editor's Note. — Session Laws 1983, c. 636, s. 37.1, as amended by Session Laws 1983, c. 768, s. 25, provided: "The General Assembly intends by this act to repeal all acts and provisions of acts that modify the application to particular cities and towns of Parts 2 and 3 of Article 4A of Chapter 160A of the General Statutes or that exempt particular cities or towns from the application of either or both of those two Parts. Therefore, all such acts and provisions of acts, even if not specifically listed and repealed in Sections 26 through 35.4 of this act, are repealed. Neither this section nor Sections 26 through 35.4 of this act shall affect any annexation in progress on the dates of ratification of this act under any of the repealed or amended sections."

Session Laws 1983, c. 636, s. 38, provided: "This act shall be effective with respect to all annexations where resolutions of intent are adopted on or after the date of ratification of this act, except that Sections 36 and 37 shall become effective with respect to all annexations where resolutions of intent are adopted on or after July 1, 1984, Sections 25.1 through 35.5 and Section 37.1 are effective upon ratification and Section 25 shall become effective as provided in that section. No annexation where a resolution of intent was adopted prior to the date of ratification of this act shall be affected by this act except as provided in Section 25."

The act was ratified June 29, 1983.

§ 160A-294.1. Honoring deceased or retiring firefighters.

A fire department established by a municipality pursuant to this Article may, in the discretion of the governing body of the municipality, award to a retiring firefighter or a surviving relative of a deceased firefighter, upon request, the fire helmet of the deceased or retiring firefighter, at a price determined in a manner authorized by the governing body. The price may be less than the fair market value of the helmet. (2003-145, s. 2.)

Cross References. — Counties honoring deceased or retiring firefighters, see G.S. 153A-236.

Article 14A.

Municipal Firefighters.

§ 160A-295. (Contingent effective date — see Editor's note) Definitions.

As used in this Article, the following terms mean:

(1) Compensatory time. — Time off with regular compensation in lieu of immediate overtime premium pay when a fire department, under certain conditions, compensates the firefighter for overtime hours worked.

(2) Firefighter. — A full-time, paid employee of an employer, maintaining a fire department certified by the North Carolina Department of Insurance, who is actively serving in a position with assigned primary duties and responsibilities for the prevention, detection, and suppression of fire.

(3) Supervisory personnel. — An individual employed by a public safety employer who (i) has the authority in the interest of the employer to hire, direct, assign, promote, reward, transfer, furlough, lay off, recall, suspend, discipline, or remove public safety officers, or to adjust their grievances or effectively recommend an adjustment, provided that the exercise of the authority is not merely routine or clerical in nature, but requires consistent exercise of independent judgment; and (ii) devotes a majority of time at work exercising that authority.

(4) Trade time. — The time one individual substitutes for another during scheduled work hours in performance of work in the same capacity when two individuals are employed in any occupation by the same fire department, as agreed to solely at the individual's option and with the approval of the management of the fire department. The hours worked are excluded by the employer in the calculation of the hours for which the substituting employee would otherwise be entitled to overtime compensation under this Article. Where one employee substitutes for another, the employee being substituted for is credited as if he or she had worked his or her normal work schedule for that shift. (2008-151, s. 1.)

Editor's Note. — Session Laws 2008-151, s. 2, makes this Article effective when 29 U.S.C. § 207(k) is repealed or is no longer enforceable.

§ 160A-295.1. (Contingent effective date — see Editor's note) Municipal firefighters; hours of labor; overtime pay.

(a) A firefighter or a member of a fire department who provides emergency medical services, other than supervisory personnel, and who is required or permitted to work, on average, more than 53 hours in a seven-day work period or up to the number of hours that bears the same ratio to 212 hours as the number of days in the work period bears to 28 days is considered to have worked overtime. A person included under this subsection is entitled to be compensated for the overtime as provided by subsection (d) of this section.

(b) A member of a fire department, other than supervisory personnel, who does not fight fires or provide emergency medical services, including a mechanic, clerk, investigator, inspector, fire marshal, fire alarm dispatcher, or maintenance worker, and who is required or permitted to average more hours in a week than the number of hours in a normal workweek of the majority of the employees of the municipality other than firefighters, emergency medical service personnel, and police officers, is considered to have worked overtime. A person included under this subsection is entitled to be compensated for the overtime as provided by subsection (d) of this section.

(c) In computing the hours worked in a workweek or the average number of hours worked in a workweek during a work cycle of a firefighter or other member of a fire department covered by this section, all hours are counted during which the firefighter or other member of a fire department is required to remain on call on the employer's premises or so close to the employer's premises that the person cannot use those hours effectively for that person's own purposes. Hours in which the firefighter or other member of a fire department is required only to leave a telephone number at which that person may be reached or to remain accessible by radio or pager are not to be used in computing the hours worked. In computing the hours in a workweek or the average number of hours in a workweek during a work cycle of a firefighter or a member of a fire department who provides emergency medical services, vacation, sick time, holidays, time in lieu of holidays, compensatory time, or trade time may be excluded as hours worked.

(d) A firefighter or other member of a fire department may be required or permitted to work overtime. A firefighter, other than supervisory personnel, who is required or permitted to work overtime as provided by subsection (a) of this section is entitled to be paid overtime for the excess hours worked without regard to the number of hours worked in any one week of the work cycle. Overtime hours as computed under this Article are to be paid at a rate equal to one and one-half times the compensation paid to the firefighter or member of the fire department for regular hours. To the extent that the municipality complies with the requirements of section 7(o) of the Fair Labor Standards Act (29 U.S.C. § 207(o)), it may compensate firefighters for their overtime hours with compensatory time in lieu of pay. A member of a fire department included under subsection (b) of this section shall be paid overtime in the same manner as other employees of the municipality entitled to overtime pay, excluding firefighters. (2008-151, s. 1.)

Editor's Note. — Session Laws 2008-151, s. 2, makes this Article effective when 29 U.S.C. § 207(k) is repealed or is no longer enforceable.

§ 160A-295.2. (Contingent effective date — see Editor's note) Authority of Department of Labor.

The Department of Labor shall have the authority to enforce the provisions of this Article to the extent that these provisions are not subject to enforcement under the Fair Labor Standards Act (29 U.S.C. § 207). (2008-151, s. 1.)

Editor's Note. — Session Laws 2008-151, s. 2, makes this Article effective when 29 U.S.C. § 207(k) is repealed or is no longer enforceable.

§ 160A-295.3. (Contingent effective date — see Editor's note) Applicability.

This Article applies only to full-time paid firefighters and other full-time paid members of a fire department of a municipality that employs five or more employees in fire protection during the workweek. (2008-151, s. 1.)

Editor's Note. — Session Laws 2008-151, s. 2, makes this Article effective when 29 U.S.C. § 207(k) is repealed or is no longer enforceable.

ARTICLE 15.

Streets, Traffic and Parking.

§ 160A-296. Establishment and control of streets; center and edge lines.

(a) A city shall have general authority and control over all public streets, sidewalks, alleys, bridges, and other ways of public passage within its corporate limits except to the extent that authority and control over certain streets and bridges is vested in the Board of Transportation. General authority and control includes but is not limited to all of the following:

(1) The duty to keep the public streets, sidewalks, alleys, and bridges in proper repair.

(2) The duty to keep the public streets, sidewalks, alleys, and bridges open for travel and free from unnecessary obstructions.

(3) The power to open new streets and alleys, and to widen, extend, pave, clean, and otherwise improve existing streets, sidewalks, alleys, and bridges, and to acquire the necessary land therefor by dedication and acceptance, purchase, or eminent domain.

(4) The power to close any street or alley either permanently or temporarily.

(5) The power to regulate the use of the public streets, sidewalks, alleys, and bridges.

(6) The power to regulate, license, and prohibit digging in the streets, sidewalks, or alleys, or placing therein or thereon any pipes, poles, wires, fixtures, or appliances of any kind either on, above, or below the surface. To the extent a municipality is authorized under applicable law to impose a fee or charge with respect to activities conducted in its rights-of-way, the fee or charge must apply uniformly and on a competitively neutral and nondiscriminatory basis to all comparable activities by similarly situated users of the rights-of-way.

(7) The power to provide for lighting the streets, alleys, and bridges of the city.

(8) The power to grant easements in street rights-of-way as permitted by G.S. 160A-273.

(a1) A city with a population of 250,000 or over according to the most recent decennial federal census may also exercise the power granted by subdivision (a)(3) of this section within its extraterritorial planning jurisdiction. Before a city makes improvements under this subsection, it shall enter into a memorandum of understanding with the Department of Transportation to provide for maintenance.

(b) Repealed by Session Laws 1991, c. 530, s. 6, effective January 1, 1992. (1917, c. 136, subch. 5, s. 1; subch. 10, s. 1; 1919, cc. 136, 237; C.S., ss. 2787, 2793; 1925, c. 200; 1963, c. 986; 1971, c. 698, s. 1; 1973, c. 507, s. 5; 1979, c. 598; 1991, c. 530, s. 6; 2001-261, s. 1; 2006-151, s. 14.)

Local Modification. — City of Monroe: 1985, c. 177; 2000-35, s. 1; town of Cary: 1993, c. 137, s. 3.

CASE NOTES

I. In General.
II. Duty to Keep Streets, etc., in Repair.
III. Duty to Keep Streets, etc., Free from Obstructions.
IV. Opening, Closing and Widening Streets.

I. IN GENERAL.

Editor's Note. — Many of the cases cited below were decided under former similar provisions.

A city has both inherent power and authority by general statute over its streets for the protection of its citizens, which is not taken from it by G.S. 62-50, conferring like powers upon the Utilities Commission. City of Durham v. Southern Ry., 185 N.C. 240, 117 S.E. 17 (1923), aff'd, 266 U.S. 178, 45 S. Ct. 51, 69 L. Ed. 231 (1924).

Title of Abutting Owner Subject to City's Powers. — The purchaser of a lot abutting a public street, whatever the origin of the street, takes title subject to the authority of the city to control and limit its use and to abandon or close it under lawful procedure. Wofford v. North Carolina State Hwy. Comm'n, 263 N.C. 677, 140 S.E.2d 376, cert. denied, 382 U.S. 822, 86 S. Ct. 50, 15 L. Ed. 2d 67 (1965).

Right to Devote Sides of Streets to Purposes Other Than Driving. — While it is the duty of a municipal corporation to use reasonable care to keep its streets in a safe condition to drive upon, it has the right to devote the sides of the streets to other useful public purposes, provided it leaves an unobstructed driveway of ample width. It may construct sidewalks for a higher grade and gutters of a lower grade than the driveway, place curbing on the line of the gutters, erect hydrants and authorize the erection of hitching posts and stepping stones as well as poles to support the wires of telegraph and telephone lines. Rollins v. City of Winston-Salem, 176 N.C. 411, 97 S.E. 211 (1918).

No Federal Preemption of Railroad Grade Crossing Regulation. — The exercise by the State of its power to provide for the safety of its citizens with respect to grade crossings of its streets by a railroad company is within its police powers, and may be exercised by municipal corporations under authority conferred on them, and not being delegated to the national government, it is not affected by federal legislation upon interstate commerce or the Federal Transportation Act. City of Durham v. Southern Ry., 185 N.C. 240, 117 S.E. 17 (1923), aff'd, 266 U.S. 178, 45 S. Ct. 51, 69 L. Ed. 231 (1924).

As to city's right to require railroad company to construct an underpass, see City of Durham v. Southern Ry., 185 N.C. 240, 117 S.E. 17 (1923), aff'd, 266 U.S. 178, 45 S. Ct. 51, 69 L. Ed. 231 (1924).

As to right of city to require railroads to construct bridges over their viaducts along streets running over their tracks, see Atlantic Coastline R.R. v. City of Goldsboro, 155 N.C. 356, 71 S.E. 514 (1911), aff'd, 232 U.S. 548, 34 S. Ct. 364, 58 L. Ed. 721 (1914); Powell v. Seaboard Air Line Ry., 178 N.C. 243, 100 S.E. 424 (1919).

The power of municipal corporations to regulate the use of public streets arises through a legislative grant of authority and is subject to the authority of the General Assembly to regulate the use and control of public roads and streets. Town of Emerald Isle ex rel. Smith v. State, 320 N.C. 640, 360 S.E.2d 756 (1987).

As to city's right to acquire and operate tow-in vehicles, see S. & R. Auto & Truck Serv., Inc. v. City of Charlotte, 268 N.C. 374, 150 S.E.2d 743 (1966).

As to the statutory obligations of the State Highway Commission (now Board of Transportation), see Milner Hotels, Inc. v. City of Raleigh, 271 N.C. 224, 155 S.E.2d 543 (1967). See § 160A-297.

Private Store Not Responsible for Traffic Control. — The duty to provide for traffic control on public streets in a municipality is charged by statute to the city. Defendant corporation, an outlet store, had no duty to provide for a crossing guard, warning lights or other traffic control devices over a city street, nor any duty to warn of the hazard of jaywalking across such a busy thoroughfare. Laumann v. Plakakis, 84 N.C. App. 131, 351 S.E.2d 765 (1987).

A town does not have the exclusive and ultimate ability to determine the use of streets and beaches within a municipality. Town of Emerald Isle ex rel. Smith v. State, 320 N.C. 640, 360 S.E.2d 756 (1987).

Including Road on Town Map Insufficient Evidence of Intent to Accept. — Simply including a road on the town map is insufficient evidence of the town's intent to accept the road for public use; to accept the road for public use, the proper authorities must accept the offer in some recognized legal manner. Wiggins v. Short, 122 N.C. App. 322, 469 S.E.2d 571 (1996).

Maintenance of Road May Provide Evidence of Intent to Accept. — Town or city maintenance of a roadway may be some evidence of acceptance of the road for public use; however, evidence that the town maintained the road for purposes of its water drain easement and not for the public generally was competent to rebut the conclusion that it was a public road. Wiggins v. Short, 122 N.C. App. 322, 469 S.E.2d 571 (1996).

Applied in Lonon v. Talbert, 103 N.C. App. 686, 407 S.E.2d 276 (1991); Cucina v. City of Jacksonville, 2000 N.C. App. LEXIS 310 (N.C. App. Apr. 4, 2000).

Cited in General Greene Inv. Co. v. Greene, 48 N.C. App. 29, 268 S.E.2d 810 (1980); Homebuilders Ass'n v. City of Charlotte, 336 N.C. 37, 442 S.E.2d 45 (1994); Moore v. City of Creedmoor, 120 N.C. App. 27, 460 S.E.2d 899 (1995); Williams v. City of Durham, 123 N.C. App. 595, 473 S.E.2d 665 (1996).

II. DUTY TO KEEP STREETS, ETC., IN REPAIR.

Duty to Maintain Streets in Reasonably Safe Condition. — This section imposes upon the municipality the positive duty to maintain its streets in a reasonably safe condition for travel. Stancill v. City of Washington, 29 N.C. App. 707, 225 S.E.2d 834 (1976).

It is the positive duty of the corporate authorities of a town to keep the streets, including the sidewalks, in "proper repair," that is, in such condition as that the people passing and repassing over them might at all times do so with reasonable ease, speed and safety. Bunch v. Edenton, 90 N.C. 431 (1886); Fitzgerald v. Concord, 140 N.C. 110, 52 S.E. 309 (1905).

Streets must be constructed in a reasonably safe manner, and to this end ordinary care must be exercised at all times. Willis v. City of New Bern, 191 N.C. 507, 132 S.E. 286 (1926); Hunt v. City of High Point, 226 N.C. 74, 36 S.E.2d 694 (1946).

Streets shall be kept in proper repair to the extent that this can be accomplished by proper and reasonable care and continuing supervision. Willis v. City of New Bern, 191 N.C. 507, 132 S.E. 286 (1926); Hunt v. City of High Point, 226 N.C. 74, 36 S.E.2d 694 (1946).

The governing authorities of a town or city have a duty imposed upon them by law to exercise ordinary care to maintain its streets and sidewalks in a condition reasonably safe for those who use them in a proper manner. Faw v. Town of N. Wilkesboro, 253 N.C. 406, 117 S.E.2d 14 (1960); Mosseller v. City of Asheville, 267 N.C. 104, 147 S.E.2d 558 (1966).

While a city is not an insurer of the safety of one who uses its streets and sidewalks, it is under a duty to use due care to keep its streets and sidewalks in a reasonably safe condition for the ordinary use thereof. Mosseller v. City of Asheville, 267 N.C. 104, 147 S.E.2d 558 (1966).

The exercise of the due care in keeping streets and public ways safe and in suitable condition is a positive obligation imposed upon a municipal corporation. Kaplan v. City of Winston-Salem, 21 N.C. App. 168, 203 S.E.2d 653, rev'd on other grounds, 286 N.C. 80, 209 S.E.2d 743 (1974).

The duty to maintain sidewalks and streets in a safe condition carries with it a correlative duty to perform these maintenance tasks in a competent manner or suffer the consequences of negligently inflicted damage which is foreseeable. Kaplan v. City of Winston-Salem, 21 N.C. App. 168, 203 S.E.2d 653, rev'd on other grounds, 286 N.C. 80, 209 S.E.2d 743 (1974).

While the city is not an insurer of the condition of its streets, this section does subject the defendant city to liability for the negligent failure to maintain its streets in a reasonably safe condition. Stancill v. City of Washington, 29 N.C. App. 707, 225 S.E.2d 834 (1976).

And to Exercise Continuing Supervision over Streets. — It is the duty of a city to exercise a reasonable and continuing supervision over its streets, in order that it may know their condition, and it is held to have knowledge of a defect which such inspection would have disclosed to it. Mosseller v. City of Asheville, 267 N.C. 104, 147 S.E.2d 558 (1966).

Duty extends to streets dedicated and accepted by the municipality, but not to streets or portions of streets not accepted by it, although dedicated by some individual. Hughes v. Clark, 134 N.C. 457, 46 S.E. 956, 47 S.E. 462 (1904).

And to Sidewalks. — The rights, powers, and liability of the municipality extend equally to the sidewalk as to the roadway, for both are parts of the street, and towns and cities are held to the same degree of liability for failure to repair sidewalks as to repair the other part of the street. Bunch v. Edenton, 90 N.C. 431 (1886); Tate v. City of Greensboro, 114 N.C. 392, 19 S.E. 767 (1894); Wolfe v. Pearson, 114 N.C. 621, 19 S.E. 264 (1894); Russell v. Town of Monroe, 116 N.C. 720, 21 S.E. 550, 47 Am. St. R. 823 (1895); Neal v. Town of Marion, 129 N.C. 345, 40 S.E. 116 (1901); Hester v. Traction Co., 138 N.C. 288, 50 S.E. 711 (1905).

A municipality is responsible for the condition of its sidewalks. Dunning v. Forsyth Whse. Co., 272 N.C. 723, 158 S.E.2d 893 (1968).

The duty of keeping its sidewalks in a reasonably safe condition rests primarily on a municipality. Kaplan v. City of Winston-Salem, 21 N.C. App. 168, 203 S.E.2d 653, rev'd on other grounds, 286 N.C. 80, 209 S.E.2d 743 (1974).

The evidence was not sufficient to raise an inference of negligence under this section where the plaintiff's experts testified that the depression in the sidewalk had existed for a number of years, had been at least one-half of an inch for 1-2 years before the accident, and was contrary to the building code but a city employee testified that the records were void of any complaints of defects in the sidewalk; the law with regard to municipalities and maintenance of sidewalks is such that minor defects are not actionable. Desmond v. City of Charlotte, 142 N.C. App. 590, 544 S.E.2d 269, 2001 N.C. App. LEXIS 176 (2001).

But one other than the municipality may be held liable for injuries caused by a defect in the sidewalk if he created the defect. Dunning v. Forsyth Whse. Co., 272 N.C. 723, 158 S.E.2d 893 (1968).

Liability of Abutting Owner to Pedestrians for Hazardous Conditions on Sidewalk. — Insofar as pedestrians are concerned, any liability of the owner or occupant of abutting property for hazardous conditions existent upon the adjacent sidewalk is limited to conditions created or maintained by him, and must be predicated upon his negligence in that respect. Dunning v. Forsyth Whse. Co., 272 N.C. 723, 158 S.E.2d 893 (1968).

Structures in Streets Subject to City's Paramount Power and Duty. — Pipes, conduits, rails, and structures erected or constructed in the city streets under a general grant of authority to use the streets therefor are subject to the paramount power and duty of the city to repair, alter, and improve the streets, as the city, in its discretion, may deem proper, and to construct therein sewers and other improvements for the public benefit. City of Raleigh v. Carolina Power & Light Co., 180 N.C. 234, 104 S.E. 462 (1920).

Guarding Against Perilous Places. — Proper repair implies that all bridges, dangerous pits, embankments, dangerous walls, and like perilous places and things very near and adjoining the streets shall be guarded against by proper railings and barriers or other reasonably necessary signals for the protection of the public. Fitzgerald v. Concord, 140 N.C. 110, 52 S.E. 309 (1905); Willis v. City of New Bern, 191 N.C. 507, 132 S.E. 286 (1926); Hunt v. City of High Point, 226 N.C. 74, 36 S.E.2d 694 (1946).

City may contract with a street railroad for repair of the street between the tracks as a consideration for the franchise, and the railroad will be required to repair and keep its part in the same condition as the rest of the street. City of New Bern v. Atlantic & N.C.R.R., 159 N.C. 542, 75 S.E. 807 (1912).

Commissioners' Duty. — This section does not impose on the commissioners the duty to personally work the streets, but it does impose on them a duty to keep them in repair. Although they are allowed discretion, the commissioners are subject to indictment for neglecting to keep public streets in repair. State v. Dickson, 124 N.C. 871, 32 S.E. 961 (1899).

Municipality may be held liable for negligent or wanton failure to keep its streets in proper repair and in a reasonably safe condition. Bowman v. Town of Granite Falls, 21 N.C. App. 333, 204 S.E.2d 239 (1974).

A municipality has a positive duty to maintain its streets in a reasonably safe condition for travel, and negligent failure to do so will render it liable to private action for proximate injury. Bunch v. Town of Edenton, 90 N.C. 431 (1884); Russell v. Town of Monroe, 116 N.C. 720, 21 S.E. 550, 47 Am. St. R. 823 (1895); Neal v. Town of Marion, 129 N.C. 345, 40 S.E. 116 (1901); Fitzgerald v. Concord, 140 N.C. 110, 52 S.E. 309 (1905); Graham v. City of Charlotte, 186 N.C. 649, 120 S.E. 466 (1923); Michaux v. City of Rocky Mount, 193 N.C. 550, 137 S.E. 663 (1927); Speas v. City of Greensboro, 204 N.C. 239, 167 S.E. 807 (1933); Radford v. City of Asheville, 219 N.C. 185, 13 S.E.2d 256 (1941); Waters v. Town of Belhaven, 222 N.C. 20, 21 S.E.2d 840 (1942); Millar v. Town of Wilson, 222 N.C. 340, 23 S.E.2d 42 (1942); Hunt v. City of High Point, 226 N.C. 74, 36 S.E.2d 694 (1946).

Negligent failure to take such measures as ordinary prudence requires to avert injury, where the municipality has actual or imputable knowledge of the dangerous condition, will render municipality liable for injury proximately caused. Hunt v. City of High Point, 226 N.C. 74, 36 S.E.2d 694 (1946).

Municipalities may be liable in tort for failure to maintain their streets in a reasonably safe condition, and they are now required to do so by this section. McClellan v. City of Concord, 16 N.C. App. 136, 191 S.E.2d 430 (1972).

And Cannot Plead Governmental Immunity Therefor. — A municipality cannot, with impunity, create in its streets a condition palpably dangerous, neglect to provide the most ordinary means of protection against it, and then avoid liability for proximate injury on the plea of governmental immunity. Hunt v. City of High Point, 226 N.C. 74, 36 S.E.2d 694 (1946); Kaplan v. City of Winston-Salem, 21 N.C. App. 168, 203 S.E.2d 653, rev'd on other grounds, 286 N.C. 80, 209 S.E.2d 743 (1974).

A municipality may not undertake a task of street improvement or repair in a careless or negligent fashion and then seek to escape liability by invoking the privilege of governmental immunity. Kaplan v. City of Winston-Salem, 21 N.C. App. 168, 203 S.E.2d 653, rev'd on other grounds, 286 N.C. 80, 209 S.E.2d 743 (1974).

As an exception to the doctrine of governmental immunity, it has been uniformly held in this jurisdiction that municipalities may be held liable in tort for failure to maintain their streets in a reasonably safe condition, and they are now required by statute to do so. Clark v. Scheld, 253 N.C. 732, 117 S.E.2d 838 (1961).

No Governmental Immunity. — Municipalities in North Carolina have never been immune from civil liability for negligence based upon the failing to keep its streets free of unnecessary obstructions, as in untrimmed shrubs and bushes that obstructed the view of motorists using the streets involved; therefore, in the case at bar defendant had no immunity to waive, and the insolvency of its insurer did not affect its liability. McDonald v. Village of Pinehurst, 91 N.C. App. 633, 372 S.E.2d 733 (1988).

But Municipality Is Not Insurer of Condition of Streets. — While it is the duty of the city to keep its streets in such repair that they are reasonably safe for public travel, it is not an insurer of such condition, nor does it warrant that they shall at all times be absolutely safe. A city is only responsible for a negligent breach of duty. Fitzgerald v. Concord, 140 N.C. 110, 52 S.E. 309 (1905).

And liability arises only for a negligent breach of duty. Faw v. Town of N. Wilkesboro, 253 N.C. 406, 117 S.E.2d 14 (1960); Mosseller v. City of Asheville, 267 N.C. 104, 147 S.E.2d 558 (1966).

Actual or Constructive Notice Prerequisite to Recovery. — Notice of a defect in a street, actual or constructive, and a failure to act on the part of the municipality to remedy the situation are prerequisites to recovery in an action involving a municipality. Bowman v. Town of Granite Falls, 21 N.C. App. 333, 204 S.E.2d 239 (1974).

In order to establish responsibility, it is not sufficient to show that a defect existed and that an injury has been caused thereby. It must be further shown that the officers of the town knew, or by ordinary diligence might have discovered, the defect, and that the character of the defect was such that injuries to travellers therefrom might reasonably be anticipated. Jones v. City of Greensboro, 124 N.C. 310, 32 S.E. 675 (1899); Fitzgerald v. Concord, 140 N.C. 110, 52 S.E. 309 (1905); Faw v. Town of N. Wilkesboro, 253 N.C. 406, 117 S.E.2d 14 (1960).

It is necessary for a complaining party to show more than the existence of a defect in the street or sidewalk and the injury; he must also show that the officers of the town or city knew, or by ordinary diligence, might have known of the defect, and that the character of the defect was such that injuries to travellers using its street or sidewalk in a proper manner might reasonably be foreseen. Mosseller v. City of Asheville, 267 N.C. 104, 147 S.E.2d 558 (1966).

Summary judgment was appropriate where the plaintiff failed to offer any evidence that the city had either actual or constructive notice of any alleged defect in its sidewalk, as required to support a negligence action under this section, so as to create a genuine issue of material fact. Willis v. City of New Bern, 137 N.C. App. 762, 529 S.E.2d 691, 2000 N.C. App. LEXIS 499 (2000).

Notice Must Be of Defect Itself. — The notice, actual or implied, of a highway defect causing injuries which a municipality must receive as a condition precedent to liability for those injuries is notice of the defect itself which occasioned the injury, and not merely of conditions naturally productive of that defect and subsequently in fact producing it. Mosseller v. City of Asheville, 267 N.C. 104, 147 S.E.2d 558 (1966).

When Notice Implied. — When observable defects in a highway have existed for a time so long that they ought to have been observed, notice of them is implied. Fitzgerald v. Concord, 140 N.C. 110, 52 S.E. 309 (1905).

Notice of a dangerous condition in a street or sidewalk will be imputed to a town or city if its officers should have discovered it in the exercise of due care. Faw v. Town of N. Wilkesboro, 253 N.C. 406, 117 S.E.2d 14 (1960); Mosseller v. City of Asheville, 267 N.C. 104, 147 S.E.2d 558 (1966).

Implied Notice Usually a Jury Question. — On the question of notice implied from the continued existence of a defect, no definite or fixed rule can be laid down as to the time required, and it is usually a question for the jury on the facts and circumstances of each particular case. Fitzgerald v. Concord, 140 N.C. 110, 52 S.E. 309 (1905).

Notice of Latent Defects. — Notice of latent defects should not be so readily presumed from their continuance as open and obvious defects. Fitzgerald v. Concord, 140 N.C. 110, 52 S.E. 309 (1905).

Foreseeability of Injury Essential to Recovery. — To recover for injuries received from a fall on a defective street, the plaintiff must not only show that the city knew of the defect, but must go further and show that the character of the defect was such that injuries to travellers using its street or sidewalk in a proper manner might reasonably be foreseen. Mosseller v. City of Asheville, 267 N.C. 104, 147 S.E.2d 558 (1966).

Trivial Defects Will Not Make City Liable. — It is not every defect in a street or sidewalk which will render a city liable to a person who falls as a result thereof. Trivial defects, which are not naturally dangerous, will not make the city liable for injuries occasioned thereby. Mosseller v. City of Asheville, 267 N.C. 104, 147 S.E.2d 558 (1966).

Effect of Independent Contributory Cause. — When two causes combine to produce an injury to a traveler on a highway, both of which are in their nature proximate, the one being a culpable defect in the highway, and the other some occurrence for which neither party is responsible, the municipality is liable, provided the injury would not have been sustained but for such defect. Dillon v. City of Raleigh, 124 N.C. 184, 32 S.E. 548 (1889).

Liability for Consequential Damage in Grading Streets. — Where a municipal corporation has authority to grade its streets, it is not liable for consequential damage, unless the work was done in an unskillful and incautious manner. Meares v. Commissioners of Wilmington, 31 N.C. 73 (1848); Salisbury v. Western N.C.R.R., 91 N.C. 490 (1884); Wright v. City of Wilmington, 92 N.C. 156 (1885); Tate v. City of Greensboro, 114 N.C. 392, 19 S.E. 767 (1894); Wolfe v. Pearson, 114 N.C. 621, 19 S.E. 264 (1894); Brown v. Electric Co., 138 N.C. 533, 51 S.E. 62 (1905); Thomason v. Seaboard Airline Ry., 142 N.C. 300, 55 S.E. 198 (1906); Small v. Councilmen of Edenton, 146 N.C. 527, 60 S.E. 413 (1908); Ward v. Commissioners of Buford County, 146 N.C. 534, 60 S.E. 418 (1908), overruled on other grounds, In re Alamance County Court Facilities, 329 N.C. 84, 405 S.E.2d 125 (1991); Jones v. Town of Henderson, 147 N.C. 120, 60 S.E. 894 (1908); Dorsey v. Town of Henderson, 148 N.C. 423, 62 S.E. 547 (1908).

Liability for Damages from Tree Cutting. — Discretionary power of repairing and maintaining a street is vested in the commissioners of a city, and an action for damages caused by cutting of trees in the street, by them, will not lie in favor of an abutting property owner, in the absence of negligence, malice, or wantonness. Tate v. City of Greensboro, 114 N.C. 392, 19 S.E. 767 (1894).

Failure to Provide Reasonable Lighting. — While a city may not be under a legal necessity to light its streets at all, where it does maintain street lights its failure to provide lighting which is reasonably required at a particular place because of the dangerous condition of the street is a negligent failure to discharge its duty to maintain the streets in a reasonably safe condition for travel. Hunt v. City of High Point, 226 N.C. 74, 36 S.E.2d 694 (1946).

No Right in Abutting Owner to Change Street's Condition. — When a street is repaired or changed by a city so as to damage an owner of the fee in the street or to cause a nuisance, the owner has no right to change the condition of the street so as to remove the nuisance or lessen the damage, and such act will subject him to indictment. State v. Wilson, 107 N.C. 865, 12 S.E. 320 (1890).

Ratification of Unauthorized Repair by City. — When an unauthorized person makes an act of repair to streets that might have been done by a city, a ratification by the city will relieve him of any liability as a trespasser. Wolfe v. Pearson, 114 N.C. 621, 19 S.E. 264 (1894).

Although court found that the maintenance of stop signs constituted a discretionary function, thereby entitling city to the defense of governmental immunity, it reversed the lower court's grant of summary judgment in the city's favor where it appeared from the record that the city was covered by a liability insurance policy at the time of the collision at issue, thereby waiving immunity from suit. Cucina v. City of Jacksonville, 138 N.C. App. 99, 530 S.E.2d 353, 2000 N.C. App. LEXIS 547 (2000), review denied, 352 N.C. 588, 544 S.E.2d 778 (2000).

III. DUTY TO KEEP STREETS, ETC., FREE FROM OBSTRUCTIONS.

Unlike § 160A-298, subdivision (a)(2) of this section creates an affirmative duty of care. Cooper v. Town of Southern Pines, 58 N.C. App. 170, 293 S.E.2d 235 (1982).

But Repair Does Not Prove Possession. — City's occasional repair of fence on Housing Authority property did not itself prove the city's intent to possess and control the fence, since these repairs might have reflected no more than the city's statutory duty as a municipality to clear streets and rights-of-way. Petty v. City of Charlotte, 85 N.C. App. 391, 355 S.E.2d 210 (1987), cert. denied, 90 N.C. App. 559, 369 S.E.2d 612 (1988).

"Obstruction". — An "obstruction" can be anything, including vegetation, which renders the public passageway less convenient or safe for use. Cooper v. Town of Southern Pines, 58 N.C. App. 170, 293 S.E.2d 235 (1982).

Suit against a city arising from a traffic accident during a funeral procession was properly dismissed because a moving car, even if driven negligently, was not an "obstruction" within the meaning of G.S. 160A-296(a)(2); also, the timing of a traffic signal was a discretionary governmental function, and thus within the immunity doctrine. Sisk v. City of Greensboro, — N.C. App. —, 645 S.E.2d 176, 2007 N.C. App. LEXIS 1094 (2007).

Liability for Negligent Obstructions. — A city does not have discretionary power to put obstructions in its streets, and it is liable for its negligence in putting or leaving obstructions in the street to one injured by such obstruction. Graham v. City of Charlotte, 186 N.C. 649, 120 S.E. 466 (1923).

A city has no right, in building a bridge, to obstruct the street with concrete pilasters, and for injuries caused by such obstruction it is liable. Graham v. City of Charlotte, 186 N.C. 649, 120 S.E. 466 (1923).

In a wrongful death action arising from a motorist being struck by a train at a railroad crossing in a city, the motorist's widow did not allege that obstructions which allegedly interfered with the motorist's view of the oncoming train were the result of the city's failure to maintain foliage on city property, so she did not show any breach of duty by the city. Wilkerson v. Norfolk S. Ry., 151 N.C. App. 332, 566 S.E.2d 104, 2002 N.C. App. LEXIS 744 (2002).

City Concurrently Liable for Failure to Repair. — City's negligence in failing to repair fence along city street on Housing Authority property was in the nature of concurrent, not insulating, negligence, and while inexcusable, the city's negligence was not so highly improbable and extraordinary an occurrence as to bear no reasonable connection to the harm threatened by the Housing Authority's original negligence. Petty v. City of Charlotte, 85 N.C. App. 391, 355 S.E.2d 210 (1987), cert. denied, 90 N.C. App. 559, 369 S.E.2d 612 (1988).

Joint Liability with Private Individual for Obstruction. — If any person unlawfully erects an obstruction or nuisance in the streets of a city, and the town authorities permit it to remain an unreasonable length of time, the town and the tort-feasor will be jointly and severally liable to a traveler for an injury resulting therefrom absent fault on his part. The question of primary and secondary liability is for the offending parties to adjust between themselves. Dillon v. City of Raleigh, 124 N.C. 184, 32 S.E. 548 (1899).

An individual may restrain the wrongful obstruction of public way, of whatever origin, if he will suffer injury thereby as distinct from the inconvenience to the public generally, and he may recover such special damages as he has sustained by reason of the obstruction. Wofford v. North Carolina State Hwy. Comm'n, 263 N.C. 677, 140 S.E.2d 376, cert. denied, 382 U.S. 822, 86 S. Ct. 50, 15 L. Ed. 2d 67 (1965).

Obstruction on Private Property. — Where tree which plaintiff contended obstructed her view was located on private property, town had no duty to exercise control over this property and therefore owed no duty to the plaintiff. Lavelle v. Schultz, 120 N.C. App. 857, 463 S.E.2d 567 (1995).

City Was Without Authority to License Placement of Structure in Right-of-Way. — City was without statutory authority, under G.S. 160A-296(a), to enter into a license agreement with a homeowner's association to permit the city to authorize the placement of a structure in a public street right-of-way. Moore's Ferry Dev. Corp. v. City of Hickory, 166 N.C. App. 441, 601 S.E.2d 900, 2004 N.C. App. LEXIS 1741 (2004), cert. denied, 359 N.C. 191, 607 S.E.2d 277 (2004), cert. denied, 359 N.C. 191, 607 S.E.2d 278 (2004).

IV. OPENING, CLOSING AND WIDENING STREETS.

The opening and closing of streets is a governmental function. Bessemer Imp. Co. v. City of Greensboro, 247 N.C. 549, 101 S.E.2d 336 (1958).

The power provided by subdivision (a)(3) of this section is to be exercised in the discretion of the governing body of the municipality acting in its governmental, rather than its proprietary capacity. Rockingham Square Shopping Center, Inc. v. Town of Madison, 45 N.C. App. 249, 262 S.E.2d 705 (1980).

Exclusive to the Municipality. — A municipal corporation is usually given express power by its charter to lay out and open streets. Such charter provisions are supplemented by our general statutes. Under the power thus conferred, the municipal authorities are the sole judges of the necessity or expediency of exercising that right. The municipality's power over its streets is exclusive. Waynesville v. Satterthwait, 136 N.C. 226, 48 S.E. 661 (1904); Moore v. Meroney, 154 N.C. 158, 69 S.E. 838 (1910); Michaux v. City of Rocky Mount, 193 N.C. 550, 137 S.E. 663 (1927).

Authorities of the county embracing such municipality are precluded from exercising the same power within the same territory. Parsons v. Wright, 223 N.C. 520, 27 S.E.2d 534 (1943).

All or Part of Street May Be Closed. — Whether a street lies in a subdivision or is of other origin, the city may close all or part of it upon compliance with statutory procedure. Wofford v. North Carolina State Hwy. Comm'n, 263 N.C. 677, 140 S.E.2d 376, cert. denied, 382 U.S. 822, 86 S. Ct. 50, 15 L. Ed. 2d 67 (1965).

But the closing of a street must not deprive a property owner of reasonable ingress or egress. Wofford v. North Carolina State Hwy. Comm'n, 263 N.C. 677, 140 S.E.2d 376, cert. denied, 382 U.S. 822, 86 S. Ct. 50, 15 L. Ed. 2d 67 (1965).

Diminution of Access from Change of Grade Is Damnum Absque Injuria. — When a city acts for public convenience under the authority granted it by the legislature and raises or lowers the grade of a street, any diminution of access by an abutting property owner is damnum absque injuria. The abutting property owner can neither prevent the change by injunction nor recover damages for the diminished value of his property, when the work is done in conformity with plans designated to promote public convenience. Thompson v. Seaboard Air Line R.R., 248 N.C. 577, 104 S.E.2d 181 (1958).

Abutting Owner Not Entitled to Damages for Narrowing of Sidewalk. — An abutting owner may not recover from a city damages resulting to his property by reason of the fact that the abutting sidewalk has been narrowed in order to widen the street under orders of the city commissioners, the width of the street and sidewalk being within the sound discretion of the commissioners. Ham v. City of Durham, 205 N.C. 107, 170 S.E. 137 (1933).

Demurrer to Action Challenging Closing of Street at Railroad Grade Crossing Upheld. — Defendant town, in cooperation with federal and State authorities in procuring the construction of an underpass and the elimination of two grade crossings, closed two of its streets at the railroad crossings. An action was thereupon instituted by property holders adjacent to the railroad tracks and along one of the closed streets, alleging that the order closing the streets was ultra vires and resulted in the creation of a nuisance causing injury to plaintiffs' property. It was held that defendant town had authority to close the said streets at the crossings in the interest of the public welfare, in the exercise of a discretionary governmental power with which the courts could interfere only in instances of fraud or oppression constituting a manifest abuse of discretion, and that as the closing did not constitute a nuisance or abuse of discretion, defendant town's demurrer to the complaint was properly sustained. Sanders v. Atlantic Coast Line R.R., 216 N.C. 312, 4 S.E.2d 902 (1939).

OPINIONS OF ATTORNEY GENERAL

Power of Municipalities to Regulate Streets. — This section grants municipalities authority to regulate public streets within municipalities, except to the extent power and control is vested in the Department of Transportation. See opinion of the Attorney General to Mr. Ralph D. Karpinos, Town Attorney, Chapel Hill, N.C., 58 N.C.A.G. 17 (1988).

The Department of Transportation is vested with general regulatory authority over the use of State Highway System streets. The general grant of authority to municipalities over streets is subordinate to the Department of Transportation's rights and duties to maintain the State Highway System. See opinion of the Attorney General to Mr. Ralph D. Karpinos, Town Attorney, Chapel Hill, N.C., 58 N.C.A.G. 17 (1988).

§ 160A-297. Streets under authority of Board of Transportation.

(a) A city shall not be responsible for maintaining streets or bridges under the authority and control of the Board of Transportation, and shall not be liable for injuries to persons or property resulting from any failure to do so.

(b) Nothing in this Article shall authorize any city to interfere with the rights and privileges of the Board of Transportation with respect to streets and bridges under the authority and control of the Board of Transportation. (1925, c. 71, s. 3; 1957, c. 65, s. 11; 1971, c. 698, s. 1; 1973, c. 507, s. 5; 1987, c. 747, s. 3.1.)

Editor's Note. — Session Laws 1987, c. 747, which amended this section, effective August 7, 1987, by deleting former subsection (b), which read "A city may, at its own expense, widen any street or bridge under the authority and control of the Board of Transportation, subject to the Board of Transportation's engineering and design specifications," and redesignating former subsection (c) as present subsection (b), in s. 4 provided: "This act shall not be construed to abrogate any agreement between the Department of Transportation and a municipality for the purpose of participating in a State highway system improvement project approved by the Board of Transportation under G.S. 143B-350(f)(4) if the agreement was approved by the Board of Transportation and executed prior to the effective date of this act. This act shall not apply to highway improvement projects identified in the Department's Transportation Improvement Program 1987-1995 adopted by the Board of Transportation in December 1986 for which local municipal participation in rights-of-way acquisition or construction or both is shown."

Section 25 of Session Laws 1987, c. 747

provided that as used in the act, the word "municipality" means a "city" as defined by G.S. 160A-1.

CASE NOTES

Subsection (a) is intended to apply where there is no contract between a city and the Board of Transportation and does not, per se, absolve a city from liability for injury, if any, imposed upon it by such contract. Matternes v. City of Winston-Salem, 286 N.C. 1, 209 S.E.2d 481 (1974).

Liability of City to Individual User for Failure to Make Repairs, etc., Contracted for. — An individual user of a street which is part of the State highway system who sustains personal injuries or property damage as the result of a dangerous condition of such street cannot maintain an action for damages against a city which contracted with the Board of Transportation to repair or remove such condition and then did nothing whatsoever about it. Matternes v. City of Winston-Salem, 286 N.C. 1, 209 S.E.2d 481 (1974).

Liability of City for Dangerous Condition on State Highway Within Its Borders. — When a city street becomes a part of the State highway system, the Board of Transportation is responsible for its maintenance thereafter, which responsibility includes the control of all signs and structures within the right-of-way. Therefore, in the absence of any control over a State highway within its border, a municipality has no liability for injuries resulting from a dangerous condition of such street, unless it created or increased such condition. Shapiro v. Toyota Motor Co., 38 N.C. App. 658, 248 S.E.2d 868 (1978).

City Not Responsible for "Controlled Access" Areas. — All areas within the boundaries of the "controlled access" area are part of the State Highway system and were excepted from contract between the city and NCDOT; thus, city was not responsible for dangerous conditions within the "controlled access" areas. Eakes v. City of Durham, 125 N.C. App. 551, 481 S.E.2d 403 (1997).

As to the statutory obligations of the State Highway Commission (now Board of Transportation), see Milner Hotels, Inc. v. City of Raleigh, 271 N.C. 224, 155 S.E.2d 543 (1967), decided under former statutory provisions.

Applied in Dize Awning & Tent Co. v. City of Winston-Salem, 29 N.C. App. 297, 224 S.E.2d 257 (1976).

Cited in Colombo v. Dorrity, 115 N.C. App. 81, 443 S.E.2d 752; Stancill v. City of Washington, 29 N.C. App. 707, 225 S.E.2d 834 (1976); Estate of Jiggetts v. City of Gastonia, 128 N.C. App. 410, 497 S.E.2d 287 (1998).

§ 160A-298. Railroad crossings.

(a) A city shall have authority to direct, control, and prohibit the laying of railroad tracks and switches in public streets and alleys and to require that all railroad tracks, crossings, and bridges be constructed so as not to interfere with drainage patterns or with the ordinary travel and use of the public streets and alleys.

(b) The costs of constructing, reconstructing, and improving public streets and alleys, including the widening thereof, within areas covered by railroad cross ties, including cross timbers, shall be borne equally by the city and the railroad company. The costs of maintaining and repairing such areas after construction shall be borne by the railroad company.

(c) A city shall have authority to require the installation, construction, erection, reconstruction, and improvement of warning signs, gates, lights, and other safety devices at grade crossings, and the city shall bear ninety percent (90%) of the costs thereof and the railroad company shall bear ten percent (10%) of the costs. The costs of maintaining warning signs, gates, lights, and other safety devices installed after January 1, 1972, shall be borne equally by the city and the railroad company. The maintenance shall be performed by the railroad company and the city shall pay annually to the railroad company fifty percent (50%) of these costs. In maintaining maintenance cost records and determining such costs, the city and the railroad company shall use the same methods and procedures as are now or may hereafter be used by the Board of Transportation.

(d) A city shall have authority to require that a grade crossing be eliminated and replaced by a railroad bridge or by a railroad underpass, if the council finds as a fact that the grade crossing constitutes an unreasonable hazard to vehicular or pedestrian traffic. In such event, the city shall bear ninety percent (90%) of the costs and the railroad company shall bear ten percent (10%) of the costs. If the city constructs a new street which requires a grade separation and which does not replace an existing street, the city shall bear all of the costs. If a railroad company constructs a new track across at grade, or under, or over an existing street, the railroad company shall pay the entire cost thereof. The city shall pay the costs of maintaining street bridges which cross over railroads. Railroad companies shall pay the cost of maintaining railroad bridges over streets, except that cities shall pay the costs of maintaining street pavement, sidewalks, street drainage, and street lighting where streets cross under railroads.

(e) Whenever the widening, improving, or other changes in a street require that a railroad bridge be relocated, enlarged, heightened, or otherwise reconstructed, the city shall bear ninety percent (90%) of the costs and the railroad company shall bear ten percent (10%) of the costs.

(f) It is the intent of this section to make uniform the law concerning the construction and maintenance of railroad crossings, bridges, underpasses, and warning devices within cities. To this end, all general laws and local acts in conflict with this section are repealed, and no local act taking effect on or after January 1, 1972, shall be construed to modify, amend, or repeal any portion of this section unless it specifically so provides by express reference to this section. (1917, c. 136, subch. 5, s. 1; 1919, cc. 136, 237; C.S., s. 2787; 1971, c. 698, s. 1; 1973, c. 507, s. 5.)

Local Modification. — Town of Carrboro: 1987, c. 476, s. 1; 1989, c. 644, s. 6.

CASE NOTES

Editor's Note. — *As to city's control over railroad crossings, see also the case notes to G.S. 160A-296.*

Exercise of control over railroad crossings is within a municipality's inherent police power. Cooper v. Town of Southern Pines, 58 N.C. App. 170, 293 S.E.2d 235 (1982).

Authority Under This Section Does Not Constitute Duty. — The fact that a city has the authority to make certain decisions does not mean that the city is under an obligation to do so. The words "authority" and "power" are not synonymous with the word "duty". When the Legislature intended to create a duty in this Chapter, it did so expressly. Cooper v. Town of Southern Pines, 58 N.C. App. 170, 293 S.E.2d 235 (1982).

In a wrongful death action arising from a motorist's death after being struck by a train at a railroad crossing in a city, the city's authority, under G.S. 160A-298(c), to require the installation of warning devices at the crossing did not create a duty on its part to have such devices installed. Wilkerson v. Norfolk S. Ry., 151 N.C. App. 332, 566 S.E.2d 104, 2002 N.C. App. LEXIS 744 (2002).

Section allows a city to exercise its discretion in requiring improvements at railroad crossings. There is no mandate of action. Cooper v. Town of Southern Pines, 58 N.C. App. 170, 293 S.E.2d 235 (1982).

And Courts Will Not Interfere Absent Abuse of Discretion. — Courts will not interfere with discretionary powers conferred on a municipality for the public welfare unless the exercise (or non-exercise) of those powers is so clearly unreasonable as to constitute an abuse of discretion. Cooper v. Town of Southern Pines, 58 N.C. App. 170, 293 S.E.2d 235 (1982).

Unlike this section, § 160A-296(a)(2) creates an affirmative duty of care. Cooper v. Town of Southern Pines, 58 N.C. App. 170, 293 S.E.2d 235 (1982).

Cost of Automatic Signal Devices at Railroad Crossings. — A city has authority, in the exercise of its police power, to promote public safety and convenience, to allocate to a railway company some portion of the costs of the installation and maintenance of automatic signal devices at road crossings. Allocations so made would constitute a denial of a railway company's constitutional right to substantive due process only if the proportion of the costs allocated to it was so unreasonable as to constitute an arbitrary taking of its property. Southern Ry. v. City of Winston-Salem, 275 N.C. 465, 168 S.E.2d 396 (1969), decided under former § 160-200.

Applied in Norman v. N.C. DOT, 161 N.C. App. 211, 588 S.E.2d 42, 2003 N.C. App. LEXIS 2043 (2003).

§ 160A-299. Procedure for permanently closing streets and alleys.

(a) When a city proposes to permanently close any street or public alley, the council shall first adopt a resolution declaring its intent to close the street or alley and calling a public hearing on the question. The resolution shall be published once a week for four successive weeks prior to the hearing, a copy thereof shall be sent by registered or certified mail to all owners of property adjoining the street or alley as shown on the county tax records, and a notice of the closing and public hearing shall be prominently posted in at least two places along the street or alley. If the street or alley is under the authority and control of the Department of Transportation, a copy of the resolution shall be mailed to the Department of Transportation. At the hearing, any person may be heard on the question of whether or not the closing would be detrimental to the public interest, or the property rights of any individual. If it appears to the satisfaction of the council after the hearing that closing the street or alley is not contrary to the public interest, and that no individual owning property in the vicinity of the street or alley or in the subdivision in which it is located would thereby be deprived of reasonable means of ingress and egress to his property, the council may adopt an order closing the street or alley. A certified copy of the order (or judgment of the court) shall be filed in the office of the register of deeds of the county in which the street, or any portion thereof, is located.

(b) Any person aggrieved by the closing of any street or alley including the Department of Transportation if the street or alley is under its authority and control, may appeal the council's order to the General Court of Justice within 30 days after its adoption. In appeals of streets closed under this section, all facts and issues shall be heard and decided by a judge sitting without a jury. In addition to determining whether procedural requirements were complied with, the court shall determine whether, on the record as presented to the city council, the council's decision to close the street was in accordance with the statutory standards of subsection (a) of this section and any other applicable requirements of local law or ordinance.

No cause of action or defense founded upon the invalidity of any proceedings taken in closing any street or alley may be asserted, nor shall the validity of the order be open to question in any court upon any ground whatever, except in an action or proceeding begun within 30 days after the order is adopted. The failure to send notice by registered or certified mail shall not invalidate any ordinance adopted prior to January 1, 1989.

(c) Upon the closing of a street or alley in accordance with this section, subject to the provisions of subsection (f) of this section, all right, title, and interest in the right-of-way shall be conclusively presumed to be vested in those persons owning lots or parcels of land adjacent to the street or alley, and the title of such adjoining landowners, for the width of the abutting land owned by them, shall extend to the centerline of the street or alley.

The provisions of this subsection regarding division of right- of-way in street or alley closings may be altered as to a particular street or alley closing by the assent of all property owners taking title to a closed street or alley by the filing of a plat which shows the street or alley closing and the portion of the closed street or alley to be taken by each such owner. The plat shall be signed by each property owner who, under this section, has an ownership right in the closed street or alley.

(d) This section shall apply to any street or public alley within a city or its extraterritorial jurisdiction that has been irrevocably dedicated to the public, without regard to whether it has actually been opened. This section also applies to unopened streets or public alleys that are shown on plats but that have not been accepted or maintained by the city, provided that this section shall not abrogate the rights of a dedicator, or those claiming under a dedicator, pursuant to G.S. 136-96.

(e) No street or alley under the control of the Department of Transportation may be closed unless the Department of Transportation consents thereto.

(f) A city may reserve its right, title, and interest in any utility improvement or easement within a street closed pursuant to this section. Such reservation shall be stated in the order of closing. Such reservation also extends to utility improvements or easements owned by private utilities which at the time of the street closing have a utility agreement or franchise with the city.

(g) The city may retain utility easements, both public and private, in cases of streets withdrawn under G.S. 136-96. To retain such easements, the city council shall, after public hearing, approve a "declaration of retention of utility easements" specifically describing such easements. Notice by certified or registered mail shall be provided to the party withdrawing the street from dedication under G.S. 136-96 at least five days prior to the hearing. The declaration must be passed prior to filing of any plat or map or declaration of withdrawal with the register of deeds. Any property owner filing such plats, maps, or declarations shall include the city declaration with the declaration of withdrawal and shall show the utilities retained on any map or plat showing the withdrawal. (1971, c. 698, s. 1; 1973, c. 426, s. 47; c. 507, s. 5; 1977, c. 464, s. 34, 1981, c. 401; c. 402, ss. 1, 2; 1989, c. 254; 1993, c. 149, s. 1.)

Local Modification. — Wake: 1989, c. 279, s. 1; city of Charlotte: 1987, c. 426 (publication period reduced) ; city of Durham: 1973, c. 415; 1985, c. 332; city of Statesville: 1987, c. 426 (publication period reduced.)

Editor's Note. — Session Laws 1993, c. 149, which amended this section, provides in s. 2: "This act applies to any street closing order adopted on or after July 1, 1993, but does not apply to pending litigation."

Session Laws 1993, c. 149, s. 3 provides: "This act does not affect any local modifications to G.S. 160A-299 which are not in conflict with the amendments made to G.S. 160A-299 by this act. If the local modification to G.S. 160A-299 conflicts with the amendments made to G.S. 160A-299 made by this act, the amendments made by this act prevail to the extent of the conflict."

CASE NOTES

Closing of Portion of Street. — The legislature did not intend to provide a town with the authority to close a street only if the entire length and breadth of the street is closed; thus, a town may close only a portion of a street. Williamson v. Town of Surf City, 143 N.C. App. 539, 545 S.E.2d 798, 2001 N.C. App. LEXIS 316 (2001).

Time to Contest Closing of Street. — A declaratory judgment action to contest the validity of a proceeding to close a 30-foot wide strip of land adjacent to the plaintiff's property was untimely where the complaint was filed more than 30 days after the adoption of the ordinance purporting to close the disputed strip of land. Groves v. Community Hous. Corp. of Haywood County, 144 N.C. App. 79, 548 S.E.2d 535, 2001 N.C. App. LEXIS 345 (2001).

Public Must Acquire Some Right in Street Before Municipality May Close it. — The language of subsections (a) and (d) clearly indicates that the public must have acquired some right in the street or alley before the municipality may act to close it. In re Easement of Right of Way, 90 N.C. App. 303, 368 S.E.2d 639 (1988).

Indexing of resolution closing a street under the name of the city, without also indexing it under the names of the abutting landowners who acquired the fee simple title to the portion closed, was all that was statutorily required. General Greene Inv. Co. v. Greene, 48 N.C. App. 29, 268 S.E.2d 810, cert. denied, 301 N.C. 235, 283 S.E.2d 132 (1980).

Street Not to Be Utilized for Park. — Subsection (c) specifies that if a portion of the street is closed, the land would go to property owners on either side of the dedicated street;

thus, closing a street pursuant to this section would not allow town to utilize the street for park purposes. Wooten v. Town of Topsail Beach, 127 N.C. App. 739, 493 S.E.2d 285 (1997), cert. denied, 348 N.C. 78, 505 S.E.2d 888 (1998).

Construction of Public Facilities on Portion of Closed Street. — A town had authority to close a street pursuant to this section where the town intended to use a portion of the closed street to construct public facilities, provided the town complied with the procedural requirements of this section. Williamson v. Town of Surf City, 143 N.C. App. 539, 545 S.E.2d 798, 2001 N.C. App. LEXIS 316 (2001).

Collateral Attack on Notice Precluded. — Where all abutting owners consented to a closing, no other notices by mail to landowners were required by former G.S. 153-9(17), and subsequent owners of property who purchased on the representation that an adjacent street was open could not collaterally attack the city council's finding that notice of the hearing was duly published. General Greene Inv. Co. v. Greene, 48 N.C. App. 29, 268 S.E.2d 810, cert. denied, 301 N.C. 235, 283 S.E.2d 132 (1980).

Separation of Powers Clause not Violated. — G.S. 160A-299(b) did not deprive a home owner of his right to a fair hearing or violate the Separation of Powers Clause of the North Carolina Constitution in his appeal from a town council order closing a road because he had the opportunity to test, rebut, and explain evidence presented to the council at three public hearings held on the road closure over a two-month period; these hearings were the proper place for him to present evidence and to rebut any evidence contrary to his position. Houston v. Town of Chapel Hill, 177 N.C. App. 739, 630 S.E.2d 249, 2006 N.C. App. LEXIS 1199 (2006).

Evidentiary Hearing Not Required on Appeal. — Homeowner was not entitled to an evidentiary hearing in his appeal from a town council's road closure order because the clear and unambiguous language of G.S. 160A-299(b) directed the superior court to decide all issues except the council's compliance with procedural issues on the record before the town council, and the owner did not challenge the council's procedural compliance; the record evidence supported the council's findings, and the superior court properly affirmed its order after finding that it complied with G.S. 160A-299. Houston v. Town of Chapel Hill, 177 N.C. App. 739, 630 S.E.2d 249, 2006 N.C. App. LEXIS 1199 (2006).

Cited in Homebuilders Ass'n v. City of Charlotte, 336 N.C. 37, 442 S.E.2d 45 (1994).

§ 160A-299.1. Applications for intermittent closing of roads within watershed improvement project by municipality; notice; costs; markers.

(a) Upon proper application by the board of commissioners of a drainage district established under the provisions of Chapter 156 of the General Statutes by the board of trustees of a watershed improvement district established under the provisions of Article 2 of Chapter 139 of the General Statutes, by the board of county commissioners of any county operating a county watershed improvement program under the provisions of Article 3 of Chapter 139 of the General Statutes, by the board of commissioners of any watershed improvement commission appointed by a board of county commissioners, or by the board of supervisors of any soil and water conservation district designated by a board of county commissioners to exercise authority in carrying out a county watershed improvement program, any municipality for roads or streets coming under its jurisdictional control is hereby authorized to permit the intermittent closing of any highway or public road within the boundaries of any watershed improvement project operated by the applicants, whenever in the judgment of the municipality it is necessary to do so, and when the highway or public road will be intermittently subject to inundation by floodwaters retained by an approved watershed improvement project.

(b) Before any permit may be issued for the temporary inundation and closing of such a road, an application for such permit shall be made to the appropriate municipality by the public body having jurisdiction over the watershed improvement project. The application shall specify the highway, road, or street involved, and shall request that a permit be granted to the applicant public body to allow the intermittent closing of the road.

(c) Upon receipt of such an application the municipality shall give public notice of the proposed action by publication in a newspaper of general circulation in the county or counties, within which the proposed intermittent closing of road or roads would occur; and such notices shall contain a description of the places of beginning and the places of ending of such intermittent closing. In addition, the municipality shall give notice to all public utilities or common carriers having facilities located within the rights-of-way of any roads being closed by mailing copies of such notices to the appropriate offices of the public utility or common carrier having jurisdiction over the affected facilities of the public utility or common carrier. Not sooner than 14 days after publication and mailing of notices, the municipality may issue its permit with respect to such road.

(d) All cost in connection with the publication and mailing of notices shall be paid by the applicant. In the event any municipality issues a permit allowing the intermittent closing of a road, the permit shall contain a provision that the applicant public body having jurisdiction over the watershed improvement project causing the potential flooding shall cause suitable markers to be installed on the road to advise the general public of the intermittent closing of the road. (1975, c. 639, s. 2.)

§ 160A-300. Traffic control.

A city may by ordinance prohibit, regulate, divert, control, and limit pedestrian or vehicular traffic upon the public streets, sidewalks, alleys, and bridges of the city. (1917, c. 136, subch. 5, s. 1; 1919, cc. 136, 237; C.S., s. 2787; 1941, c. 153, ss. 1, 2; c. 272; 1947, c. 7; 1953, c. 171; 1965, c. 945; 1971, c. 698, s. 1.)

Legal Periodicals. — For note on trend away from governmental immunity to liability for a defective traffic signal, see 6 Wake Forest Intra. L. Rev. 518 (1970).

CASE NOTES

Editor's Note. — *Most of the cases cited below were decided under former G.S. 160-200.*

Ordinances under this section are presumed to be valid, and the courts will not declare them invalid unless they are clearly shown to be so. Wenco Mgt. Co. v. Town of Carrboro, 53 N.C. App. 480, 281 S.E.2d 74 (1981).

Section Does Not Impose Affirmative Duty. — This section grants cities discretionary authority, but imposes no affirmative duty on them to control vehicular traffic on the public streets of the city. Talian v. City of Charlotte, 98 N.C. App. 281, 390 S.E.2d 737, aff'd, 327 N.C. 629, 398 S.E.2d 330 (1990).

City has been held to have owed the plaintiffs no affirmative duty to control traffic on a city street when G.S. 160A-300 authorized the city to control traffic, but did not expressly require it to do so; a city cannot be held liable for delaying the installation of safety devices at a railroad crossing because the city, although authorized to require safety devices, has no duty to have the warning or safety devices in place. Norman v. N.C. DOT, 161 N.C. App. 211, 588 S.E.2d 42, 2003 N.C. App. LEXIS 2043 (2003), review dismissed, review denied, 358 N.C. 235, 595 S.E.2d 153 (2004), cert. denied, 358 N.C. 545, 599 S.E.2d 404 (2004).

Authority to Regulate Traffic and Use of Streets. — Every municipal corporation has specific statutory authority to adopt such ordinances for the regulation and use of its streets as it deems best for the public welfare of its citizens and to provide for the regulation and diversion of vehicular traffic upon its streets. Gene's, Inc. v. City of Charlotte, 259 N.C. 118, 129 S.E.2d 889 (1963).

As to municipality's right to install traffic control signals, see Upchurch v. Hudson Funeral Home, 263 N.C. 560, 140 S.E.2d 17 (1965); Rappe v. Carr, 4 N.C. App. 497, 167 S.E.2d 48 (1969).

Installation and Maintenance of Traffic Lights as Discretionary Governmental Function. — The installation and maintenance of traffic lights by a municipality is in the interest of the public safety in the exercise of the police power and is a discretionary governmental function. Hodges v. City of Charlotte, 214 N.C. 737, 200 S.E. 889 (1939).

In the installation and maintenance of traffic light signals, a city exercises a discretionary governmental function solely for the benefit of the public and may not be held liable for the negligence of its officers and agents in respect thereto. Hamilton v. Hamlet, 238 N.C. 741, 78 S.E.2d 770 (1953).

The installation and maintenance of electrical traffic control signals in and by municipalities is a governmental function and not a proprietary or corporate function. Rappe v. Carr, 4 N.C. App. 497, 167 S.E.2d 48 (1969).

Private Store Not Responsible for Traffic Control. — The duty to provide for traffic control on public streets in a municipality is charged by statute to the city. Defendant corporation, an outlet store, had no duty to provide for a crossing guard, warning lights or other traffic control devices over a city street, nor any duty to warn of the hazard of jaywalking across such a busy thoroughfare. Laumann v. Plakakis, 84 N.C. App. 131, 351 S.E.2d 765 (1987).

Applied in Cucina v. City of Jacksonville, 138 N.C. App. 99, 530 S.E.2d 353, 2000 N.C. App. LEXIS 547 (2000).

Cited in Lonon v. Talbert, 103 N.C. App. 686, 407 S.E.2d 276 (1991).

§ 160A-300.1. Use of traffic control photographic systems.

(a) A traffic control photographic system is an electronic system consisting of a photographic, video, or electronic camera and a vehicle sensor installed to work in conjunction with an official traffic control device to automatically produce photographs, video, or digital images of each vehicle violating a standard traffic control statute or ordinance.

(b) Any traffic control photographic system or any device which is a part of that system, as described in subdivision (a) of this section, installed on a street or highway which is a part of the State highway system shall meet requirements established by the North Carolina Department of Transportation. Any traffic control system installed on a municipal street shall meet standards established by the municipality and shall be consistent with any standards set by the Department of Transportation.

(b1) Any traffic control photographic system installed on a street or highway must be identified by appropriate advance warning signs conspicuously posted not more than 300 feet from the location of the traffic control photographic system. All advance warning signs shall be consistent with a statewide standard adopted by the Department of Transportation in conjunction with local governments authorized to install traffic control photographic systems.

(c) Municipalities may adopt ordinances for the civil enforcement of G.S. 20-158 by means of a traffic control photographic system, as described in subsection (a) of this section. Notwithstanding the provisions of G.S. 20-176, in the event that a municipality adopts an ordinance pursuant to this section, a violation of G.S. 20-158 at a location at which a traffic control photographic system is in operation shall not be an infraction. An ordinance authorized by this subsection shall provide that:

(1) The owner of a vehicle shall be responsible for a violation unless the owner can furnish evidence that the vehicle was, at the time of the violation, in the care, custody, or control of another person. The owner of the vehicle shall not be responsible for the violation if the owner of the vehicle, within 30 days after notification of the violation, furnishes the officials or agents of the municipality which issued the citation either of the following:

a. An affidavit stating the name and address of the person or company who had the care, custody, and control of the vehicle.

b. An affidavit stating that the vehicle involved was, at the time, stolen. The affidavit must be supported with evidence that supports the affidavit, including insurance or police report information.

(1a) Subdivision (1) of this subsection shall not apply, and the registered owner of the vehicle shall not be responsible for the violation, if notice of the violation is given to the registered owner of the vehicle more than 90 days after the date of the violation.

(2) A violation detected by a traffic control photographic system shall be deemed a noncriminal violation for which a civil penalty of fifty

dollars ($50.00) shall be assessed, and for which no points authorized by G.S. 20-16(c) shall be assigned to the owner or driver of the vehicle nor insurance points as authorized by G.S. 58-36-65.

(3) The owner of the vehicle shall be issued a citation which shall clearly state the manner in which the violation may be challenged, and the owner shall comply with the directions on the citation. The citation shall be processed by officials or agents of the municipality and shall be forwarded by personal service or first-class mail to the address given on the motor vehicle registration. If the owner fails to pay the civil penalty or to respond to the citation within the time period specified on the citation, the owner shall have waived the right to contest responsibility for the violation, and shall be subject to a civil penalty not to exceed one hundred dollars ($100.00). The municipality may establish procedures for the collection of these penalties and may enforce the penalties by civil action in the nature of debt.

(4) The municipality shall institute a nonjudicial administrative hearing to review objections to citations or penalties issued or assessed under this section.

(c1) The duration of the yellow light change interval at intersections where traffic control photographic systems are in use shall be no less than the yellow light change interval duration specified in the Design Manual developed by the Signals and Geometrics Section of the North Carolina Department of Transportation.

(d) This section applies only to the Cities of Albemarle, Charlotte, Durham, Fayetteville, Greensboro, Greenville, High Point, Locust, Lumberton, Newton, Rocky Mount, and Wilmington, to the Towns of Chapel Hill, Cornelius, Huntersville, Matthews, Nags Head, Pineville, and Spring Lake, and to the municipalities in Union County. (1997-216, ss. 1, 2; 1999-17, s. 1; 1999-181, ss. 1, 2; 1999-182, s. 2; 1999-456, s. 48(c); 2000-37, s. 1; 2000-97, s. 2; 2001-286, ss. 1, 2; 2001-487, s. 37; 2003-86, s. 1; 2003-380, s. 2; 2007-341, s. 2.)

Local Modification. — City of Albemarle: 2007-341, s. 1; city of Charlotte: 2007-341, s. 1; city of Durham: 2007-341, s. 1; city of Fayetteville: 2007-341, s. 1; city of Locust: 2007-341, s. 1; city of Rocky Mount: 2007-341, s. 1; town of Chapel Hill: 2000-97, s. 2(b); municipalities in Union County: 2007-341, s.1.

Use of Traffic Control Photographic Systems in Wake County and the City of Concord. — Sessions Laws 2001-286, ss. 3, 4, as amended by Session Laws 2003-380, s. 3, enacted local laws governing the use of traffic control photographic systems in Wake County and the City of Concord.

Editor's Note. — Session Laws 1997-216, s. 1, effective June 23, 1997, enacted this section and s. 2 made it effective as to the city of Charlotte. Session Laws 1999-17, s. 1, effective April 17, 1999, added the city of Fayetteville. Session Laws 1999-181, effective January 1, 2000, in s. 1, added subsection (b1), added "nor insurance points as authorized by G.S. 58-36-65" at the end of subdivision (c)(2), and in s. 2, added the cities of Greensboro, High Point, and Rocky Mount. Session Laws 1999-182, effective January 1, 2000, in s. 1 made the same changes as were made by Session Laws 1999-181, s. 1, and in s. 2 added Charlotte, Fayetteville, Greenville, Wilmington, and Greensboro and the towns of Huntersville, Matthews, and Cornelius. Session Laws 1999-456, s. 48(c), effective August 13, 1999, and designed to resolve duplicate enactments by Session Laws 1999-181 and 1999-182, repealed Session Laws 1999-182, ss. 1 and 2, and rewrote Session Laws 1997-216, s. 2, as amended by Session Laws 1999-17 and Session Laws 1999-181, to add the city of Wilmington, and the towns of Cornelius, Huntersville, and Matthews. Session Laws 2000-37, s. 1, effective June 30, 2000, added the cities of Greenville and Lumberton, and the town of Pineville. Session Laws 2000-97, s. 2, effective July 10, 2000, added the town of Chapel Hill. The section has been codified at the direction of the Revisor of Statutes.

Legal Periodicals. — For recent development, "Picture It: Red Light Cameras Abide by the Law of the Land," see 80 N.C.L. Rev. 1879 (2002).

CASE NOTES

Due Process. — Because G.S. 160A-300.1(c)(4) and a city ordinance promulgated pursuant to it provided an adequate method to challenge the legality of a city's program to catch red-light violators by use of automatic cameras at intersections, plaintiff's independent action presenting such a challenge was properly dismissed. Structural Components Int. Inc. v. City of Charlotte, 154 N.C. App. 119, 573 S.E.2d 166, 2002 N.C. App. LEXIS 1418 (2002).

Constitutionality. — An individual who was assessed a $50.00 civil penalty for a red light violation detected by cameras installed under the authority of G.S. 160A-300.1 lacked standing to challenge the statute on the grounds of a violation of his right to due process and equal protection because the individual did not avail himself of any of the procedural processes available under the statute. Furthermore, even if the individual had standing, the statute was civil in nature and the process was sufficient in a civil setting to afford the citation recipient due process. In addition, the individual failed to allege membership in any suspect class. Shavitz v. City of High Point, 270 F. Supp. 2d 702, 2003 U.S. Dist. LEXIS 11839 (M.D.N.C. 2003).

Use of Assessments. — The assessments made pursuant to G.S. 160A-300.1 and High Point, N.C., Ordinance No. 00-89, § 10-1-306 constituted monetary payments which, although levied in a civil setting, were penal in nature. Where the assessments did not accrue to the state, the "civil penalties" assessed by a city pursuant to the ordinance were not subject to the requirements N.C. Const. art. IX, § 7. The fines and other amounts received by the city and the other defendants under the statute and the ordinance were not required to be appropriated and used exclusively for maintaining free public schools in the county. Shavitz v. City of High Point, 270 F. Supp. 2d 702, 2003 U.S. Dist. LEXIS 11839 (M.D.N.C. 2003).

County board of education was entitled to funds derived from a city's red light camera program, which program was implemented by an ordinance pursuant to G.S. 160A-300.1(c), as N.C. Const. art. IX, § 7 applied to the civil penalties assessed by the city for violations of the ordinance regarding the failure to stop for a red stoplight. Further, pursuant to G.S. 115C-437, the city was to pay 90 percent of the amount collected by its red light camera program to the board. Shavitz v. City of High Point, 177 N.C. App. 465, 630 S.E.2d 4, 2006 N.C. App. LEXIS 1080 (2006), cert. denied, appeal dismissed, 361 N.C. 430, 648 S.E.2d 845 (2007).

Standing. — An individual, who was assessed a $50.00 civil penalty for a red light violation detected by cameras installed under the authority of G.S. 160A-300.1 and High Point, N.C., Ordinance No. 00-89, § 10-1-306, launched a challenge to the statute and the ordinance based on N.C. Const. art. IX, § 7; he did not, however, have standing to bring this claim, as he did not allege that (1) there had been a demand on and refusal by the proper authorities to institute proceedings for the protection of the interests of the political agency or political subdivision; or (2) a demand on such authorities would have been useless. Nor could the individual allege that a demand on the proper authorities, a school board, would have been useless since the school board had protected its own interests by asking for declaratory relief. Shavitz v. City of High Point, 270 F. Supp. 2d 702, 2003 U.S. Dist. LEXIS 11839 (M.D.N.C. 2003).

An individual, who was assessed a $50.00 civil penalty for a red light violation detected by cameras installed under the authority of G.S. 160A-300.1 and High Point, N.C., Ordinance No. 00-89, § 10-1-306, launched a challenge to the statute and the ordinance based on N.C. Const. art. IX, § 7; while the court concluded that the assessments in question constituted monetary payments. Shavitz v. City of High Point, 270 F. Supp. 2d 702, 2003 U.S. Dist. LEXIS 11839 (M.D.N.C. 2003).

§ 160A-300.5: Repealed by Session Laws 2009-459, s. 2, effective October 1, 2009.

Editor's Note. — The former section, Regulation of golf carts on streets in certain localities, was enacted by Session Laws 2006-27, ss. 1, 2 (codified at the direction of the Revisor of Statutes) and amended by Session Laws 2007-72, s. 1, 2007-336, s. 1, and 2008-71, s. 1. For present similar provisions, see G.S. 160A-300.6.

§ 160A-300.6. Regulation of golf carts on streets, roads, and highways.

(a) Notwithstanding the provisions of G.S. 20-50 and G.S. 20-54, a city may, by ordinance, regulate the operation of golf carts, as defined in G.S. 20-4.01(12a), on any public street, road, or highway where the speed limit is 35 miles per hour or less within its municipal limits or on any property owned or leased by the city.

(b) By ordinance, a city may require the registration of golf carts, charge a fee for the registration, specify who is authorized to operate golf carts, and specify the required equipment, load limits, and the hours and methods of operation of golf carts. No person less than 16 years of age may operate a golf cart on a public street, road, or highway. (2009-459, s. 3.)

Editor's Note. — Session Laws 2009-459, s. 11, made this section effective October 1, 2009. Section 11 further provides: "A county may adopt an ordinance under G.S. 153A-245, and a city may adopt an ordinance under G.S. 160A-300.6 when this act becomes law, but the ordinances may not become effective prior to October 1, 2009. The repeal herein of any act does not affect the rights or liabilities of a local government that arose during the time the act was in effect, or under an ordinance adopted under such an act. If any county or city had adopted an ordinance under any act repealed by this act, and the ordinance would be permitted under G.S. 153A-245 or G.S. 160A-300.6 as enacted by this act, that ordinance shall remain in effect until amended or repealed by that county or city."

§ 160A-301. Parking.

(a) On-Street Parking. — A city may by ordinance regulate, restrict, and prohibit the parking of vehicles on the public streets, alleys, and bridges within the city. When parking is permitted for a specified period of time at a particular location, a city may install a parking meter at that location and require any person parking a vehicle therein to place the meter in operation for the entire time that the vehicle remains in that location, up to the maximum time allowed for parking there. Parking meters may be activated by coins or tokens. Proceeds from the use of parking meters on public streets must be used to defray the cost of enforcing and administering traffic and parking ordinances and regulations.

(b) Off-Street Parking. — A city may by ordinance regulate the use of lots, garages, or other facilities owned or leased by the city and designated for use by the public as parking facilities. The city may impose fees and charges for the use of these facilities, and may provide for the collection of these fees and charges through parking meters, attendants, automatic gates, or any other feasible means. The city may make it unlawful to park any vehicle in an off-street parking facility without paying the established fee or charge and may ordain other regulations pertaining to the use of such facilities.

Revenues realized from off-street parking facilities may be pledged to amortize bonds issued to finance such facilities, or used for any other public purpose.

(c) Nothing contained in Public Laws 1921, Chapter 2, Section 29, or Public Laws 1937, Chapter 407, Section 61, shall be construed to affect the validity of a parking meter ordinance or the revenues realized therefrom.

(d) The governing body of any city may, by ordinance, regulate the stopping, standing, or parking of vehicles in specified areas of any parking areas or driveways of a hospital, shopping center, apartment house, condominium complex, or commercial office complex, or any other privately owned public vehicular area, or prohibit such stopping, standing, or parking during any specified hours, provided the owner or person in general charge of the operation and control of that area requests in writing that such an ordinance be adopted. The owner of a vehicle parked in violation of an ordinance adopted pursuant to this subsection shall be deemed to have appointed any appropriate law-enforcement officer as his agent for the purpose of arranging for the transportation and safe storage of such vehicle.

(e) The registered owner of a vehicle that has been leased or rented to another person or company shall not be liable for a violation of an ordinance adopted pursuant to this section if, after receiving notification of the civil violation within 90 days of the date of occurrence, the owner, within 30 days thereafter, files with the officials or agents of the municipality an affidavit including the name and address of the person or company that leased or rented the vehicle. If notification is given to the owner of the vehicle after 90 days have elapsed from the date of the violation, the owner is not required to provide the name and address of the lessee or renter, and the owner shall not be held responsible for the violation. (1917, c. 136, subch. 5, s. 1; 1919, cc. 136, 237; C.S., s. 2787; 1941, c. 153, ss. 1, 2; c. 272; 1947, c. 7; 1953, c. 171; 1965, c. 945; 1971, c. 698, s. 1; 1973, c. 426, s. 48; 1979, c. 745, s. 2; 2003-380, s. 1.)

Local Modification. — City of Ashville: 2001-46, s. 2, 2003-165, s. 1; city of Fayetteville: 1991 (Reg. Sess., 1992), c. 952; city of Greenville: 2001-46; city of Raleigh: 2009-164, s. 1; city of Wilmington: 2001-9; town of Chapel Hill: 2000-97, s. 3; 2001-46; town of Carolina Beach: 2001-9; town of Chapel Hill: 2009-164, s. 1; town of Kure Beach: 2001-9; town of Wrightsville Beach: 1998-86.

CASE NOTES

Editor's Note. — *Most of the cases cited below were decided under former G.S. 160-200(31).*

A municipality may require a motorist who parks his vehicle in a parking meter zone to set the meter in operation by depositing a coin, provided that the deposit of the coin is the method selected by its governing body in the exercise of its discretion for the purpose of regulating parking in the interest of the public convenience and not as a revenue raising measure. State v. Scoggin, 236 N.C. 1, 72 S.E.2d 97 (1952).

The deposit of a coin by a motorist at the time of parking, to activate the parking meter, is not a fee, charge or toll for using the parking space, but is simply the method adopted by the governing authorities of the city for putting the meter in operation, and the revenue derived therefrom is expressly set apart and dedicated to a particular use by the legislature. Britt v. City of Wilmington, 236 N.C. 446, 73 S.E.2d 289 (1952).

But Revenue Derived Therefrom Is in the Nature of a Tax. — The revenue derived from on-street parking facilities is exacted in the performance of a governmental function, and must be set apart and used for a specific purpose. By whatever name called, it is in the nature of a tax. Britt v. City of Wilmington, 236 N.C. 446, 73 S.E.2d 289 (1952).

Validity of Making Parking Privilege Dependent on Amount of Money Placed in Meter. — Where a municipal ordinance prescribed that parking in a designated zone should be limited to one hour, a motorist could not be convicted of overtime parking for parking in such zone for less than the prescribed one-hour period; hence, an additional provision of the ordinance, that a motorist would be subject to criminal prosecution if he parked in the one-hour zone for longer than 12 minutes upon the deposit of a one-cent coin or 24 minutes upon the deposit of two one-cent coins for successive periods, was unconstitutional as being discriminatory and as making the period of time dependent not upon public convenience but upon the amount of money deposited. State v. Scoggin, 236 N.C. 1, 72 S.E.2d 97 (1952).

Where a municipal ordinance prescribes one-hour and two-hour parking meter zones upon the deposit of a five-cent coin, the ordinance may permit, by nonpenal provisions, that a motorist may deposit a one-cent coin for a shorter length of time, provided the motorist is permitted, by depositing additional pennies, not to exceed a total of five, to remain in the parking space for the total length of time prescribed by the ordinance for such zone. State v. Scoggin, 236 N.C. 1, 72 S.E.2d 97 (1952).

Contract Binding City to Enact Parking Meter Ordinance Not Authorized. — A municipality may not bind itself to enact or enforce on-street and off-street parking regulations by penal ordinance for the period during which bonds issued to provide off-street parking facilities should be outstanding, since it may not contract away or bind itself in regard to its freedom to enact governmental regulations. Britt v. City of Wilmington, 236 N.C. 446, 73

S.E.2d 289 (1952). But see, Town of Graham v. Karpark Corp., 194 F.2d 616 (4th Cir. 1952), upholding a contract with a parking meter manufacturer whereby city agreed to enact and enforce ordinances requiring parking meters until the meters were paid for.

City ordinance prohibiting parking of automobiles on one side of a street on certain blocks where, because of the narrowness of the street, there was insufficient room for cars to pass between parked cars and a streetcar track in the street, was valid in the light of former G.S. 160-200(31). State v. Carter, 205 N.C. 761, 172 S.E. 415 (1934).

Parking Improvements Permissible. — Parking improvements made by town constituted permissible on-street parking; thus, the trial court erred in granting plaintiff's motion for summary judgment. March v. Town of Kill Devil Hills, 125 N.C. App. 151, 479 S.E.2d 252 (1996).

Cited in Cauble v. City of Asheville, 45 N.C. App. 152, 263 S.E.2d 8 (1980).

OPINIONS OF ATTORNEY GENERAL

As to the validity of subsection (b), insofar as it authorizes criminal sanctions to enforce parking regulations in municipally owned off-street parking facilities, in light of Britt v. City of Wilmington, 236 N.C. 446, 73 S.E.2d 289 (1952), see opinion of Attorney General to Mr. Rufus C. Boutwell, Jr., 43 N.C.A.G. 141 (1973).

§ 160A-302. Off-street parking facilities.

A city shall have authority to own, acquire, establish, regulate, operate, and control off-street parking lots, parking garages, and other facilities for parking motor vehicles, and to make a charge for the use of such facilities. (1917, c. 136, subch. 5, s. 1; 1919, cc. 136, 237; C.S., s. 2787; 1941, c. 153, ss. 1, 2; c. 272; 1947, c. 7; 1953, c. 171; 1965, c. 945; 1971, c. 698, s. 1.)

§ 160A-302.1. Fishing from bridges regulated.

The governing body of any city is hereby authorized to enact an ordinance prohibiting or regulating fishing from any bridge for the purpose of protecting persons fishing on the bridge from passing vehicular or rail traffic. Such ordinance may also prohibit or regulate fishing from any bridge one mile beyond the corporate limits of the city where the board or boards of county commissioners by resolution agree to such prohibition or regulation; provided, however, that the board or boards of county commissioners may upon 30 days' written notice withdraw their respective approval of the municipal ordinance, and that ordinance shall have no further effect within that county's jurisdiction. The ordinance shall provide that signs shall be posted on any bridge where fishing is prohibited or regulated reflecting such prohibition or regulation. In any event, no one may fish from the drawspan of any regularly attended drawbridge.

The police department of the city is hereby vested with the jurisdiction and authority to enforce any ordinance passed pursuant to this section.

The authority granted under the provisions of this section shall be subject to the authority of the Board of Transportation to prohibit fishing on any bridge on the State highway system. (1971, c. 690, ss. 2, 3, 6; c. 896, s. 15; 1973, c. 426, s. 49; c. 507, s. 5.)

Editor's Note. — This section was originally codified as subdivision (47) of former G.S. 160-200. It was transferred to its present position by Session Laws 1971, c. 896, s. 15.

§ 160A-303. Removal and disposal of junked and abandoned motor vehicles.

(a) A city may by ordinance prohibit the abandonment of motor vehicles on the public streets or on public or private property within the city, and may enforce any such ordinance by removing and disposing of junked or abandoned motor vehicles according to the procedures prescribed in this section.

(b) A motor vehicle is defined to include all machines designed or intended to travel over land or water by self-propulsion or while attached to any self-propelled vehicle.

(b1) An abandoned motor vehicle is one that:

(1) Has been left upon a street or highway in violation of a law or ordinance prohibiting parking; or

(2) Is left on property owned or operated by the city for longer than 24 hours; or

(3) Is left on private property without the consent of the owner, occupant, or lessee thereof for longer than two hours; or

(4) Is left on any public street or highway for longer than seven days.

(b2) A junked motor vehicle is an abandoned motor vehicle that also:

(1) Is partially dismantled or wrecked; or

(2) Cannot be self-propelled or moved in the manner in which it was originally intended to move; or

(3) Is more than five years old and worth less than one hundred dollars ($100.00) or is more than five years old and worth less than five hundred dollars ($500.00) as provided by the municipality in an ordinance adopted under this section; or

(3a) Repealed by Session Laws 2009-97, s. 1, effective October 1, 2009.

(4) Does not display a current license plate.

(c) Any junked or abandoned motor vehicle found to be in violation of an ordinance adopted under this section may be removed to a storage garage or area, but no such vehicle shall be removed from private property without the written request of the owner, lessee, or occupant of the premises unless the council or a duly authorized city official or employee has declared it to be a health or safety hazard. The city may require any person requesting the removal of a junked or abandoned motor vehicle from private property to indemnify the city against any loss, expense, or liability incurred because of the removal, storage, or sale thereof. When an abandoned or junked motor vehicle is removed, the city shall give notice to the owner as required by G.S. 20-219.11(a) and (b).

(d) Hearing Procedure. — Regardless of whether a city does its own removal and disposal of motor vehicles or contracts with another person to do so, the city, shall provide a hearing procedure for the owner. For purposes of this subsection, the definitions in G.S. 20-219.9 apply.

(1) If the city operates in such a way that the person who tows the vehicle is responsible for collecting towing fees, all provisions of Article 7A, Chapter 20, apply.

(2) If the city operates in such a way that it is responsible for collecting towing fees, it shall:

a. Provide by contract or ordinance for a schedule of reasonable towing fees,

b. Provide a procedure for a prompt fair hearing to contest the towing,

c. Provide for an appeal to district court from that hearing,

d. Authorize release of the vehicle at any time after towing by the posting of a bond or paying of the fees due, and

e. Provide a sale procedure similar to that provided in G.S. 44A-4, 44A-5, and 44A-6, except that no hearing in addition to the probable cause hearing is required. If no one purchases the vehicle at the sale and if the value of the vehicle is less than the amount of the lien, the city may destroy it.

(e) Repealed by Session Laws 1983, c. 420, s. 13.

(f) No person shall be held to answer in any civil or criminal action to any owner or other person legally entitled to the possession of any abandoned, lost, or stolen motor vehicle for disposing of the vehicle as provided in this section.

(g) Nothing in this section shall apply to any vehicle in an enclosed building or any vehicle on the premises of a business enterprise being operated in a lawful place and manner if the vehicle is necessary to the operation of the enterprise, or to any vehicle in an appropriate storage place or depository maintained in a lawful place and manner by the city.

(h) Repealed by Session Laws 1983, c. 420, s. 13, effective July 1, 1983. (1965, c. 1156; 1967, cc. 1215, 1250; 1971, c. 698, s. 1; 1973, c. 426, s. 50; 1975, c. 716, s. 5; 1983, c. 420, ss. 11-13; 1997-456. s. 27; 2005-10, ss. 1, 3; 2006-15, s. 1; 2006-166, s. 2; 2006-171, s. 1; 2007-208, s. 1; 2009-97, s. 1.)

Local Modification. — City of Durham: 1987, c. 755; city of Winston-Salem: 1995, c. 92, s. 1; 2000-104, s. 1; town of Carrboro: 1987, c. 476, s. 1; town of Garner: 1979, c. 270.

Editor's Note. — The subsection (b1) and (b2) designations were inserted pursuant to Session Laws 1997-456, s. 27 which authorized the Revisor of Statutes to renumber or reletter sections and parts of sections having a number or letter designation that is incompatible with the General Assembly's computer database.

Since Session Laws 2005-10, ss. 1, 3, as amended by Session Laws 2006-15, s. 1, and as amended by 2006-166, s. 2, and as amended by Session Laws 2006-171, s. 1, now applies to 10 or more jurisdictions, it has been codified as subdivision (b2)(3a) of this section at the direction of the Revisor of Statutes.

Session Laws 2009-97, s. 3, provides: "This act is effective when it becomes law, but the repeal of G.S. 160A-303(b2)(3a) and G.S. 160A-303.2(a)(4) become effective October 1, 2009. A municipality may adopt an ordinance under G.S. 160A-303(b2)(3) or G.S. 160A-303.2(a)(3) when this act becomes law, but the ordinance may not become effective prior to October 1, 2009."

Effect of Amendments. — Session Laws 2009-97, s. 1, in subsection (b2), added "or is more than five years old and worth less than five hundred dollars ($500.00) as provided by the municipality in an ordinance adopted under this section; or" at the end of subdivision (b2)(3), and deleted subdivision (b2)(3a). For effective dates, see Editor's note.

CASE NOTES

A city may make provision for the removal of motor vehicles abandoned or disabled in its streets so as to promote the free flow of traffic therein. S & R Auto & Truck Serv., Inc. v. City of Charlotte, 268 N.C. 374, 150 S.E.2d 743 (1966), decided under former § 160-200(44).

§ 160A-303.1. Regulation of the placing of trash, refuse and garbage within municipal limits.

The governing body of any municipality is hereby authorized to enact an ordinance prohibiting the placing, discarding, disposing or leaving of any trash, refuse or garbage upon a street or highway located within that municipality or upon property owned or operated by the municipality unless such garbage, refuse or trash is placed in a designated location or container for removal by a specific garbage or trash service collector. Any ordinance adopted pursuant hereto may prohibit the placing, discarding, disposing or leaving of any trash, refuse or garbage upon private property located within the municipality without the consent of the owner, occupant, or lessee thereof and may provide that the placing, discarding, disposing or leaving of the articles forbidden by this section shall, for each day or portion thereof the articles or matter are left, constitute a separate offense.

The governing body of a municipality, in any ordinance adopted pursuant hereto, may provide that a person who violates the ordinance may be punished by a fine not exceeding fifty dollars ($50.00) or imprisoned not exceeding 30 days, or both, for each offense. (1973, c. 953.)

§ 160A-303.2. Regulation of abandonment of junked motor vehicles.

(a) A municipality may by ordinance regulate, restrain or prohibit the abandonment of junked motor vehicles on public grounds and on private property within the municipality's ordinance-making jurisdiction upon a finding that such regulation, restraint or prohibition is necessary and desirable to promote or enhance community, neighborhood or area appearance, and may enforce any such ordinance by removing or disposing of junked motor vehicles subject to the ordinance according to the procedures prescribed in this section. The authority granted by this section shall be supplemental to any other authority conferred upon municipalities. Nothing in this section shall be construed to authorize a municipality to require the removal or disposal of a motor vehicle kept or stored at a bona fide "automobile graveyard" or "junkyard" as defined in G.S. 136-143.

For purposes of this section, the term "junked motor vehicle" means a vehicle that does not display a current license plate and that:

(1) Is partially dismantled or wrecked; or

(2) Cannot be self-propelled or moved in the manner in which it originally was intended to move; or

(3) Is more than five years old and appears to be worth less than one hundred dollars ($100.00) or is more than five years old and appears to be worth less than five hundred dollars ($500.00) as provided by the municipality in an ordinance adopted under this section.

(4) Repealed by Session Laws 2009-97, s. 2, effective October 1, 2009.

(a1) Any junked motor vehicle found to be in violation of an ordinance adopted pursuant to this section may be removed to a storage garage or area, but no such vehicle shall be removed from private property without the written request of the owner, lessee, or occupant of the premises unless the council or a duly authorized city official or employee finds in writing that the aesthetic benefits of removing the vehicle outweigh the burdens imposed on the private property owner. Such finding shall be based on a balancing of the monetary loss of the apparent owner against the corresponding gain to the public by promoting or enhancing community, neighborhood or area appearance. The following, among other relevant factors, may be considered:

(1) Protection of property values;

(2) Promotion of tourism and other economic development opportunities;

(3) Indirect protection of public health and safety;

(4) Preservation of the character and integrity of the community; and

(5) Promotion of the comfort, happiness, and emotional stability of area residents.

(a2) The city may require any person requesting the removal of a junked or abandoned motor vehicle from private property to indemnify the city against any loss, expense, or liability incurred because of the removal, storage, or sale thereof. When an abandoned or junked motor vehicle is removed, the city shall give notice to the owner as required by G.S. 20-219.11(a) and (b).

(a3) Hearing Procedure. — Regardless of whether a city does its own removal and disposal of motor vehicles or contracts with another person to do so, the city shall provide a prior hearing procedure for the owner. For purposes of this subsection, the definitions in G.S. 20-219.9 apply.

(1) If the city operates in such a way that the person who tows the vehicle is responsible for collecting towing fees, all provisions of Article 7A, Chapter 20, apply.

(2) If the city operates in such a way that it is responsible for collecting towing fees, it shall:
  a. Provide by contract or ordinance for a schedule of reasonable towing fees,
  b. Provide a procedure for a prompt fair hearing to contest the towing,
  c. Provide for an appeal to district court from that hearing,
  d. Authorize release of the vehicle at any time after towing by the posting of a bond or paying of the fees due, and
  e. Provide a sale procedure similar to that provided in G.S. 44A-4, 44A-5, and 44A-6, except that no hearing in addition to the probable cause hearing is required. If no one purchases the vehicle at the sale and if the value of the vehicle is less than the amount of the lien, the city may destroy it.

(a4) Any person who removes a vehicle pursuant to this section shall not be held liable for damages for the removal of the vehicle to the owner, lienholder or other person legally entitled to the possession of the vehicle removed; however, any person who intentionally or negligently damages a vehicle in the removal of such vehicle, or intentionally or negligently inflicts injury upon any person in the removal of such vehicle, may be held liable for damages.

(b) Any ordinance adopted pursuant to this section shall include a prohibition against removing or disposing of any motor vehicle that is used on a regular basis for business or personal use. (1983, c. 841, s. 2; 1985, c. 737, s. 2; 1987, c. 42, s. 2; c. 451, s. 2; 1989, c. 3; c. 743, s. 2; 2005-10, ss. 2, 3; 2006-15, s. 3; 2006-166, s. 2; 2006-171, s. 1; 2007-208, s. 2; 2007-505, s. 3; 2009-97, s. 2.)

Local Modification. — City of Albemarle: 2002-80, s. 1; city of Greenville: 1998-80; 2004-30, s. 1; city of Henderson: 2004-30, s. 1; city of Jacksonville: 2005-25, s. 1 (as to subsection (a)); city of Lumberton: 1995, c. 53, ss. 1, 2; city of Winston-Salem: 2000-104, s. 2; town of Matthews: 2004-30, s. 2; 2005-24, s. 1; town of Waynesville: 2004-30, s. 1.

Editor's Note. — As enacted by Session Laws 1983, c. 841, s. 2, effective October 1, 1983, this section was applicable only to municipalities in the Counties of Dare, Stokes, Alleghany, Carteret and Columbus. Subsequently, Session Laws 1985, c. 737, s. 2, effective July 12, 1985, amended this section by making it applicable to an additional 19 counties. At the direction of the Revisor of Statutes, the section was set out above as G.S. 160A-303.2.

Later amendments added additional counties to the list of those to which the section was applicable.

Session Laws 1989, c. 743, s. 2, deleted "in municipalities in certain counties" from the end of the catchline, and rewrote this section.

Session Laws 1989, c. 743, s. 4 provided that the act does not affect the validity of any ordinance passed prior to October 1, 1989.

Since Session Laws 2005-10, ss. 2, 3, as amended by Session Laws 2006-15, s. 1, and as amended by 2006-166, s. 2, and as amended by Session Laws 2006-171, s. 1, now applies to 10 or more jurisdictions, it has been codified as subdivision (a)(4) of this section at the direction of the Revisor of Statutes. The bracketed language at the end of subdivision (a)(3) has also been added at the direction of the Revisor of Statutes.

Session Laws 2009-97, s. 3, provides: "This act is effective when it becomes law, but the repeal of G.S. 160A-303(b2)(3a) and G.S. 160A-303.2(a)(4) become effective October 1, 2009. A municipality may adopt an ordinance under G.S. 160A-303(b2)(3) or G.S. 160A-303.2(a)(3) when this act becomes law, but the ordinance may not become effective prior to October 1, 2009."

Effect of Amendments. — Session Laws 2009-97, s. 1, in subsection (a), added "or is more than five years old and worth less than five hundred dollars ($500.00) as provided by the municipality in an ordinance adopted under this section" at the end of subdivision (a)(3), and deleted subdivision (a)(4). For effective dates, see Editor's note.

§ 160A-304. Regulation of taxis.

(a) A city may by ordinance license and regulate all vehicles operated for hire in the city. The ordinance may require that the drivers and operators of taxicabs engaged in the business of transporting passengers for hire over the public streets shall obtain a license or permit from the city; provided, however, that the license or permit fee for taxicab drivers shall not exceed fifteen dollars ($15.00). As a condition of licensure, the city may require an applicant for licensure to pass a controlled substance examination. The ordinances may also specify the types of taxicab services that are legal in the municipality; provided, that in all cases shared-ride services as well as exclusive-ride services shall be legal. Shared-ride service is defined as a taxi service in which two or more persons with either different origins or with different destinations, or both, occupy a taxicab at one time. Exclusive-ride service is defined as a taxi service in which the first passenger or party requests exclusive use of the taxicab. In the event the applicant is to be subjected to a national criminal history background check, the ordinance shall specifically authorize the use of FBI records. The ordinance shall require any applicant who is subjected to a national criminal history background check to be fingerprinted.

The Department of Justice may provide a criminal record check to the city for a person who has applied for a license or permit through the city. The city shall provide to the Department of Justice, along with the request, the fingerprints of the applicant, any additional information required by the Department of Justice, and a form signed by the applicant consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The city shall keep all information pursuant to this subsection privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

The Department of Justice may charge each applicant a fee for conducting the checks of criminal history records authorized by this subsection.

The following factors shall be deemed sufficient grounds for refusing to issue a permit or for revoking a permit already issued:

(1) Conviction of a felony against this State, or conviction of any offense against another state which would have been a felony if committed in this State;
(2) Violation of any federal or State law relating to the use, possession, or sale of alcoholic beverages or narcotic or barbiturate drugs;
(3) Addiction to or habitual use of alcoholic beverages or narcotic or barbiturate drugs;
(4) Violation of any federal or State law relating to prostitution;
(5) Noncitizenship in the United States;
(6) Habitual violation of traffic laws or ordinances.

The ordinance may also require operators and drivers of taxicabs to display prominently in each taxicab, so as to be visible to the passengers, the city taxi permit, the schedule of fares, a photograph of the driver, and any other identifying matter that the council may deem proper and advisable. The ordinance may also establish rates that may be charged by taxicab operators, may limit the number of taxis that may operate in the city, and may grant franchises to taxicab operators on any terms that the council may deem advisable.

(b) When a city ordinance grants a taxi franchise for operation of a stated number of taxis within the city, the holder of the franchise shall report at least quarterly to the council the average number of taxis actually in operation during the preceding quarter. The council may amend a taxi franchise to reduce the number of authorized vehicles by the average number not in actual operation during the preceding quarter, and may transfer the unused allotment to another franchised operator. Such amendments of taxi franchises shall not be subject to G.S. 160A-76. Allotments of taxis among franchised operators may be transferred only by the city council, and it shall be unlawful for any franchised operator to sell, assign, or otherwise transfer allotments under a taxi franchise. (1943, c. 639, s. 1; 1945, c. 564, s. 2; 1971, c. 698, s. 1; 1981, c. 412, s. 4; c. 606, s. 5; c. 747, s. 66; 1987, c. 777, s. 7; 2002-147, s. 14; 2003-65, s. 1.)

CASE NOTES

Editor's Note. — *Most of the cases cited below were decided under former G.S. 160-200(35) and (36a).*

The word "franchise" denotes a right or privilege conferred by law, that is, a special privilege conferred by government on an individual, natural or corporate, which is not enjoyed by its citizens generally, of common right. Ordinarily the grant of a franchise when accepted and acted on creates a contract which is binding on the grantor and the grantee. Hence, the grant of a franchise contemplates, and usually embraces, express conditions and stipulations as to standards of service, and so forth, which the grantee or holder of the franchise must perform. Victory Cab Co. v. City of Charlotte, 234 N.C. 572, 68 S.E.2d 433 (1951).

Ordinance Regulating Taxicabs Presumed to Be Valid. — In the exercise of their delegated power to license, regulate, and control the operators and drivers of taxicabs, it is the duty of the municipal authorities, in their sound discretion, to determine what ordinances or regulations are reasonably necessary for the protection of the public or the better government of the town; and when in the exercise of such discretion and ordinance is adopted, it is presumed to be valid, and the courts will not declare it invalid unless it is clearly shown to be so. State v. Stallings, 230 N.C. 252, 52 S.E.2d 901 (1949); Victory Cab Co. v. Shaw, 232 N.C. 138, 59 S.E.2d 573 (1950).

Former § 160-200(36a) did not authorize city to impose exactions on taxicabs beyond the limits fixed by § 20-97, subsections (a) and (b). Victory Cab Co. v. City of Charlotte, 234 N.C. 572, 68 S.E.2d 433 (1951).

Requiring Taxicab Drivers to Wear Distinctive Insignia. — It is not an unlawful, unreasonable, or arbitrary exercise of its delegated police power for a city to require, as a condition incident to the privilege of operating a taxicab on its streets, that the driver of such taxicab shall wear a distinctive cap or other insignia while operating same, to show that he is a duly licensed taxicab driver. Such a requirement would seem to be reasonable and a protection to the public against unlicensed drivers or operators. State v. Stallings, 230 N.C. 252, 52 S.E.2d 901 (1949).

Requiring Taxicab Operators to Secure Liability Insurance. — An ordinance requiring operators of taxicabs or other motor vehicles for hire to secure liability insurance or enter into bond with personal or corporate surety is a valid exercise of the police power and does not violate the U.S. Const., Amend. XIV, the operation of vehicles for gain being a special and extraordinary use of a city's streets, which the city has the power to condition by ordinance uniform upon all coming within the classification. Watkins v. Iseley, 209 N.C. 256, 183 S.E. 365 (1936).

Coverage of Indemnity Bond or Deposit. — An indemnity bond for a taxi corporation did not cover liability for injuries inflicted prior to the execution of the bond. Manheim v. Virginia Sur. Co., 215 N.C. 693, 3 S.E.2d 16 (1939).

Where a municipal ordinance required taxicab operators to deposit insurance, surety bonds, or cash or securities, conditioned upon the payment of a final judgment in favor of any person injured by the operation of a cab over the municipal streets, the cash or securities deposited for the operation of cabs under a stipulated trade name, filed with the municipality under an agreement pursuant to the ordinance, did not cover a final judgment for injuries to a garage mechanic from the negligent operation of the cab while on private garage premises. Perrell v. Beaty Serv. Co., 248 N.C. 153, 102 S.E.2d 785 (1958).

Cited in State v. Johnson, 42 N.C. App. 234, 256 S.E.2d 297 (1979).

OPINIONS OF ATTORNEY GENERAL

Subdivision (a)(2) does not prohibit issuance of taxi operator's permit where the applicant therefor has a prior conviction for possession or sale of intoxicating liquors. See opinion of Attorney General to Mr. Joe Chandler, City Attorney, Elizabethtown, N.C., 47 N.C.A.G. 74 (1977).

§ 160A-305. Agreements under National Highway Safety Act.

Any city is hereby authorized to enter into agreements with the State of North Carolina and its agencies, and with the federal government and its agencies, to secure the full benefits available to the city under the National Highway Safety Act of 1966, and to cooperate with State and federal agencies, other public and private agencies, interested organizations, and individuals, to effectuate the purposes of the act and subsequent amendments thereof. (1967, c. 1255; 1971, c. 698, s. 1.)

§ 160A-306. Building setback lines.

(a) A city shall have authority to (i) classify all or a portion of the streets in the city according to their size, present and anticipated traffic loads, and other characteristics relevant to the achievement of the purposes of this section, and (ii) establish by ordinance minimum distances that buildings and other permanent structures or improvements constructed along each class or type of street shall be set back from the right-of-way line or the center line of an existing or proposed street. Portions of any street may be classified in a manner different from other portions of the same street where the characteristics of the portions differ.

(b) Any setback line shall be designed

(1) To promote the public safety by providing adequate sight distances for persons using the street and its sidewalks, lessening congestion in the street and sidewalks, facilitating the safe movement of vehicular and pedestrian traffic on the street and sidewalks and providing adequate fire lanes between buildings, and

(2) To protect the public health by keeping dwellings and other structures an adequate distance from the dust, noise, and fumes created by traffic on the street and by insuring an adequate supply of light and air.

(c) A setback-line ordinance shall permit affected property owners to appeal to the council for variance or modification of setback requirements as they apply to a particular piece of property. The council may vary or modify the requirements upon a showing that

(1) The peculiar nature of the property results in practical difficulties or unnecessary hardships that impede carrying out the strict letter of the requirement.

(2) The property will not yield a reasonable return or cannot be put to reasonable use unless relief is granted, and

(3) Balancing the public interest in enforcing the setback requirements and the interest of the owner, the grant of relief is required by considerations of justice and equity.

In granting relief, the council may impose reasonable and appropriate conditions and safeguards to protect the interest of neighboring properties. The council may delegate authority to hear appeals under setback-line ordinances to any authorized body to hear appeals under zoning ordinances. If this is done, appeal to the council from the board shall be governed by the same laws and rules as appeals from decisions granting or denying variances or modifications under the zoning ordinance. (1971, c. 698, s. 1; 1987, c. 747, ss. 13, 14.)

§ 160A-307. Curb cut regulations.

A city may by ordinance regulate the size, location, direction of traffic flow, and manner of construction of driveway connections into any street or alley.

The ordinance may require the construction or reimbursement of the cost of construction and public dedication of medians, acceleration and deceleration lanes, and traffic storage lanes for driveway connections into any street or alley if:

(1) The need for such improvements is reasonably attributable to the traffic using the driveway; and

(2) The improvements serve the traffic of the driveway.

No street or alley under the control of the Department of Transportation may be improved without the consent of the Department of Transportation. However, if there is a conflict between the written driveway regulations of the Department of Transportation and the related driveway improvements required by the city, the more stringent requirement shall apply. (1971, c. 698, s. 1; 1987, c. 747, s. 16.)

CASE NOTES

Cited in Lambeth v. Town of Kure Beach, 157 N.C. App. 349, 578 S.E.2d 688, 2003 N.C. App. LEXIS 638 (2003).

§ 160A-308. Regulation of dune buggies.

A municipality may by ordinance regulate, restrict and prohibit the use of dune or beach buggies, jeeps, motorcycles, cars, trucks, or any other form of power-driven vehicle specified by the governing body of the municipality on the foreshore, beach strand and the barrier dune system. Violation of any ordinance adopted by the governing body of a municipality pursuant to this section is a Class 3 misdemeanor.

Provided, a municipality shall not prohibit the use of such specified vehicles from the foreshore, beach strand and barrier dune system by commercial fishermen for commercial activities. Commercial fishermen, however, shall abide by all other regulations or restrictions duly enacted by municipalities under this section. (1973, cc. 856, 1401; 1993, c. 539, s. 1086; 1994, Ex. Sess., c. 14, s. 68; c. 24, s. 14(c).)

Local Modification. — Town of Wrightsville Beach: 1989, c. 611, s. 1, as amended by 2005-265, s. 1.

§ 160A-309. Intersection and roadway improvements.

A city may contract with a developer or property owner, or with a private party who is under contract with the developer or property owner, for public intersection or roadway improvements that are adjacent or ancillary to a private land development project. Such a contract is not subject to Article 8 of Chapter 143 of the General Statutes if the public cost will not exceed two hundred fifty thousand dollars ($250,000) and the city or its designated agency determines that: (i) the public cost will not exceed the estimated cost of providing for those public intersection or roadway improvements through either eligible force account qualified labor or through a public contract let pursuant to Article 8 of Chapter 143 of the General Statutes; or (ii) the coordination of separately constructed public intersection or roadway improvements, and the adjacent or ancillary private land development improvements would be impracticable. A city may enact ordinances and policies setting forth the procedures, requirements, and terms for agreements authorized by this section. (2005-426, s. 8(c).)

Editor's Note. — Session Laws 2005-426, s. 11, made this section effective January 1, 2006.

§ 160A-310: Reserved for future codification purposes.

ARTICLE 16.

Public Enterprises.

Part 1. General Provisions.

§ 160A-311. Public enterprise defined.

As used in this Article, the term "public enterprise" includes:

(1) Electric power generation, transmission, and distribution systems.
(2) Water supply and distribution systems.
(3) Wastewater collection, treatment, and disposal systems of all types, including septic tank systems or other on-site collection or disposal facilities or systems.
(4) Gas production, storage, transmission, and distribution systems, where systems shall also include the purchase or lease of natural gas fields and natural gas reserves, the purchase of natural gas supplies, and the surveying, drilling and any other activities related to the exploration for natural gas, whether within the State or without.
(5) Public transportation systems.
(6) Solid waste collection and disposal systems and facilities.
(7) Cable television systems.
(8) Off-street parking facilities and systems.
(9) Airports.
(10) Stormwater management programs designed to protect water quality by controlling the level of pollutants in, and the quantity and flow of, stormwater and structural and natural stormwater and drainage systems of all types. (1971, c. 698, s. 1; 1975, c. 549, s. 2; c. 821, s. 3; 1977, c. 514, s. 2; 1979, c. 619, s. 2; 1989, c. 643, s. 5; 1991 (Reg. Sess., 1992), c. 944, s. 14; 2000-70, s. 3.)

Local Modification. — Town of Kure Beach: 1997-94; town of Stallings: 1991, cc. 16, 350; town of Ocean Isle Beach: 2000-43, s. 1; town of White Lake: 1993 (Reg. Sess., 1994), c. 631, s. 1; village of Bald Head Island: 1991, cc. 16, 350; village of Pinehurst: 1985, c. 379, s. 3.

Funds for Local Government Water and Sewer Improvement Grants. — Session Laws 2007-323, s. 13.13A(a)-(p), provides: "(a) Allocation of Funds. — Of the funds appropriated in this act to the Rural Economic Development Center, Inc., (Rural Center) the sum of one hundred million dollars ($100,000,000) for the 2007-2008 fiscal year shall be allocated as follows:

"(1) Up to $50,000,000 may be used to provide grants to local government units for wastewater-related projects under subsection (b) of this section.

"(2) Up to $50,000,000 may be used to provide grants to local government units for public water system-related projects under subsection (b) of this section.

"(b) Definitions. — The definitions in G.S. 159G-20 and the following definitions apply in this section. In addition, the following definitions shall apply in this section unless otherwise provided:

"(1) Ability to pay. — An assessment of the ability of a local government unit to pay for a water infrastructure project as calculated annually by the Division of Community Assistance in the Department of Commerce.

"(2) Economically distressed area. — Any of the following:

"a. An economically distressed county as defined in G.S. 143B-437.01.

"b. That part of a county in which the poverty rate is at least one hundred fifty percent (150%) of the State poverty rate. The poverty rate is the percentage of the population whose income is below the most recent federal poverty level set by the U.S. Bureau of the Census.

"c. That part of a county that experiences an actual or imminent loss of jobs in a number equal to or greater than five percent (5%) of the total number of jobs in the part.

"(3) Rural county. — A county with a population density of fewer than 250 people per square mile based on the most recent federal decennial census.

"(c) Eligible Applicants; Eligible Projects. — A local government unit is not eligible for a grant under subsection (a) of this section unless it meets the eligibility requirements under subsection (d) or subsection (e) of this section for that type of grant. The funds allocated under this section may be used to provide either a planning grant that meets the requirements under subsection (d) of this section or a supplemental grant that meets the requirements of subsection (e) of this section. The following projects are eligible for receiving a grant under this section:

"(1) Wastewater collection system.

"(2) Wastewater treatment works.

"(3) Public water system.

"(4) Wastewater and drinking water infrastructure planning.

"(5) Multi-jurisdictional wastewater, drinking water, water quality, and stormwater planning.

"(d) Planning Grants. — A planning grant under this section is available for the costs associated with preliminary planning for wastewater collection system projects, wastewater treatment works projects, and public water system projects. Preliminary planning includes developing a capital improvement plan, developing a comprehensive land-use plan, conducting a study, developing a regional or multi-jurisdictional infrastructure or water quality improvement plan, assembling a financing plan to carry out a project, completing a grant application, and preparing a preliminary engineering report for a proposed project. A planning grant is subject to the following restrictions:

"(1) Eligibility. — For purposes of this subsection, a regional council of government organized under G.S. 160A-460 or a regional planning and development commission organized under G.S. 153A-391 is considered a local government unit. A local government unit is eligible for a planning grant if it meets the following criteria:

"a. It is a rural county or is located in one of these counties.

"b. It is an economically distressed county or is located in an economically distressed county or an economically distressed area.

"c. It is applying for a regional or multi-jurisdictional planning project involving two or more units of local government.

"(2) Maximum. — A planning grant shall not exceed forty thousand dollars ($40,000) for each unit of local government.

"(3) Matching funds. — A local government unit shall match a planning grant on a dollar-for-dollar basis unless the unit meets one or more of the following descriptions, in which instance the Rural Center may require a match of less than fifty percent (50%):

"a. It is an economically distressed county or located in an economically distressed county.

"b. Its poverty rate is at least one hundred fifty percent (150%) of the State poverty rate.

"c. If it is not a county, its ability to pay is less than fifty percent (50%) of the ability to pay of the county in which it is located.

"(e) Supplemental Grants. — A supplemental grant is available to match other funds to be applied to the construction costs of an eligible project. Other funds include federal funds, State funds received under Article 2 of Chapter 159G of the General Statutes, and local funds. A supplemental grant is subject to the following restrictions:

"(1) Eligibility. — A local government unit is eligible for a supplemental grant if it meets the following criteria:

"a. It is a rural county or is located in one of these counties.

"b. It adopts a resolution to set the household user fee for water and sewer service in the area served by the project at an amount that equals or exceeds the high-unit-cost threshold.

"(2) Maximum. — A supplemental grant shall not exceed five hundred thousand dollars ($500,000) unless the applicant meets one or more of these descriptions:

"a. It is an economically distressed county or is located in an economically distressed county.

"b. Its poverty rate is at least one hundred fifty percent (150%) of the State poverty rate.

"c. If it is not a county, its ability to pay is less than fifty percent (50%) of the ability to pay of the county in which it is located.

"(3) Matching funds. — A local government unit shall match a supplemental grant on a dollar-for-dollar basis unless the unit meets one or more of the following descriptions, in which instance the Rural Center may require a match of less than fifty percent (50%):

"a. It is an economically distressed county or is located in an economically distressed county.

"b. Its poverty rate is at least one hundred fifty percent (150%) of the State poverty rate.

"c. If it is not a county, its ability to pay is less than fifty percent (50%) of the ability to pay of the county in which it is located.

"(f) Criteria for Grants. — The criteria in G.S. 159G-23, the criteria set out in this section, and any other criteria established by the Board of Directors of the Rural Center shall apply to a grant provided under this section. An application for a project that serves an economically distressed area shall have priority over a project that does not.

"(g) Grant Applications. — Any application for a grant under this section shall be submitted by the local government unit to the Rural Center. An application shall be submitted on a form prescribed by the Rural Center, and shall contain the information required by the Rural Center. An applicant shall submit to the Rural Center, any additional information requested by the Rural Center to enable the Rural Center to make a determination on the application. An application that does not contain information required on the application or requested by the Rural Center is incomplete and is not eligible for consideration. An applicant may submit an application in as many categories as it is eligible for consideration under this section.

"(h) Environmental Assessment. — An application submitted under this section for any grant other than a planning grant for a project under subdivision (b)(4) or (b)(5) of this section shall state whether the project to be funded by the grant requires an environmental assessment. If the application indicates that an environmental assessment is not required, it must identify the exclusion in the North Carolina Environmental Policy Act, Article 1 of Chapter 113A of the General Statutes, that applies to the project. The Rural Center, shall give the Department of Environment and Natural Resources a copy of an application that indicates an environmental assessment is not required. If the Department of Environment and Natural Resources determines that the project requires an environmental assessment, the Department shall notify the Rural Center, and the applicant, and the applicant shall submit the assessment to the Department before the Center continues its review of the application.

"An application that does not identify an exclusion in the North Carolina Environmental Policy Act shall include the environmental assessment of the project's probable impacts on the environment that was submitted to the Department of Environment and Natural Resources. If the Department notifies the Rural Center that an environmental impact statement is required, the Rural Center shall not award the applicant a grant until a final environmental assessment impact statement has been completed and approved as provided in the Environmental Policy Act.

"(i) Review of Applications and Award of Grant. —

"(1) Point Assignment. — The Rural Center shall review all grant applications submitted under this section for an application period, to be determined by the Rural Center, and shall rank each application in accordance with the points assigned to the evaluation criteria. The Rural Center shall make a written determination of an application's rank and attach the determination to the application. The Rural Center's determination of rank is conclusive.

"(2) Reconsideration. — When an application's rank is too low to receive an award of a grant for the application period, the Rural Center may reconsider an amended application, provided the application addresses questions from the previous grant round.

"(3) Notification of Decision. — When the Rural Center determines that an application's rank makes it eligible for an award of a grant, the Rural Center shall send the applicant a letter of intent to award the grant. The notice shall set out any conditions the applicant must meet to receive an award of a grant. When the applicant satisfies the conditions set out in the letter of intent, the Rural Center shall send the applicant an offer to award a grant. The applicant shall give the Rural Center written notice of whether it accepts or rejects the offer. A grant is considered awarded the date the offer to award the grant is sent by the Rural Center.

"(j) Disbursement of Grant. — A planning grant awarded under this section may be disbursed in one payment. Other grants awarded under this section shall be disbursed in two or more payments based on the progress of the project for which the grant was awarded. To obtain a payment, a grant recipient shall submit a request for payment to the Rural Center and shall document the expenditures for which the payment is requested. The Rural Center shall review the payment request for compliance with all grant conditions.

"(k) Withdrawal of Grant. — An award for a grant for a project is withdrawn if the applicant fails to enter into a construction contract for the project within one year after the date of the award for supplemental grants under subsection (d) of this section, unless the Board of Directors of the Rural Center finds that the applicant has good cause for the failure. If the Rural Center finds good cause for an applicant's failure, the Rural Center shall set a date by which the applicant must take action or forfeit the grant. This subsection does not apply to a planning grant for a project under subdivision (b)(4) or (b)(5) of this section.

"(*l*) Inspection of Project. —

"(1) Authority. — The Rural Center may inspect a project for which it awards a grant under this section to determine the progress made on the project and whether the construction of the project is consistent with the project described in the grant application. The inspection may be performed by personnel of the Rural Center or by a professional engineer licensed under Chapter 89C of the General Statutes.

"(2) Disqualification. — An individual may not perform an inspection of a project under this section if the individual meets any of the following criteria:

"a. Is an officer or employee of the local government unit that received the grant award for the project.

"b. Is an owner, officer, employee, or agent of a contractor or subcontractor engaged in the construction of the project for which the grant was made.

"(m) The Rural Center may use a portion of the funds allocated under this section for administration, not to exceed two percent (2%), for the life of the grant program created by this section. Of these funds for administrative costs, the sum of two hundred fifty thousand dollars ($250,000) may be used to fund the ongoing work of the State Water Infrastructure Commission in the 2007-2008 fiscal year.

"(n) Reporting Requirement. — The Rural Center shall report to the Joint Legislative Commission on Governmental Operations on a quarterly basis concerning the progress of the grant program created under this section. The first report is due no later than December 1, 2007.

"(o) Separate Accounts. — Each grant that is provided under this section shall be administered through a separate account.

"(p) Loans Prohibited. — The Rural Center shall not use the funds allocated under this section to make loans."

Session Laws 2007-323, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2007'."

Session Laws 2007-323, s. 32.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2007-2009 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2007-2009 fiscal biennium."

Session Laws 2007-323, s. 32.5 is a severability clause.

Rural Center/Funds for Local Government Water, Sewer, and Natural Gas Improvement Grants. — Session Laws 2008-107, s. 13.8(a)-(p), provides: "(a) Appropriation. — Of the funds appropriated to the North Carolina Rural Economic Development Center, Inc. (Rural Center), the sum of fifty million dollars ($50,000,000) for the 2008-2009 fiscal year shall be used to provide grants to local government units for wastewater-related projects and public water system-related projects as provided by this section. Up to four million dollars ($4,000,000) of these funds may be used for natural gas line projects as provided by this section. Funds may also be used to provide drought-related emergency water and sewer grants.

"(b) Definitions. — The definitions in G.S. 159G-20 apply in this section, except that all census calculations are based on the most recent federal decennial census. In addition, the following definitions shall apply in this section unless otherwise provided:

"(1) Ability to pay. — An assessment of the ability of a local government unit to pay for a water infrastructure project or natural gas line project as calculated annually by the Division of Community Assistance in the Department of Commerce.

"(2) Economically distressed area. — Any of the following:

"a. An economically distressed county as defined in G.S. 143B-437.01.

"b. That part of a county in which the poverty rate is at least one hundred fifty percent (150%) of the State poverty rate. The poverty rate is the percentage of the population whose income is below the most recent federal poverty level set by the U.S. Bureau of the Census.

"c. If it is not a county, its ability to pay is less than fifty percent (50%) of the ability to pay of the county in which it is located.

"(3) Rural county. — A county with a population density of fewer than 250 people per square mile based on the most recent federal decennial census.

"(c) Eligible Applicants; Eligible Projects. — A local government unit is eligible for a grant under this section if it meets the eligibility requirements under subsections (d) or (e) of this section for the specific type of grant. The funds appropriated under this section may be used to provide either a planning grant that meets the requirements under subsection (d) of this section or a supplemental grant that meets the requirements of subsection (e) of this section. The following projects are eligible for receiving a grant under this section:

"(1) Wastewater collection system.

"(2) Wastewater treatment works.

"(3) Public water system.

"(4) Wastewater and drinking water infrastructure planning.

"(5) Multi-jurisdictional wastewater, drinking water, water quality, and stormwater planning.

"(6) Natural gas line project.

"(d) Planning Grants. — A planning grant under this section is available for the costs associated with preliminary planning for wastewater collection system projects, wastewater treatment works projects, public water system projects, and natural gas line projects. Preliminary planning includes developing a capital improvement plan, developing a comprehensive land-use plan that provides for water quality protection, conducting a feasibility study, developing a regional or multi-jurisdictional infrastructure or water quality improvement plan, assembling a financing plan to carry out a project, completing a grant application, and preparing a preliminary engineering report for a proposed project. A planning grant is subject to the following restrictions:

"(1) Eligibility. — A local government unit is eligible for a planning grant if it meets the following criteria:

"a. It is a rural county or is located in one of these counties.

"b. It is an economically distressed county or is located in an economically distressed county or an economically distressed area.

"c. For purposes of this subsection, a regional council of governments organized under G.S. 160A-460 or a regional planning and development commission organized under G.S. 153A-391 is considered a local government unit. A regional council of governments or regional planning and development commission is eligible for a grant if it serves a rural county and is applying for a regional or multi-jurisdictional planning project involving two or more units of local government.

"(2) Maximum. — A planning grant shall not exceed forty thousand dollars ($40,000) for each unit of local government.

"(3) Matching funds. — A local government unit shall match a planning grant on a dollar-for-dollar basis unless the unit meets one or more of the following descriptions, in which instance the Rural Center may require a match of fifty percent (50%) or less:

"a. It is an economically distressed county or located in an economically distressed county.

"b. Its poverty rate is at least one hundred fifty percent (150%) of the State poverty rate.

"c. If it is not a county, its ability to pay is less than fifty percent (50%) of the ability to pay of the county in which it is located.

"(e) Supplemental Grants. — A supplemental grant is available to match other funds to be applied to the construction costs of an eligible project. Other funds include federal funds, State funds, and local funds. A supplemental grant is subject to the following restrictions:

"(1) Eligibility. — A local government unit is eligible for a supplemental grant if it meets the following criteria:

"a. It is a rural county or is located in one of these counties.

"b. It adopts a resolution to set the household user fee for water and sewer service or natural gas service in the area served by the project at an amount that equals or exceeds the high-unit-cost threshold.

"(2) Maximum. — A supplemental grant shall not exceed five hundred thousand dollars ($500,000) unless the applicant meets one or more of these descriptions:

"a. It is an economically distressed county or is located in an economically distressed county.

"b. Its poverty rate is at least one hundred fifty percent (150%) of the State poverty rate.

"c. If it is not a county, its ability to pay is less than fifty percent (50%) of the ability to pay of the county in which it is located.

"The maximum supplemental grant for an applicant meeting at least one of these descriptions is the lesser of one million dollars ($1,000,000) or twenty-five percent (25%) of the total project cost.

"(3) Matching funds. — A local government unit shall match a supplemental grant on a dollar-for-dollar basis unless the unit meets one or more of the following descriptions, in which instance the Rural Center may require a match of fifty percent (50%) or less:

"a. It is an economically distressed county or is located in an economically distressed county.

"b. Its poverty rate is at least one hundred fifty percent (150%) of the State poverty rate.

"c. If it is not a county, its ability to pay is less than fifty percent (50%) of the ability to pay of the county in which it is located.

"A local government unit that meets one or more of these descriptions may not provide less than a dollar-for-dollar match if the supplemental grant amount requested exceeds five hundred thousand dollars ($500,000).

"(f) Criteria for Grants. — All projects must document a current critical water or wastewater need affecting human health or the environment or must document a current critical natural gas line project. The criteria in G.S. 159G-23, the criteria set out in this section, and any other criteria established by the Board of Directors of the Rural Center shall apply to a grant provided under this section. An application for a project that serves an economically distressed area shall have priority over a project that does not. The Board of Directors of the Rural Center may determine that a crisis need exists that merits special consideration and may establish a subcategory of this program to address one or more crisis applications.

"(g) Grant Applications. — Any application for a grant under this section shall be submitted by the local government unit to the Rural Center. An application shall be submitted on a form prescribed by the Rural Center and shall contain the information required by the Rural Center. An applicant shall submit to the Rural Center any additional information requested by the Rural Center to enable the Rural Center to make a determination on the application. An application that does not contain information required on the application or requested by the Rural Center is incomplete and is not eligible for consideration. An applicant may submit an application in as many categories as it is eligible for consideration under this section.

"(h) Environmental Assessment. — An application submitted under this section for a supplemental grant shall state whether the project to be funded by the grant requires an environmental assessment. If the application indicates that an environmental assessment is not required, it must identify the exclusion in the North Carolina Environmental Policy Act, Article 1 of Chapter 113A of the General Statutes, that applies to the project. The Rural Center shall give the Department of Environment and Natural Resources a copy of an application that indicates an environmental assessment is not required. If the Department of Environment and Natural Resources determines that the project requires an environmental assessment, the Department shall notify the Rural Center and the applicant, and the applicant shall submit the assessment to the Department before the Center continues its review of the application. An application that does not identify an exclusion in the North Carolina Environmental Policy Act shall include the environmental assessment of the project's probable impacts on the environment that was submitted to the Department of Environment and Natural Resources. If the Department notifies the Rural Center that an environmental impact statement is required, the Rural Center shall not award the applicant a grant until a final environmental assessment impact statement has been completed and approved as provided in the Environmental Policy Act.

"(i) Review of Applications and Award of Grant. — The Rural Center shall review grant applications and award grants as provided by this subsection:

"(1) Point assignment. — The Rural Center shall review all grant applications submitted under this section for an application period, to be determined by the Rural Center, and shall rank each application in accordance with the points assigned to the evaluation criteria. Applications addressing a crisis need may be ranked according to a special set of criteria or be reviewed for a specifically determined application period. The Rural Center shall make a written determination of an application's rank and attach the determination to the application. The Rural Center's determination of rank is conclusive.

"(2) Reconsideration. — When an application's rank is too low to receive an award of a grant for the application period, the Rural Center may reconsider an amended application, provided the application addresses questions from the previous grant round.

"(3) Notification of decision. — When the Rural Center determines that an application's rank makes it eligible for an award of a grant, the Rural Center shall send the applicant a letter of intent to award the grant. The notice shall set out any conditions the applicant must meet to receive an award of a grant. When the applicant satisfies the conditions set out in the letter of intent, the Rural Center shall send the applicant an offer to award a grant. The applicant shall give the Rural Center written notice of whether it accepts or rejects the offer. A grant is considered awarded the date the offer to award the grant is sent by the Rural Center.

"(j) Disbursement of Grant. — A planning grant awarded under this section shall be disbursed in two payments. Other grants awarded under this section shall be disbursed in two or more payments based on the progress of the project for which the grant was awarded. To obtain a payment, a grant recipient shall submit a request for payment to the Rural Center and shall document the expenditures for which the payment is requested. The Rural Center shall review the payment request for compliance with all grant conditions.

"(k) Withdrawal of Grant. — An award for a supplemental grant for a project is withdrawn if the applicant fails to enter into a construction contract for the project within one year after the date of the award for supplemental grants under subsection (e) of this section, unless the Board of Directors of the Rural Center finds that the applicant has good cause for the failure. If the Rural Center finds good cause for an applicant's failure, the Rural Center shall set a date by which the applicant must take action or forfeit the grant. Planning grants may be withdrawn if there is insufficient progress in meeting the scope of work within one year of the award date.

"(*l*) Inspection of Project. — The Rural Center may inspect a project as provided by this subsection:

"(1) Authority. — The Rural Center may inspect a project for which it awards a grant under this section to determine the progress made on the project and whether the construction of the project is consistent with the project described in the grant application. The inspection may be performed by personnel of the Rural Center or by a professional engineer licensed under Chapter 89C of the General Statutes.

"(2) Disqualification. — An individual may not perform an inspection of a project under this section if the individual meets any of the following criteria:

"a. Is an officer or employee of the local government unit that received the grant award for the project.

"b. Is an owner, officer, employee, or agent of a contractor or subcontractor engaged in the construction of the project for which the grant was made.

"(m) Administration Costs. — The Rural Center may use a portion of the funds appropriated in this section for administration, not to exceed two percent (2%), for the life of the grant program created by this section.

"(n) Reporting Requirement. — The Rural Center shall report to the Joint Legislative Commission on Governmental Operations on a quarterly basis concerning the progress of the grant program created under this section. The first report is due no later than December 1, 2008.

"(o) Separate Accounts. — Each grant that is provided under this section shall be administered through a separate account.

"(p) Loans Prohibited. — The Rural Center shall not use the funds appropriated in this section to make loans."

Rural Economic Development Center to Report on Progress of Water and Sewer Improvement Grants. — Session Laws 2009-451, s. 14.31, provides: "By September 1 of each year, and more frequently as requested, the North Carolina Rural Economic Development Center, Inc., shall report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division concerning the progress of the water/sewer improvement grants (commonly referred to as funding for Clean Water Partners) as appropriated in Section 13.13A of S.L. 2007-323 and Section 13.8 of S.L. 2008-107. Each report shall include a list of grants made since the last report, the total amount contracted, and the amount of funds remaining. This reporting requirement shall replace all previous reporting requirements and shall remain in effect until all funds from this program are expended."

Editor's Note. — Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2009-2011 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2009-2011 fiscal biennium."

Session Laws 2009-451, s. 28.5 is a severability clause.

Legal Periodicals. — For note, "Municipal Ownership of Cable Television Systems: Madison Cablevision, Inc. v. City of Morganton," see 68 N.C.L. Rev. 1295 (1990).

For comment, "'Don't Know What a Slide Rule Is For': The Need for a Precise Definition of Public Purpose in North Carolina in the Wake of Kelo v. City of New London," see 28 Campbell L. Rev. 291 (2006).

CASE NOTES

Airports. — The provisions of Chapter 40A now control cities' eminent domain actions with respect to airports. Smith v. City of Charlotte, 79 N.C. App. 517, 339 S.E.2d 844 (1986).

Cable Television System as "Public Purpose". — The provisions of this article which authorize cities to finance, acquire, construct, own, and operate a cable television system do not violate the "public purpose" clause of N.C. Const., Art. V, § 2(1). Madison Cablevision, Inc. v. City of Morganton, 325 N.C. 634, 386 S.E.2d 200 (1989).

The establishment, financing, construction, operation, and maintenance of a cable television system by a municipality as authorized by this article involved a reasonable connection with the convenience and necessity of the city and benefited the public generally, as opposed to special interests or persons, and thus constituted a "public purpose" within the meaning of N.C. Const., Art. V, § 2(1). Madison Cablevision, Inc. v. City of Morganton, 325 N.C. 634, 386 S.E.2d 200 (1989).

The power to grant or to refuse to grant a franchise is vested solely in the governing body of the city; this power is essentially legislative in nature, and its exercise is discretionary. Madison Cablevision, Inc. v. City of Morganton, 325 N.C. 634, 386 S.E.2d 200 (1989).

Intent That Competition Be Displaced in Cable Television Service. — The powers conferred upon cities by the North Carolina General Statutes with respect to provision and franchising of cable television service reflect the clear contemplation that competition may be displaced with respect to this service. Madison Cablevision, Inc. v. City of Morganton, 325 N.C. 634, 386 S.E.2d 200 (1989).

No Violation of Chapter 75. — Municipal ownership and operation of cable television systems does not violate Chapter 75 which relates to monopolies. Madison Cablevision, Inc. v. City of Morganton, 325 N.C. 634, 386 S.E.2d 200 (1989).

Defendant city was not immune from tort liability in the operation of its sewer system and was answerable to plaintiffs for any negligent act which may have caused them injury and damage. Pulliam v. City of Greensboro, 103 N.C. App. 748, 407 S.E.2d 567, cert. denied, 330 N.C. 197, 412 S.E.2d 59 (1991).

City which owned sewage treatment facility located in county and outside city's boundaries was not required to comply with county's zoning ordinances in upgrading the facility and providing sewage service to newly annexed areas of city with that facility. Davidson County v. City of High Point, 85 N.C. App.

26, 354 S.E.2d 280, modified and aff'd, 321 N.C. 252, 362 S.E.2d 553 (1987).

Since county had no authority to restrict or regulate city's provision of sewer service to its residents, the city could use city-owned sewage treatment plant located outside the city but within the county, which was upgraded pursuant to the county's special use permit, with a condition attached to the permit requiring the county's prior approval of service to county citizens, to meet its statutory mandate to provide sewer service to residents in newly annexed areas without seeking the county's prior approval, even though the facility was located in the county. Davidson County v. City of High Point, 321 N.C. 252, 362 S.E.2d 553 (1987).

Authority to Impose Impact and Tap Fees. — Town of Wrightsville Beach had the authority to impose utility system impact fees and tap fees for water and sewer services under the public enterprise statute and no specific enabling legislation was necessary; section 160A-314(a) makes no distinction between increasing rates, rents, or fees in order to raise the money necessary for capital improvements, and there is no language in the statute limiting a town's authority to impose fees for the use of the services as a method of raising money for capital expansion or requiring that a town only increase rates for the services furnished to fund such improvements; thus, under G.S. 160A-314 the Town could increase fees, rates or both to raise money needed. South Shell Inv. v. Town of Wrightsville Beach, 703 F. Supp. 1192 (E.D.N.C. 1988), aff'd, 900 F.2d 255 (4th Cir. 1990).

City's Stormwater Management Program Exceeded Statutory Authority. — Durham city ordinance, designed to satisfy the EPA's National Pollutant Discharge Elimination System's permit requirements required by the Water Quality Act's demands for pollution control of stormwater discharges into public waters, and fees thereunder, exceeded its enabling authority as laid out by this section and G.S. 160A-314(a1). Smith Chapel Baptist Church v. City of Durham, 350 N.C. 805, 517 S.E.2d 874 (1999). (decided prior to 2000 amendment).

Authority to Expand a Sewer System. — A condemnation procedure was proper where the condemnation satisfied the public use and public benefit test as all city residents, including the landowners whose property was being condemned, and provided an equal right to connect to the expanded sewer system, which was an essential service. Tucker v. City of Kannapolis, 159 N.C. App. 174, 582 S.E.2d 697, 2003 N.C. App. LEXIS 1442 (2003).

City's operation of a fiber optics network is a cable television system authorized to be owned and operated as a public enterprise. BellSouth Telecomms., Inc. v. City of Laurinburg, 168 N.C. App. 75, 606 S.E.2d 721, 2005 N.C. App. LEXIS 164, cert. denied, — N.C. —, 615 S.E.2d 660, cert. denied, 359 N.C. 629, — S.E.2d — (2005).

Applied in Dize Awning & Tent Co. v. City of Winston-Salem, 29 N.C. App. 297, 224 S.E.2d 257 (1976); State ex rel. Utilities Comm'n v. VEPCO, 62 N.C. App. 262, 302 S.E.2d 642 (1983); Morgan v. Town of Hertford, 70 N.C. App. 725, 321 S.E.2d 170 (1984); City of Wilson v. Carolina Bldrs. of Wilson, Inc., 94 N.C. App. 117, 379 S.E.2d 712 (1989); Caswell County v. Town of Yanceyville, 170 N.C. App. 124, 611 S.E.2d 451, 2005 N.C. App. LEXIS 898 (2005).

Cited in Duke Power Co. v. City of High Point, 22 N.C. App. 91, 205 S.E.2d 774 (1974); Big Bear of N.C., Inc. v. City of High Point, 294 N.C. 262, 240 S.E.2d 422 (1978); Advance Publications, Inc. v. City of Elizabeth City, 53 N.C. App. 504, 281 S.E.2d 69 (1981); Pinehurst Enters., Inc. v. Town of S. Pines, 690 F. Supp. 444 (M.D.N.C. 1988); State ex rel. Utils. Comm'n v. Carolina Util. Customers Ass'n, 323 N.C. 238, 372 S.E.2d 692 (1988); State ex rel. Utils. Comm'n v. Public Staff-North Carolina Utils. Comm'n, 323 N.C. 481, 374 S.E.2d 361 (1988); Ricks v. Town of Selma, 99 N.C. App. 82, 392 S.E.2d 437 (1990); Bogue Shores Homeowners Ass'n v. Town of Atl. Beach, 109 N.C. App. 549, 428 S.E.2d 258 (1993); County of Lenoir v. Moore, 114 N.C. App. 110, 441 S.E.2d 589 (1994); Gregory v. City of Kings Mt., 117 N.C. App. 99, 450 S.E.2d 349 (1994); Carolina Water Serv., Inc. v. Town of Atlantic Beach, 121 N.C. App. 23, 464 S.E.2d 317 (1995); Stout v. City of Durham, 121 N.C. App. 716, 468 S.E.2d 254 (1996); Grassy Creek Neighborhood Alliance v. City of Winston-Salem, 142 N.C. App. 290, 542 S.E.2d 296, 2001 N.C. App. LEXIS 84 (2001); Bostic Packaging, Inc. v. City of Monroe, 149 N.C. App. 825, 562 S.E.2d 75, 2002 N.C. App. LEXIS 307 (2002); County of Wake v. N.C. Dep't of Env't & Natural Res., 155 N.C. App. 225, 573 S.E.2d 572, 2002 N.C. App. LEXIS 1632 (2002).

OPINIONS OF ATTORNEY GENERAL

Ownership and Operation of Private For-Profit Corporation. — The authority of a city to hold property granted by G.S. 160A-11 should not be interpreted to authorize a city to act as a shareholder of a private for-profit corporation organized under the provisions of Chapter 55, and to appoint city officials and employees as corporate directors or officers. See opinion of the Attorney General to H. Michael Boyd, Deputy City Attorney, City of Charlotte, 60 N.C.A.G. 114 (1992).

While there may be authority for a city to purchase all of the stock of a corporation which owns and operates a water and sewer system, there is no authority to operate and continue the existence of a private for-profit corporation which is outside of the traditional functions of a municipality and for which there is no judicial or legislative approval. See opinion of the Attorney General to H. Michael Boyd, Deputy City Attorney, City of Charlotte, 60 N.C.A.G. 114 (1992).

§ 160A-312. Authority to operate public enterprises.

(a) A city shall have authority to acquire, construct, establish, enlarge, improve, maintain, own, operate, and contract for the operation of any or all of the public enterprises as defined in this Article to furnish services to the city and its citizens. Subject to Part 2 of this Article, a city may acquire, construct, establish, enlarge, improve, maintain, own, and operate any public enterprise outside its corporate limits, within reasonable limitations, but in no case shall a city be held liable for damages to those outside the corporate limits for failure to furnish any public enterprise service.

(b) A city shall have full authority to protect and regulate any public enterprise system belonging to or operated by it by adequate and reasonable rules. The rules shall be adopted by ordinance, shall apply to the public enterprise system both within and outside the corporate limits of the city, and may be enforced with the remedies available under any provision of law.

(c) A city may operate that part of a gas system involving the purchase and/or lease of natural gas fields, natural gas reserves and natural gas supplies and the surveying, drilling or any other activities related to the exploration for natural gas, in a partnership or joint venture arrangement with natural gas utilities and private enterprise. (1971, c. 698, s. 1; 1973, c. 426, s. 51; 1975, c. 821, s. 5; 1979, 2nd Sess., c. 1247, s. 29; 1991 (Reg. Sess., 1992), c. 836, s. 1.)

Local Modification. — City of Asheville: 2005-139, ss. 1, 4 and 5 (as to the inapplicability to the operation of public transportation systems or off-street parking facilities).

Legal Periodicals. — For note, "Utilities—Extension of Electric Service: The Municipalities' Power Play," see 63 N.C.L. Rev. 1095 (1985).

For note, "Municipal Ownership of Cable Television Systems: Madison Cablevision, Inc. v. City of Morganton," see 68 N.C.L. Rev. 1295 (1990).

CASE NOTES

I. In General.
II. Garbage Service.
III. Water and Sewage Service.
IV. Electric Service.
V. Extension of Services Outside Corporate Limits.

I. IN GENERAL.

Editor's Note. *— Many of the cases below were decided under former similar provisions.*

Section Contemplates Anticompetitive Activity. — This section grants cities the authority to acquire, construct, maintain, improve, own, operate, and regulate sewage collection systems of all types, and additionally, the North Carolina scheme explicitly contemplates anticompetitive activity because it expressly authorizes cities to require those within its limits to use its sewer facilities. Therefore, the North Carolina legislature contemplated anticompetitive conduct by cities respecting sewage services within city limits. Pinehurst Enters., Inc. v. Town of S. Pines, 690 F. Supp. 444 (M.D.N.C. 1988), aff'd, 887 F.2d 1080 (4th Cir. 1989).

The term "reasonable limitations" does not refer solely to the territorial extent of city's venture, but embraces all facts and circumstances which affect the reasonableness of the venture. Quality Water Supply, Inc. v. City of Wilmington, 97 N.C. App. 400, 388 S.E.2d 608, cert. denied, 326 N.C. 598, 393 S.E.2d 881 (1990).

Municipality Promulgates Regulations as Agent of General Assembly. — Since this section gives a municipality the authority to regulate by reasonable rules any public enterprise belonging to the municipality, a municipality in promulgating such regulations acts merely as an agent of the General Assembly. City of Wilson v. Carolina Bldrs. of Wilson, Inc., 94 N.C. App. 117, 379 S.E.2d 712 (1989).

The courts cannot inquire into the motives which prompted a municipality to enact an ordinance which is valid on its face, and they cannot frustrate the operation of such an ordinance by judicial action. City of Wilson v. Carolina Bldrs. of Wilson, Inc., 94 N.C. App. 117, 379 S.E.2d 712 (1989).

No liability for Failure to Furnish Sufficient Water or Light. — A city which owns a municipal light and waterworks system and operates the same in its governmental capacity cannot be held liable in damages for failure to furnish a sufficient supply of either water or light. Harrington v. Town of Greenville, 159 N.C. 632, 75 S.E. 849 (1912); Howland v. City of Asheville, 174 N.C. 749, 94 S.E. 524 (1917); Mabe v. City of Winston-Salem, 190 N.C. 486, 130 S.E. 169 (1925).

Applied in State ex rel. Utilities Comm'n v. VEPCO, 62 N.C. App. 262, 302 S.E.2d 642 (1983); Duke Power Co. v. City of High Point, 69 N.C. App. 378, 317 S.E.2d 699 (1984); Cabarrus County v. City of Charlotte, 71 N.C. App. 192, 321 S.E.2d 476 (1984).

Cited in Wall v. City of Durham, 41 N.C. App. 649, 255 S.E.2d 739 (1979); Advance Publications, Inc. v. City of Elizabeth City, 53 N.C. App. 504, 281 S.E.2d 69 (1981); Lumbee River Elec. Membership Corp. v. City of Fayetteville, 60 N.C. App. 534, 299 S.E.2d 305 (1983); State ex rel. Utils. Comm'n v. Carolina Util. Customers Ass'n, 323 N.C. 238, 372 S.E.2d 692 (1988); State ex rel. Utils. Comm'n v. Public Staff-North Carolina Utils. Comm'n, 323 N.C. 481, 374 S.E.2d 361 (1988); Madison Cablevision, Inc. v. City of Morganton, 325 N.C. 634, 386 S.E.2d 200 (1989); Ricks v. Town of Selma, 99 N.C. App. 82, 392 S.E.2d 437 (1990); Stout v. City of Durham, 121 N.C. App. 716, 468 S.E.2d 254 (1996); City of New Bern v. Carteret-Craven Elec. Membership Corp., 356 N.C. 123, 567 S.E.2d 131, 2002 N.C. LEXIS 681 (2002).

II. GARBAGE SERVICE.

No Obligation to Provide Garbage Service. — A municipality may provide the service of collecting and removing garbage as an exercise of police powers delegated to it, but is under no compulsion to provide such service. Big Bear of N.C., Inc. v. City of High Point, 294 N.C. 262, 240 S.E.2d 422 (1978).

Rates Charged for Garbage Service. — A municipality which provides garbage collection services may impose a charge reasonably commensurate with the cost of this service upon the householder or building occupant. Under proper classification, the rates charged need not be uniform, and a business may be charged at a rate different from individuals. Big Bear of N.C., Inc. v. City of High Point, 294 N.C. 262, 240 S.E.2d 422 (1978).

Municipality need not provide garbage collection services to one who refuses to pay the charge imposed, and may discontinue this service in the event of nonpayment. Big Bear of N.C., Inc. v. City of High Point, 294 N.C. 262, 240 S.E.2d 422 (1978).

III. WATER AND SEWAGE SERVICE.

County Zoning Ordinances Inapplicable to Municipal Facility. — City which owned a sewage treatment facility located in a county and outside the city's boundaries was not required to comply with county's zoning ordinances in upgrading the facility and providing sewage service to newly annexed areas of city with that facility. Davidson County v. City of High Point, 85 N.C. App. 26, 354 S.E.2d 280, modified and aff'd, 321 N.C. 252, 362 S.E.2d 553 (1987).

Since county had no authority to restrict or regulate city's provision of sewer service to its residents, the city could use city-owned sewage treatment plant located outside the city but within the county, which was upgraded pursuant to the county's special use permit, with a condition attached to the permit requiring the county's prior approval of service to county citizens, to meet its statutory mandate to provide sewer service to residents in newly annexed areas without seeking the county's prior approval, even though the facility was located in the county. Davidson County v. City of High Point, 321 N.C. 252, 362 S.E.2d 553 (1987).

A municipality owes no duty to supply water to a resident for resale to others either within or without its limits. Fulghum v. Town of Selma, 238 N.C. 100, 76 S.E.2d 368 (1953).

Construction of a sewerage system is a governmental function. McCombs v. City of Asheboro, 6 N.C. App. 234, 170 S.E.2d 169 (1969).

And Municipality Is Not Liable for Personal Injuries Resulting from Construction of Sewerage System. — A municipal corporation is performing a governmental function when engaged in construction of a sewerage system and is not liable for personal injuries resulting from the alleged negligent acts of its employees in such construction, notwithstanding the municipality charges for sewage and sanitary services which it furnishes its citizens. A municipality will not lose its governmental immunity solely because it is engaged in an activity which makes a profit, the test being whether the act is for the common good of all without the element of special corporate benefit or pecuniary profit. McCombs v. City of Asheboro, 6 N.C. App. 234, 170 S.E.2d 169 (1969).

Or for Injuries to Health Resulting from Its Construction and Maintenance. — In the construction and maintenance of a sewer or drainage system, a municipal corporation exercises a part of the governmental powers of the State for the customary local convenience and benefit of all the people, and in the exercise of these discretionary functions the municipality cannot be required to respond in damages to individuals for injury to health, resulting either from omissions to act or the mode of exercising the power conferred on it for public purposes to be used at discretion for the public good. McCombs v. City of Asheboro, 6 N.C. App. 234, 170 S.E.2d 169 (1969).

Maintenance of a free public sewer system by a city is an exercise of its police power for the public benefit, so that a city would not be liable for the death of a citizen from illness caused by the pollution of a stream by the sewer which emptied into it. Metz v. City of Asheville, 150 N.C. 748, 64 S.E. 881, 22 L.R.A. (n.s.) 940 (1909).

But May Be Liable for Damages to Property. — In actions brought to recover damages for injury to property and person by reason of the alleged negligent maintenance of a sewerage system, recovery has been allowed for damage to property on the theory of the creation of a nuisance and the taking of property. McCombs v. City of Asheboro, 6 N.C. App. 234, 170 S.E.2d 169 (1969).

A municipal corporation, empowered to construct and maintain a sewerage system, may not exercise its power in such a way as to create a private nuisance without making compensation for the injury inflicted, or being liable in damages therefor or subject to equitable restraint in a proper case, and it is a nuisance to pollute a stream by emptying sewage therein. Moser v. City of Burlington, 162 N.C. 141, 78 S.E. 74 (1913).

Sewer Excavations Not Attractive Nuisance. — Municipalities must build sewers and other conduits necessitating the making of excavations. This creates some obvious danger, but is not categorized as an attractive nuisance. McCombs v. City of Asheboro, 6 N.C. App. 234, 170 S.E.2d 169 (1969).

Fluoridation of Water Supply. — An ordinance for fluoridation of the city water supply is enacted in the exercise of public policy, and the courts will not interfere therewith in the absence of a showing that the ordinance is so unreasonable, oppressive, and subversive as to amount to an abuse rather than a legitimate exercise of the legislative power. Stroupe v. Eller, 262 N.C. 573, 138 S.E.2d 240 (1964).

Utilities Had Standing to Challenge City's Provision of Water to Subdivision. — Plaintiff utilities which, by virtue of their contiguity to subdivision were in a superior position to any other utility in the area to provide service to the development since no other competitor would be able to provide for subdivision without first obtaining a certificate, and in the event that another company sought a certificate, plaintiffs would be afforded the opportunity to contest the application, had a legitimate expectation of entitlement sufficient to give them a protectible interest so as to challenge city's provision of water to the subdivision. Quality Water Supply, Inc. v. City of Wilmington, 97 N.C. App. 400, 388 S.E.2d 608, cert. denied, 326 N.C. 598, 393 S.E.2d 881 (1990).

City's extension of service to private subdivision beyond its corporate limits was within the reasonable limitations requirement of this section. Quality Water Supply, Inc. v. City of Wilmington, 97 N.C. App. 400, 388 S.E.2d 608, cert. denied, 326 N.C. 598, 393 S.E.2d 881 (1990).

Annexation of Area Served by Private Water or Sewer Lines. — Where there is no contract or municipal ordinance involved, and the territory served by private water or sewer lines is annexed to a municipality, the owner of the lines may not recover the value thereof from the municipality unless it appropriates them and controls them as proprietor. Covington v. City of Rockingham, 266 N.C. 507, 146 S.E.2d 420 (1966).

Maintenance of private water or sewer lines upon annexation as a voluntary act on the part of the city does not amount to a taking of the property. Covington v. City of Rockingham, 266 N.C. 507, 146 S.E.2d 420 (1966).

Town Authorized to Extend Water Lines. — When the water service being provided by plaintiff water service to annexed area was no longer equal to the water service being provided by the town to other areas within the municipal boundaries, the town had the authority, pursuant to this section, to extend its water lines to the annexed area. Carolina Water Serv., Inc. v. Town of Atlantic Beach, 121 N.C. App. 23, 464 S.E.2d 317 (1995).

By offering water users in annexed area with the option, rather than requirement, to connect to the town's water system at reduced fees, the town was simply providing those users with the same opportunity as it had historically given to water users in other areas to which it had extended service. Carolina Water Serv., Inc. v. Town of Atlantic Beach, 121 N.C. App. 23, 464 S.E.2d 317 (1995).

City Authorized to Expand Sewer System. — A condemnation procedure was proper because the intended use of the condemnation satisfied the public use and public benefit test as all city residents, including the landowners whose property was being condemned, and provided an equal right to connect to the expanded sewer system, which was an essential service. Tucker v. City of Kannapolis, 159 N.C. App. 174, 582 S.E.2d 697, 2003 N.C. App. LEXIS 1442 (2003).

IV. ELECTRIC SERVICE.

The clause "Subject to Part 2 of this Article" refers to those situations where a city extending its electric lines outside its corporate limits necessarily begins construction within its corporate limits. When a city extending service outside its corporate limits constructs lines beginning at some point within its corporate limits, then pursuant to this section and G.S. 160A-332, such lines as are within the city limits may not infringe on the guaranteed corridor rights of a secondary supplier. Duke Power Co. v. City of High Point, 69 N.C. App. 378, 317 S.E.2d 701, cert. denied, 312 N.C. 82, 321 S.E.2d 895 (1984).

Under current legislation, the absolute right of a secondary supplier to serve customers within its 300-foot corridor arises upon the effective date of annexation, statutorily defined as the "determination date." If the legislature determines that the corridor rights of a secondary supplier deserve protection before the effective date of annexation, then it can guarantee such rights by defining the "determination date" when such rights arise as the date an annexation ordinance is adopted rather than the date an annexation plan is effected. Unless and until such time arises, the Supreme Court precedent in relying solely on this section in determining whether a city has legislative authority to extend its lines will be followed. Duke Power Co. v. City of High Point, 69 N.C. App. 378, 317 S.E.2d 701, cert. denied, 312 N.C. 82, 321 S.E.2d 895 (1984).

The first sentence of this section grants a city absolute authority without limitation or restriction to provide electric service for the benefit of the city itself and its citizens. Duke Power Co. v. City of High Point, 69 N.C. App. 378, 317 S.E.2d 701, cert. denied, 312 N.C. 82, 321 S.E.2d 895 (1984).

This section does not affect a city's right to furnish electric service to a newly annexed territory within its corporate limits. Duke Power Co. v. City of High Point, 69 N.C. App. 378, 317 S.E.2d 701, cert. denied, 312 N.C. 82, 321 S.E.2d 895 (1984).

A city's rights under this section are not subject to the provisions of §§ 160A-331 to 160A-338. Duke Power Co. v. City of High Point, 69 N.C. App. 378, 317 S.E.2d 701, cert. denied, 312 N.C. 82, 321 S.E.2d 895 (1984).

Only Limits on City Are Reasonable Limits. — Since a municipality is not an "electric supplier" as that term is used in section 62-110.2 its public works commission is not prohibited from supplying electric service to a customer outside city's limits, so long as its extension of service is within "reasonable limitations," as provided for in this section. South River Elec. Membership Corp. v. City of Fayetteville, 113 N.C. App. 401, 438 S.E.2d 464, cert. denied, 336 N.C. 74, 445 S.E.2d 38 (1994).

V. EXTENSION OF SERVICES OUTSIDE CORPORATE LIMITS.

Right to Operate Utilities Beyond Corporate Boundaries Within Reasonable Limitations. — A municipality is authorized to construct and operate utilities for the benefit of the public beyond its corporate boundaries within reasonable limitations. If the authority was not thus limited this section would contravene fundamental law. Public Serv. Co. v. City of Shelby, 252 N.C. 816, 115 S.E.2d 12 (1960).

The term "reasonable limitations" does not refer solely to the territorial extent of the venture, but embraces all facts and circumstances which affect the reasonableness of the venture. Domestic Elec. Serv., Inc. v. City of Rocky Mount, 285 N.C. 135, 203 S.E.2d 838 (1974); Lumbee River Elec. Membership Corp. v. City of Fayetteville, 309 N.C. 726, 309 S.E.2d 209 (1983); Morgan v. Town of Hertford, 70 N.C. App. 725, 321 S.E.2d 170 (1984).

Right to Distribute Electricity Beyond Corporate Limits. — A municipality has the power to purchase, generate, or distribute electricity for its own use and the use of its inhabitants, and is given legislative authority to extend its lines beyond its corporate limits for the purpose of selling electricity to nonresidents; therefore, a complaint in an action against a municipality alleging injury from negligent maintenance of power lines outside the corporate limits was not demurrable on the ground that the alleged negligence of its officers and employees was ultra vires. Kennerly v. Town of Dallas, 215 N.C. 532, 2 S.E.2d 538 (1939).

A municipal corporation engaged in the production and distribution of electric power is authorized to extend this service to consumers outside its corporate limits, and this would confer authority on a city to construct and operate transmission lines for the distribution of electric current for the benefit of the public beyond its corporate boundaries within reasonable limitations. But if from lawful competition the town's business is curtailed, it would seem that no actionable wrong would result, nor would the town be entitled to injunctive relief therefrom. Town of Grimesland v. City of Washington, 234 N.C. 117, 66 S.E.2d 794 (1951).

Section Provides Sole Authority Therefor. — This section provides the sole authority for and restriction upon municipalities furnishing electric service outside corporate limits. State ex rel. Utilities Comm'n v. VEPCO, 310

N.C. 302, 311 S.E.2d 586 (1984); Duke Power Co. v. City of High Point, 69 N.C. App. 378, 317 S.E.2d 701, cert. denied, 312 N.C. 82, 321 S.E.2d 895 (1984).

This section vests municipalities with a right to serve potential new customers outside its corporate limits so long as this extension of service is within reasonable limitations. State ex rel. Utilities Comm'n v. VEPCO, 310 N.C. 302, 311 S.E.2d 586 (1984).

Operation of Electric System Outside Municipality. — The 1965 Electric Act, appearing in G.S. 160A-331 through 160A-338 and G.S. 62-110.2, does not empower or authorize municipalities to operate electric systems outside corporate limits, nor does it restrict such service. Insofar as the General Statutes are concerned, the sole authority for, and the only restriction upon municipalities furnishing electric service outside corporate limits is found in this section. Lumbee River Elec. Membership Corp. v. City of Fayetteville, 309 N.C. 726, 309 S.E.2d 209 (1983).

For analysis of the dichotomy between a city's rights to extend electric service outside city limits under this section and its rights to extend such service within city limits under G.S. 160A-331 to 160A-338, see Duke Power Co. v. City of High Point, 69 N.C. App. 378, 317 S.E.2d 701, cert. denied, 312 N.C. 82, 321 S.E.2d 895 (1984).

For case holding that extension of city's electric system across city limits exceeded "reasonable limitations," see Domestic Elec. Serv., Inc. v. City of Rocky Mount, 285 N.C. 135, 203 S.E.2d 838 (1974).

Effect of Utilities Commission's Assignment of Area to Electric Suppliers. — The Utilities Commission's assignment of an area to an electric supplier does not automatically preclude a city from extending its service lines into the area. Domestic Elec. Serv., Inc. v. City of Rocky Mount, 285 N.C. 135, 203 S.E.2d 838 (1974).

All municipalities have been given the right to extend water and sewer facilities beyond the corporate limits of the municipality. Upchurch v. City of Raleigh, 252 N.C. 676, 114 S.E.2d 772 (1960).

Municipalities have legislative permission to extend their sewer and water lines beyond corporate boundaries. Such extensions may be made either because necessary to the effective operation of the improvement within the city, or to provide services for a profit beyond the corporate limits. Eakley v. City of Raleigh, 252 N.C. 683, 114 S.E.2d 777 (1960).

Extension of Water and Sewer Facilities for Profit Requires Vote. — A municipality has the power to extend funds for the construction and operation of water and sewer facilities without a vote when such facilities are for the benefit of the citizens of the municipality, but extension of such facilities outside its corporate limits for the purpose of profit is a proprietary function requiring a vote of its citizens. Eakley v. City of Raleigh, 252 N.C. 683, 114 S.E.2d 777 (1960).

Right to Impose Conditions on Furnishing Water and Sewer Service outside Corporate Limits. — Since it is optional with the city as to whether or not it will furnish water to residents outside its corporate limits and permit such residents to connect their sewer facilities with the sewerage system of the city, or with any other sewerage system which connects with the city system, it may fix the terms upon which the service may be rendered and its facilities used. George v. City of Asheville, 80 F.2d 50, 103 A.L.R. 568 (4th Cir. 1935); Williamson v. City of High Point, 213 N.C. 96, 195 S.E. 90 (1938); Kennerly v. Town of Dallas, 215 N.C. 532, 2 S.E.2d 538 (1939); Atlantic Constr. Co. v. City of Raleigh, 230 N.C. 365, 53 S.E.2d 165 (1949).

A municipality which operates its own waterworks is under no duty in the first instance to furnish water to persons outside its limits. It has the discretionary power, however, to engage in this undertaking. When a municipality exercises this discretionary power, it does not assume the obligations of a public service corporation toward nonresident consumers. It retains the authority to specify the terms upon which nonresidents may obtain its water. Fulghum v. Town of Selma, 238 N.C. 100, 76 S.E.2d 368 (1953).

Duty of Equal Service in Furnishing Water Owed Only to Consumers within Corporate Limits. — When a municipality engages in supplying water to its inhabitants, it owes the duty of equal service in furnishing water only to consumers within its corporate limits. Fulghum v. Town of Selma, 238 N.C. 100, 76 S.E.2d 368 (1953).

The factors used to ascertain whether an extension of service is reasonable are the electric providers' current levels of service in the area in question, particularly in the immediate vicinity of the potential customer, and the present readiness, willingness, and ability of each to serve the potential customer. South River Elec. Membership Corp. v. City of Fayetteville, 113 N.C. App. 401, 438 S.E.2d 464, cert. denied, 336 N.C. 74, 445 S.E.2d 38 (1994).

City's operation of a fiber optics network is a cable television system authorized to be owned and operated as a public enterprise. BellSouth Telecomms., Inc. v. City of Laurinburg, 168 N.C. App. 75, 606 S.E.2d 721, 2005 N.C. App. LEXIS 164, cert. denied, — N.C. —, 615 S.E.2d 660, cert. denied, 359 N.C. 629, — S.E.2d — (2005).

Ownership and Operation of Private For-Profit Corporation. — The authority of a city to hold property granted by G.S. 160A-11 should not be interpreted to authorize a city to act as a shareholder of a private for-profit corporation organized under the provisions of Chapter 55, and to appoint city officials and employees as corporate directors or officers. See opinion of the Attorney General to H. Michael Boyd, Deputy City Attorney, City of Charlotte, 60 N.C.A.G. 114 (1992).

Approval for Condemnation Not Required. — Summary judgment was properly entered in a declaratory action regarding the applicability of G.S. 153A-15(b) because a condemnation action by a city in order to facilitate the construction of a water supply and distribution facility did not require any approval since the city and the land were located in the same county; moreover, the evidence showed that the real and substantial benefits of the condemnation accrued to the city in question, and not other parties in the case that were located in different counties. Caswell County v. Town of Yanceyville, 170 N.C. App. 124, 611 S.E.2d 451, 2005 N.C. App. LEXIS 898 (2005).

§ 160A-313. Financing public enterprise.

Subject to the restrictions, limitations, procedures, and regulations otherwise provided by law, a city shall have full authority to finance the cost of any public enterprise by levying taxes, borrowing money, and appropriating any other revenues therefor, and by accepting and administering gifts and grants from any source on behalf thereof. (1971, c. 698, s. 1.)

CASE NOTES

Town had authority to impose impact and tap fees under this section and G.S. 160A-314(a). South Shell Inv. v. Town of Wrightsville Beach, 703 F. Supp. 1192 (E.D.N.C. 1988), aff'd, 900 F.2d 255 (4th Cir. 1990).

Town of Wrightsville Beach had the authority to impose utility system impact fees and tap fees for water and sewer services under the public enterprise statute and no specific enabling legislation was necessary; section 160A-314(a) makes no distinction between increasing rates, rents, or fees in order to raise the money necessary for capital improvements, and there is no language in the statute limiting a town's authority to impose fees for the use of the services as a method of raising money for capital expansion or requiring that a town only increase rates for the services furnished to fund such improvements; thus, under G.S. 160A-313 the town could increase fees, rates or both to raise money needed. South Shell Inv. v. Town of Wrightsville Beach, 703 F. Supp. 1192 (E.D.N.C. 1988), aff'd, 900 F.2d 255 (4th Cir. 1990).

Cited in Madison Cablevision, Inc. v. City of Morganton, 325 N.C. 634, 386 S.E.2d 200 (1989).

§ 160A-314. Authority to fix and enforce rates.

(a) A city may establish and revise from time to time schedules of rents, rates, fees, charges, and penalties for the use of or the services furnished by any public enterprise. Schedules of rents, rates, fees, charges, and penalties may vary according to classes of service, and different schedules may be adopted for services provided outside the corporate limits of the city.

(a1)(1) Before it establishes or revises a schedule of rates, fees, charges, or penalties for stormwater management programs and structural and natural stormwater and drainage systems under this section, the city council shall hold a public hearing on the matter. A notice of the hearing shall be given at least once in a newspaper having general circulation in the area, not less than seven days before the public hearing. The hearing may be held concurrently with the public hearing on the proposed budget ordinance.

(2) The fees established under this subsection must be made applicable throughout the area of the city. Schedules of rates, fees, charges, and penalties for providing stormwater management programs and structural and natural stormwater and drainage system service may vary according to whether the property served is residential, commercial, or industrial property, the property's use, the size of the property, the

area of impervious surfaces on the property, the quantity and quality of the runoff from the property, the characteristics of the watershed into which stormwater from the property drains, and other factors that affect the stormwater drainage system. Rates, fees, and charges imposed under this subsection may not exceed the city's cost of providing a stormwater management program and a structural and natural stormwater and drainage system. The city's cost of providing a stormwater management program and a structural and natural stormwater and drainage system includes any costs necessary to assure that all aspects of stormwater quality and quantity are managed in accordance with federal and State laws, regulations, and rules.

(3) No stormwater utility fee may be levied under this subsection whenever two or more units of local government operate separate stormwater management programs or separate structural and natural stormwater and drainage system services in the same area within a county. However, two or more units of local government may allocate among themselves the functions, duties, powers, and responsibilities for jointly operating a stormwater management program and structural and natural stormwater and drainage system service in the same area within a county, provided that only one unit may levy a fee for the service within the joint service area. For purposes of this subsection, a unit of local government shall include a regional authority providing stormwater management programs and structural and natural stormwater and drainage system services.

(a2) A fee for the use of a disposal facility provided by the city may vary based on the amount, characteristics, and form of recyclable materials present in solid waste brought to the facility for disposal. This section does not prohibit a city from providing aid to low-income persons to pay all or part of the cost of solid waste management services for those persons.

(b) A city shall have power to collect delinquent accounts by any remedy provided by law for collecting and enforcing private debts, and may specify by ordinance the order in which partial payments are to be applied among the various enterprise services covered by a bill for the services. A city may also discontinue service to any customer whose account remains delinquent for more than 10 days. When service is discontinued for delinquency, it shall be unlawful for any person other than a duly authorized agent or employee of the city to do any act that results in a resumption of services. If a delinquent customer is not the owner of the premises to which the services are delivered, the payment of the delinquent account may not be required before providing services at the request of a new and different tenant or occupant of the premises, but this restriction shall not apply when the premises are occupied by two or more tenants whose services are measured by the same meter.

(b1) A city shall not do any of the following in its debt collection practices:

(1) Suspend or disconnect service to a customer because of a past-due and unpaid balance for service incurred by another person who resides with the customer after service has been provided to the customer's household, unless one or more of the following apply:

a. The customer and the person were members of the same household at a different location when the unpaid balance for service was incurred.

b. The person was a member of the customer's current household when the service was established, and the person had an unpaid balance for service at that time.

c. The person is or becomes responsible for the bill for the service to the customer.

(2) Require that in order to continue service, a customer must agree to be liable for the delinquent account of any other person who will reside in the customer's household after the customer receives the service, unless one or more of the following apply:
 a. The customer and the person were members of the same household at a different location when the unpaid balance for service was incurred.
 b. The person was a member of the customer's current household when the service was established, and the person had an unpaid balance for service at that time.

(b2) Notwithstanding the provisions of subsection (b1) of this section, if a customer misrepresents his or her identity in a written or verbal agreement for service or receives service using another person's identity, the city shall have the power to collect a delinquent account using any remedy provided by subsection (b) of this section from that customer.

(c) Except as provided in subsection (d) of this section and G.S. 160A-314.1, rents, rates, fees, charges, and penalties for enterprisory services shall be legal obligations of the person contracting for them, and shall in no case be a lien upon the property or premises served, provided that no contract shall be necessary in the case of structural and natural stormwater and drainage systems.

(d) Notwithstanding subsection (b1) of this section, rents, rates, fees, charges, and penalties for enterprisory services shall be legal obligations of the owner of the premises served when:

(1) The property or premises is leased or rented to more than one tenant and services rendered to more than one tenant are measured by the same meter.

(2) Charges made for use of a sewage system are billed separately from charges made for the use of a water distribution system.

(e) Nothing in this section shall repeal any portion of any city charter inconsistent herewith. (1971, c. 698, s. 1; 1991, c. 591, s. 1; c. 652, s. 4; 1991 (Reg. Sess., 1992), c. 1007, s. 46; 1995 (Reg. Sess., 1996), c. 594, s. 28; 2000-70, s. 4; 2009-302, s. 3(a), (b).)

Local Modification. — City of Charlotte: 1998-66; city of Dunn: 1991, c. 502; city of Durham: 1991 (Reg. Sess., 1992), c. 925; city of Gastonia: 1991, c. 557, s. 1; city of Reidsville: 1983, c. 125; 1989 (Reg. Sess., 1990), c. 957, s. 1; town of Angier: 2008-63, s. 3; town of Erwin: 1991, c. 502; town of Kernersville: 2005-441, s. 3(b) (as to subsection (c), applicable to stream-clearing activities commenced on or after September 27, 2005); town of Lake Lure: 1987, c. 194, s. 1; town of Lillington: 1991, c. 502; village of Clemmons: 2005-441, s. 3(b) (as to subsection (c), applicable to stream-clearing activities commenced on or after September 27, 2005).

Effect of Amendments. — Session Laws 2009-302, s. 3(a) and (b), effective July 17, 2009, added subsections (b1) and (b2); and in subsection (d), added "Notwithstanding subsection (b1) of this section" at the beginning of the introductory language.

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

For survey of 1981 administrative law, see 60 N.C.L. Rev. 1165 (1982).

For survey of 1982 law on taxation, see 61 N.C.L. Rev. 1217 (1983).

CASE NOTES

Editor's Note. — *Some of the cases cited below were decided under former similar provisions.*

A municipality is authorized to establish and revise rates for water and sewer services. Mulberry-Fairplains Water Ass'n v. Town of N. Wilkesboro, 105 N.C. App. 258, 412 S.E.2d 910, cert. denied, 332 N.C. 148, 419 S.E.2d 573 (1992).

A municipality may establish a charge for sewerage service and require all its water customers to pay for such service whether such customers live within or without the corporate limits of such municipality. Covington v. City of

Rockingham, 266 N.C. 507, 146 S.E.2d 420 (1966).

And Such Charge Is Not in the Nature of a Tax. — A properly adopted ordinance of a municipality establishing a sewerage service charge is not in the nature of a tax for the use of the users' sewer facilities, but a charge for the use of the sewer facilities of the municipality in the disposal of polluted water and sewage which drains into the disposal system of the municipality. Covington v. City of Rockingham, 266 N.C. 507, 146 S.E.2d 420 (1966).

Setting of Rates for Water and Sewerage as Proprietary Function. — Setting of rates and charges for water and sewer services furnished by a municipality to its customers is a proprietary function, subject only to limitations imposed upon such action by statute or contractual obligation assumed in such actions. Town of Spring Hope v. Bissette, 53 N.C. App. 210, 280 S.E.2d 490 (1981), aff'd, 305 N.C. 248, 287 S.E.2d 851 (1982).

Since this section expressly authorizes a city to base its stormwater utility (SWU) fees on the impervious area of a piece of property, the rate scheme enacted by the City of Durham pursuant to its SWU ordinance was rationally related to the amount of runoff from each lot and was not an arbitrary exercise of the city's statutory authority. Smith Chapel Baptist Church v. City of Durham, 350 N.C. 805, 517 S.E.2d 874 (1999). (decided prior to 2000 amendment).

City's Stormwater Management Program Exceeded Statutory Authority. — Durham city ordinance, designed to satisfy the EPA's National Pollutant Discharge Elimination System's permit requirements required by the Water Quality Act's demands for pollution control of stormwater discharges into public waters, and fees thereunder, exceeded its enabling authority as laid out by G.S. 160A-311 and subsection (a1) of this section. Smith Chapel Baptist Church v. City of Durham, 350 N.C. 805, 517 S.E.2d 874 (1999). (decided prior to 2000 amendment).

Landowners Entitled to Refund Where Ordinance and Fees Were Illegal. — Where city's stormwater utility ordinance and fees charged thereunder were invalid as a matter of law, plaintiffs were entitled to a full refund of the illegally collected fees, plus interest on those fees to the date of judgment. Smith Chapel Baptist Church v. City of Durham, 350 N.C. 805, 517 S.E.2d 874 (1999). (decided prior to 2000 amendment).

Not Invalidated by Courts Absent Arbitrary or Discriminatory Action. — Setting of rates and charges for water and sewer services furnished by a municipality is a matter for the judgment and discretion of municipal authorities, not to be invalidated by the courts absent some showing of arbitrary or discriminatory action. Town of Spring Hope v. Bissette, 53 N.C. App. 210, 280 S.E.2d 490 (1981), aff'd, 305 N.C. 248, 287 S.E.2d 851 (1982).

Test of Arbitrariness. — Test is not whether any particular customer has directly benefited from the use of a discrete or particular component of the utility plant, but whether the municipal authority has acted arbitrarily in establishing its rates. Town of Spring Hope v. Bissette, 53 N.C. App. 210, 280 S.E.2d 490 (1981), aff'd, 305 N.C. 248, 287 S.E.2d 851 (1982).

Inclusion in Rates of Capital Costs of Improvement. — Great weight of authority is to the effect that in the setting of rates and charges for water and sewer services a municipal body may include not only operating expenses and depreciation, but also capital costs associated with actual or anticipated growth or improvement of the facilities required for the furnishing of such services. Town of Spring Hope v. Bissette, 53 N.C. App. 210, 280 S.E.2d 490 (1981), aff'd, 305 N.C. 248, 287 S.E.2d 851 (1982).

Propriety of Rates Calculated to Recoup Costs of New Facilities Not Yet in Use. — Where the costs of necessary new facilities constructed to serve a municipality's customers are known or are predictable, rates calculated to begin recoupment of those costs are not unlawful or illegal merely because the new facilities have not yet been put into actual use. Town of Spring Hope v. Bissette, 53 N.C. App. 210, 280 S.E.2d 490 (1981), aff'd, 305 N.C. 248, 287 S.E.2d 851 (1982).

Right to Classify Consumers Under Reasonable Classifications. — The statutory authority of a city to fix and enforce rates for its services and to classify its customers is not a license to discriminate among customers of essentially the same character and services. Rather, this section must be read as a codification of the general rule that a city has the right to classify consumers under reasonable classifications based upon such factors as the cost of service or any other matter which presents a substantial difference as a ground of distinction. Town of Taylorsville v. Modern Cleaners, 34 N.C. App. 146, 237 S.E.2d 484 (1977).

No License to Discriminate. — The statutory authority of a city to fix and enforce rates for public services furnished by it and to classify its customers is not a license to discriminate among customers of essentially the same character and services. Wall v. City of Durham, 41 N.C. App. 649, 255 S.E.2d 739, cert. denied, 298 N.C. 304, 259 S.E.2d 918 (1979).

A public utility, whether publicly or privately owned, may not discriminate in the distribution of services or the establishment of rates. There must be substantial differences in service or conditions to justify differences in rates. There must be no unreasonable discrimination between those receiving the same kind and degree of service. Cabarrus County v. City of Charlotte, 71 N.C. App. 192, 321 S.E.2d 476 (1984).

City is free to establish such fees and charges for services rendered to residents outside its corporate limits as it may deem reasonable and proper, by contract or by ordinance. Atlantic Constr. Co. v. City of Raleigh, 230 N.C. 365, 53 S.E.2d 165 (1949).

Town had authority to impose impact and tap fees under this section and G.S. 160A-313. South Shell Inv. v. Town of Wrightsville Beach, 703 F. Supp. 1192 (E.D.N.C. 1988), aff'd, 900 F.2d 255 (4th Cir. 1990).

Town of Wrightsville Beach had the authority to impose utility system impact fees and tap fees for water and sewer services under the public enterprise statute and no specific enabling legislation was necessary; this section makes no distinction between increasing rates, rents, or fees in order to raise the money necessary for capital improvements, and there is no language in the statute limiting a town's authority to impose fees for the use of the services as a method of raising money for capital expansion or requiring that a town only increase rates for the services furnished to fund such improvements; thus, under this section the town could increase fees, rates or both to raise money needed. South Shell Inv. v. Town of Wrightsville Beach, 703 F. Supp. 1192 (E.D.N.C. 1988), aff'd, 900 F.2d 255 (4th Cir. 1990).

Rates Charged Consumers Outside Corporate Limits Held Not Discriminatory. — An amendment to an ordinance which substantially increased the rates charged for water supplied by a municipality for consumption outside its corporate limits could not be held discriminatory in a legal sense when it applied alike to all nonresidents, and it was immaterial that a nonresident consumer deemed such rates exorbitant or unreasonable. Fulghum v. Town of Selma, 238 N.C. 100, 76 S.E.2d 368 (1953).

Minimum Monthly Charge Assessed Against Condominium Complex Held Reasonable. — For a municipal water supplier to charge a condominium complex based only on the size of the service line rather than on the number of residential units in the complex would unfairly discriminate against single residential customers because it would place an unfair portion of the costs of water service on them. Accordingly, a minimum monthly charge assessed condominium complexes is neither discriminatory nor arbitrary, but is reasonable. Bogue Shores Homeowners Ass'n v. Town of Atl. Beach, 109 N.C. App. 549, 428 S.E.2d 258 (1993), pet. disc. rev. denied, 334 N.C. 162, 432 S.E.2d 356 (1993).

Ordinance Held Unenforceable Against City. — A county ordinance providing that no fees could be charged residents of the county or franchise haulers by the owners or operators of a sanitary landfill located within the county was improper, because it based fees upon the wrong criteria (residence rather than kind and degree of service) in violation of this section. Therefore, the county could not enforce the ordinance against city which operated a sanitary landfill in the county. Cabarrus County v. City of Charlotte, 71 N.C. App. 192, 321 S.E.2d 476 (1984).

Applied in Ricks v. Town of Selma, 99 N.C. App. 82, 392 S.E.2d 437 (1990).

Cited in City of Wilson v. Carolina Bldrs. of Wilson, Inc., 94 N.C. App. 117, 379 S.E.2d 712 (1989); Pulliam v. City of Greensboro, 103 N.C. App. 748, 407 S.E.2d 567 (1991); Davis v. Town of Southern Pines, 101 N.C. App. 570, 400 S.E.2d 82 (1991); Carolina Water Serv., Inc. v. Town of Atlantic Beach, 121 N.C. App. 23, 464 S.E.2d 317 (1995).

§ 160A-314.1. Availability fees for solid waste disposal facilities; collection of any solid waste fees.

(a) In addition to a fee that a city may impose for collecting solid waste or for using a disposal facility, a city may impose a fee for the availability of a disposal facility provided by the city. A fee for availability may not exceed the cost of providing the facility and may be imposed on all improved property in the city that benefits from the availability of the facility. A city may not impose an availability fee on property whose solid waste is collected by a county, a city, or a private contractor for a fee if the fee imposed by a county, a city, or a private contractor for the collection of solid waste includes a charge for the availability and use of a disposal facility provided by the city. Property served by a private contractor who disposes of solid waste collected from the property in a disposal facility provided by a private contractor that provides the same services as those provided by the city disposal facility is not considered to benefit from a disposal facility provided by the city and is not subject to a fee imposed by the city for the availability of a disposal facility provided by the city. To the extent that the services provided by the city disposal facility differ from the services provided by the disposal facility provided by a private contractor in the same city, the city may charge an availability fee to cover the costs of the additional services provided by the city disposal facility.

In determining the costs of providing and operating a disposal facility, a city may consider solid waste management costs incidental to a city's handling and disposal of solid waste at its disposal facility. A fee for the availability or use of a disposal facility may be based on the combined costs of the different disposal facilities provided by the city.

(b) A city may adopt an ordinance providing that any fee imposed under subsection (a) or under G.S. 160A-314 for collecting or disposing of solid waste may be billed with property taxes, may be payable in the same manner as property taxes, and, in the case of nonpayment, may be collected in any manner by which delinquent personal or real property taxes can be collected. If an ordinance states that delinquent fees can be collected in the same manner as delinquent real property taxes, the fees are a lien on the real property described on the bill that includes the fee. (1991, c. 652, s. 5; 2007-550, s. 10(b).)

§ 160A-315. Billing and collecting agents for certain sewer systems.

Any city that maintains and operates a sewage collection and disposal system but does not maintain and operate a water distribution system is authorized to contract with the owner or operator of the water distribution system operating within the area served by the city sewer system to act as the billing and collection agent of the city for any charges, rents, or penalties imposed by the city for sewer services. (1933, c. 322, s. 1; 1941, c. 106; 1961, c. 1074; 1971, c. 698, s. 1.)

Cross References. — As to authority of counties, cities and towns to enter into long-term contracts with private persons, firms or corporations for the disposal of solid waste, see G.S. 153A-299.1 through 153A-299.6.

§ 160A-316. Independent water companies to supply information.

The owner or operator of any independent or private water distribution system operating within a city that maintains and operates a sewage collection and disposal system shall furnish to the city upon request copies of water meter readings and any other water consumption records and data that the city may require to bill and collect its sewer rents and charges. The city shall pay the reasonable cost of supplying this information. (1933, c. 322, s. 1; 1941, c. 106; 1961, c. 1074; 1971, c. 698, s. 1.)

§ 160A-317. Power to require connections to water or sewer service and the use of solid waste collection services.

(a) Connections. — A city may require an owner of developed property on which there are situated one or more residential dwelling units or commercial establishments located within the city limits and within a reasonable distance of any water line or sewer collection line owned, leased as lessee, or operated by the city or on behalf of the city to connect the owner's premises with the water or sewer line or both, and may fix charges for the connections. In lieu of requiring connection under this subsection and in order to avoid hardship, the city may require payment of a periodic availability charge, not to exceed the minimum periodic service charge for properties that are connected.

(b) Solid Waste. — A city may require an owner of improved property to do any of the following:

(1) Place solid waste in specified places or receptacles for the convenience of city collection and disposal.
(2) Separate materials before the solid waste is collected.
(3) Participate in a recycling program by requiring separation of designated materials by the owner or occupant of the property prior to disposal. An owner of recovered materials as defined by G.S. 130A-290(a)(24) retains ownership of the recovered materials until the owner conveys, sells, donates, or otherwise transfers the recovered materials to a person, firm, company, corporation, or unit of local government. A city may not require an owner to convey, sell, donate, or otherwise transfer recovered materials to the city or its designee. If an owner places recovered materials in receptacles or delivers recovered materials to specific locations, receptacles, and facilities that are owned or operated by the city or its designee, then ownership of these materials is transferred to the city or its designee.
(4) Participate in any solid waste collection service provided by the city or by a person who has a contract with the city if the owner or occupant of the property has not otherwise contracted for the collection of solid waste from the property.

(c) A city may impose a fee for the solid waste collection service provided under subdivision (4) of subsection (b) of this section. The fee may not exceed the costs of collection. (1917, c. 136, subch. 7, s. 2; C.S., s. 2806; 1971, c. 698, s. 1; 1979, c. 619, s. 14: 1981, c. 823; 1989, c. 741, s. 2; 1991, c. 698, s. 2; 1993, c. 165, s. 2; 1995, c. 511, s. 4.)

Editor's Note. — Session Laws 1993, c. 165, which amended this section, in s. 3 provides that the act is effective upon ratification and does not apply to any contracts in existence at that time or to any extensions or renewals thereof. The act was ratified on June 16, 1993.

Session Laws 1995, c. 511, which amended this section, in s. 5 provides: "It is the express purpose of this act to provide additional and alternative powers to political subdivisions and authorities affected by this act and to provide additional and alternative methods by which the functions affected by this act may be performed. This act is not intended, and shall not be construed, to derogate, limit, or repeal any power now existing under any other law, whether general, special, or local."

Session Laws 1995, c. 511, which amended this section, in s. 6 provides: "All general, special, or local laws, or parts thereof, inconsistent with the provisions of this act are declared to be inapplicable to the provisions of this act."

CASE NOTES

Legislature Contemplated Anticompetitive Conduct by Cities Respecting Sewage Services Within City Limits. — Section 160A-312 grants cities the authority to acquire, construct, maintain, improve, own, operate, and regulate sewage collection systems of all types, and additionally, the North Carolina scheme explicitly contemplates anticompetitive activity because it expressly authorizes cities to require those within its limits to use its sewer facilities. Therefore, the North Carolina legislature contemplated anticompetitive conduct by cities respecting sewage services within city limits. Pinehurst Enters., Inc. v. Town of S. Pines, 690 F. Supp. 444 (M.D.N.C. 1988), aff'd, 887 F.2d 1080 (4th Cir. 1989).

Section Not Applicable to Property Located Outside City. — A municipality is not authorized to compel owners of improved property located outside the city, but which may be located upon or near one of its sewer lines, or a line which empties into the city's sewerage system, to connect with the sewerline. Atlantic Constr. Co. v. City of Raleigh, 230 N.C. 365, 53 S.E.2d 165 (1949); Smith v. City of Winston-Salem, 247 N.C. 349, 100 S.E.2d 835 (1957), decided under former § 160-240.

Authority to Impose Impact and Tap Fees. — Town of Wrightsville Beach had the authority to impose utility system impact fees and tap fees for water and sewer services under the public enterprise statute and no specific enabling legislation was necessary; section 160A-314(a) makes no distinction between increasing rates, rents, or fees in order to raise the money necessary for capital improvements, and there is no language in the statute limiting a town's authority to impose fees for the use of the services as a method of raising money for capital expansion or requiring that a town only increase rates for the services furnished to fund such improvements; thus, under G.S. 160A-314 the town could increase fees, rates or both to raise money needed. South Shell Inv. v. Town of Wrightsville Beach, 703 F. Supp. 1192 (E.D.N.C. 1988), aff'd, 900 F.2d 255 (4th Cir. 1990).

Cited in Blevins v. Denny, 114 N.C. App. 766, 443 S.E.2d 354 (1994); Homebuilders Ass'n v. City of Charlotte, 336 N.C. 37, 442 S.E.2d 45 (1994).

§ 160A-318. Mutual aid contracts.

(a) Any two or more cities, counties, water and sewer authorities, metropolitan sewage districts, sanitary districts, or private utility companies or combination thereof may enter into contracts with each other to provide mutual aid and assistance in restoring electric, water, sewer, or gas services in the event of natural disasters or other emergencies under such terms and conditions as may be agreed upon. Mutual aid contracts may include provisions for furnishing personnel, equipment, apparatus, supplies and materials; for reimbursement or indemnification of the aiding party for loss or damage incurred by giving aid; for delegating authority to a designated official or employee to send aid upon request; and any other provisions not inconsistent with law.

(b) Officials and employees furnished by one party in aid of another party pursuant to a mutual aid contract entered into under authority of this section shall be conclusively deemed for all purposes to remain officials and employees of the aiding party. While providing aid to another and while traveling to and from another city or county pursuant to giving aid, they shall retain all rights, privileges, and immunities, including coverage under the North Carolina Workers' Compensation Act, as they enjoy while performing their normal duties.

(c) Notwithstanding any other provisions of law to the contrary, any party to a mutual aid contract entered into under authority of this section, may sell or otherwise convey or deliver to another party to the contract personal property to be used in restoring utility services pursuant to the contract, without following procedures for the sale or disposition of property prescribed by any general law, local act, or city charter.

(d) Nothing in this section shall be construed to deprive any party to a mutual aid contract of its discretion to send or decline to send its personnel, equipment, and apparatus in aid of another party to the contract under any circumstances, whether or not obligated by the contract to do so. In no case shall a party to a mutual aid contract or any of its officials or employees be held to answer in any civil or criminal action for declining to send personnel, equipment, or apparatus to another party to the contract, whether or not obligated by contract to do so. (1967, c. 450; 1971, c. 698, s. 1; 1991, c. 636, s. 3.)

§ 160A-319. Utility franchises.

(a) A city shall have authority to grant upon reasonable terms franchises for a telephone system and any of the enterprises listed in G.S. 160A-311, except a cable television system. A franchise granted by a city authorizes the operation of the franchised activity within the city. No franchise shall be granted for a period of more than 60 years, except that a franchise for solid waste collection or disposal systems and facilities shall not be granted for a period of more than 30 years. Except as otherwise provided by law, when a city operates an enterprise, or upon granting a franchise, a city may by ordinance make it unlawful to operate an enterprise without a franchise.

(b) For the purposes of this section, "cable television system" means any system or facility that, by means of a master antenna and wires or cables, or by wires or cables alone, receives, amplifies, modifies, transmits, or distributes any television, radio, or electronic signal, audio or video or both, to subscribing members of the public for compensation. "Cable television system" does not include providing master antenna services only to property owned or leased by the same person, firm, or corporation, nor communication services rendered to a cable television system by a public utility that is regulated by the North Carolina Utilities Commission or the Federal Communications Commission in providing those services. (Code, ss. 704, 3117; 1901, c. 283; 1905, c. 526; Rev., s. 2916; 1907, c. 978; P.L. 1917, c. 223; C. S., s. 2623; Ex. Sess. 1921, c. 58; 1927, c. 14; 1933, c. 69; 1949, c. 938; 1955, c. 77; 1959, c. 391; 1961, c. 308; 1967, c. 100, s. 2; c. 1122, s. 1; 1969, c. 944; 1971, c. 698, s. 1; 1975, c. 664, s. 11; 1991 (Reg. Sess., 1992), c. 1013, s. 2; 2006-151, s. 15.)

Cross References. — As to authority of counties, cities and towns to enter into long-term contracts with private persons, firms or corporations for the disposal of solid waste notwithstanding the provisions of this section, see G.S. 153A-299.3.

Editor's Note. — Session Laws 1991 (Reg. Sess., 1992), c. 1013, which amended this section, in s. 8 provides: "Any contract for solid waste collection or disposal entered into by any county, city, or town that would have been lawful if this act had been in effect at the time the contract was entered into is validated. The provisions of this act that limit a contract or franchise for the collection and disposal of solid waste to a period of not more than 30 years shall not be construed to invalidate any contract or franchise for a longer period up to 60 years that was entered into by any county, city, or town prior to the date this act is effective." The act became effective July 22, 1992.

Session Laws 2006-151, s. 20, is a severability clause.

Legal Periodicals. — For note, "North Carolina's Theft of Cable Television Service Statute: Prospects of a Brighter Future for the Cable Television Industry," see 63 N.C.L. Rev. 1296 (1985).

CASE NOTES

Editor's Note. — *Most of the cases cited below were decided under former similar provisions.*

Every town has the power to grant franchises to public utilities, that is, the right to engage within the corporate boundaries in business of a public nature. Duke Power Co. v. Blue Ridge Elec. Membership Corp., 253 N.C. 596, 117 S.E.2d 812 (1961).

Grant of Franchise is Governmental Function. — In the granting of a franchise to a public utility to operate a system for furnishing gas for cooking and heating to residents of the municipality, the municipality exercises a governmental function, and may not be held liable in tort to a person injured by a gas explosion, even if it be conceded that the city was negligent in continuing the franchise after the pipelines and equipment of the licensee had become defective. Denning v. Goldsboro Gas Co., 246 N.C. 541, 98 S.E.2d 910 (1957).

Grant or Refusal of Franchise Vested Solely in Governing Body. — The power to grant or to refuse to grant a franchise is vested solely in the governing body of the city; this power is essentially legislative in nature, and its exercise is discretionary. Madison Cablevision, Inc. v. City of Morganton, 325 N.C. 634, 386 S.E.2d 200 (1989).

The sovereign right to franchise implies the power to control for public benefit, including among other things, the right to fix reasonable rates and to specify where the franchise may or may not be exercised, so as to afford adequate service to the public. Duke Power Co. v. Blue Ridge Elec. Membership Corp., 253 N.C. 596, 117 S.E.2d 812 (1961).

Terms and Conditions Within Discretion of Local Body. — The terms and conditions upon which franchises to public utilities are to be granted, unless clearly unreasonable or expressly prohibited by law, rest in the sound discretion of the local body. Mullen v. Town of Louisburg, 225 N.C. 53, 33 S.E.2d 484 (1945).

A franchise need not be exclusive. Indeed, if it is exclusive, an additional question as to its validity arises under N.C. Const., Art. I, § 32 and 34. Kornegay v. City of Raleigh, 269 N.C. 155, 152 S.E.2d 186 (1967).

No grant of franchise by a city is deemed

exclusive unless so expressed by the grant. Hill v. Elizabeth City, 298 F. 67 (4th Cir. 1924).

Grant of Exclusive Privilege Held Unconstitutional. — Those provisions of an ordinance granting the exclusive privilege to construct and maintain a waterworks within the corporate limits of a town, and the exclusive use of its streets, alleys, sidewalks, public grounds, streams and bridges, came within the confirmation of N.C. Const., Art. I, § 34, which declares that "perpetuities and monopolies are contrary to the genius of a free state and shall not be allowed." Thrift v. Elizabeth City, 122 N.C. 31, 30 S.E. 349 (1898).

No Right to Grant Franchise for Use of Streets Absent Legislative Authority. — The law is well settled that the title either of the fee in the soil or an easement is vested in the municipality, in trust for the use of the people as and for a public highway, and that it cannot, without legislative authority, divert them from this use. Therefore, a grant by a city of a franchise allowing gas pipes to be laid in its streets is void unless allowed by express legislation. Elizabeth City v. Banks, 150 N.C. 407, 64 S.E. 189 (1909).

City Must Follow Procedural Restrictions of Charter. — Where the charter of a city provides procedural restrictions upon the granting by the city of franchises, such city must follow such procedural restrictions of its charter in granting a franchise, regardless of whether the authority to grant the particular franchise is conferred upon the city by statute or by its own charter. Shaw v. City of Asheville, 269 N.C. 90, 152 S.E.2d 139 (1967).

Statutory Term Read into Contract. — Where a franchise granted by a municipality fails to stipulate a term, the statutory term of 60 years will be read into the contract as a part thereof. Boyce v. City of Gastonia, 227 N.C. 139, 41 S.E.2d 355 (1947).

Grant of Right to Construct City-Wide Television Cable System as Franchise. — The grant by a city to a person, firm or corporation of the right to construct a city-wide television cable system of towers, poles, cables, wires, and other apparatus in, along, and over its streets and other public ways and to operate such systems for the profit of the grantee is clearly a franchise, for it is the grant of a right which is not held by all persons in common and which may be granted only by the act of the sovereign or its authorized agent. Kornegay v. City of Raleigh, 269 N.C. 155, 152 S.E.2d 186 (1967).

Acceptance of a municipal franchise by a water company carries with it the duty of supplying water to all persons along the lines of its mains without discrimination and at uniform rates. Griffin v. Goldsboro Water Co., 122 N.C. 206, 30 S.E. 319 (1898).

A water company operating under a franchise-contract from a city or town, and receiving the benefits and advantages arising thereunder, may not repudiate the duty of supplying water free to public schools, etc., which it had expressly contracted to do in accepting the franchise containing such provision, and collect for water it had furnished upon quantum meruit or otherwise. Henderson Water Co. v. Trustees of Henderson Graded Schools, 151 N.C. 171, 65 S.E. 927 (1909).

License Granted to Railroad Not a Permanent Easement. — A license granted by a city to a railroad company to lay a track upon and to that extent use the streets, in the absence of an express power in the charter to do so, cannot be construed into a grant of a permanent easement. State v. Atlantic & N.C.R.R., 141 N.C. 736, 53 S.E. 290 (1906).

Power to Annul License. — After a city, by ordinance, has granted a street railroad a right to construct its line over certain streets, it cannot by subsequent ordinance arbitrarily annul such license. Asheville Street Ry. v. City of Asheville, 109 N.C. 688, 14 S.E. 316 (1891).

Displacement of Cable Television Service Competition. — The powers conferred upon cities by the North Carolina General Statutes with respect to provision and franchising of cable television service reflect the clear contemplation that competition may be displaced with respect to this service. Madison Cablevision, Inc. v. City of Morganton, 325 N.C. 634, 386 S.E.2d 200 (1989).

Rights of Abutting Owners. — As against the rights of abutting owners, the municipal authorities have no power to grant to a railroad company an easement to lay its track upon and operate its trains over the streets of a town, even though the title to the streets be in the town. Staton v. Atlantic Coast Line R.R., 147 N.C. 428, 61 S.E. 455 (1908).

No Violation of Chapter 75. — Municipal ownership and operation of cable television systems does not violate Chapter 75, which relates to monopolies. Madison Cablevision, Inc. v. City of Morganton, 325 N.C. 634, 386 S.E.2d 200 (1989).

Town Was Equitably Estopped from Requiring a Franchise for a Landfill. — Neighboring town was equitably estopped from arguing that a county failed to receive a public enterprise franchise from the town for the operation of a proposed landfill, despite an ordinance that the town passed after it gave its approval for the landfill before later withdrawing its approval. County of Wake v. N.C. Dep't of Env't & Natural Res., 155 N.C. App. 225, 573 S.E.2d 572, 2002 N.C. App. LEXIS 1632 (2002), cert. dismissed, 357 N.C. 62, 579 S.E.2d 387 (2003).

City's operation of a fiber optics network is a cable television system authorized to be owned and operated as a public enterprise.

BellSouth Telecomms., Inc. v. City of Laurinburg, 168 N.C. App. 75, 606 S.E.2d 721, 2005 N.C. App. LEXIS 164, cert. denied, — N.C. —, 615 S.E.2d 660, cert. denied, 359 N.C. 629, — S.E.2d — (2005).

Applied in City of Lexington v. Summit Communications, Inc., 76 N.C. App. 333, 332 S.E.2d 519 (1985).

Cited in Duke Power Co. v. City of High Point, 22 N.C. App. 91, 205 S.E.2d 774 (1974); Pulliam v. City of Greensboro, 103 N.C. App. 748, 407 S.E.2d 567 (1991).

§ 160A-320. Public enterprise improvements.

(a) Authorization. — A city may contract with a developer or property owner, or with a private party who is under contract with the developer or property owner, for public enterprise improvements that are adjacent or ancillary to a private land development project. Such a contract shall allow the city to reimburse the private party for costs associated with the design and construction of improvements that are in addition to those required by the city's land development regulations. Such a contract is not subject to Article 8 of Chapter 143 of the General Statutes if the public cost will not exceed two hundred fifty thousand dollars ($250,000) and the city determines that: (i) the public cost will not exceed the estimated cost of providing for those improvements through either eligible force account qualified labor or through a public contract let pursuant to Article 8 of Chapter 143 of the General Statutes; or (ii) the coordination of separately constructed improvements would be impracticable. A city may enact ordinances and policies setting forth the procedures, requirements, and terms for agreements authorized by this section.

(b) Property Acquisition. — The improvements may be constructed on property owned or acquired by the private party or on property owned or acquired by the city. The private party may assist the city in obtaining easements in favor of the city from private property owners on those properties that will be involved in or affected by the project. The contract between the city and the private party may be entered into before the acquisition of any real property necessary to the project. (2005-426, s. 8(d).)

Editor's Note. — Session Laws 2005-426, s. 11, made this section effective January 1, 2006.

§ 160A-321. Sale, lease, or discontinuance of city-owned enterprise.

A city is authorized to sell or lease as lessor any enterprise that it may own upon any terms and conditions that the council may deem best. However, except as to transfers to another governmental entity pursuant to G.S. 160A-274, a city-owned enterprise shall not be sold, leased to another, or discontinued unless the proposal to sell, lease, or discontinue is first submitted to a vote of the people and approved by a majority of those who vote thereon. Voter approval shall not be required for the sale, lease, or discontinuance of airports, off-street parking systems and facilities, or solid waste collection and disposal systems. (Code, ss. 704, 3117; 1901, c. 283; 1905, c. 526; Rev., s. 2916; 1907, c. 978; P.L. 1917, c. 223; C.S., s. 2623; Ex. Sess. 1921, c. 58; 1927, c. 14; 1933, c. 69; 1949, c. 938; 1955, c. 77; 1959, c. 391; 1961, c. 308; 1967, c. 100, s. 2; c. 1122, s. 1; 1969, c. 944; 1971, c. 698, s. 1; 1973, c. 489, s. 2.)

CASE NOTES

Approval of Voters Not Required for Sale of Diesel Engines. — Where a municipality decided to abandon the generation of electricity by the use of diesel engines and substitute therefor electricity purchased wholesale for distribution through its electric plant, and in pursuance of such change of policy advertised a sale of diesel engines, there was no sale by such municipality of its electric plant requiring approval of a majority of the qualified voters. Mullen v. Town of Louisburg, 225 N.C. 53, 33 S.E.2d 484 (1945), decided under former similar statutory provisions.

As to private sale under former statutory provisions, see Allen v. Town of Reidsville, 178 N.C. 513, 101 S.E. 267 (1919).

§ 160A-322. Contracts for electric power and water.

A city is authorized to enter into contracts for a period not exceeding 40 years for the supply of water, and for a period not exceeding 30 years for the supply of electric power or other public commodity or services. (Code, ss. 704, 3117; 1901, c. 283; 1905, c. 526; Rev., s. 2916; 1907, c. 978; P.L. 1917, c. 223; C. S., s. 2623; Ex. Sess. 1921, c. 58; 1927, c. 14; 1933, c. 69; 1949, c. 938; 1955, c. 77; 1959, c. 391; 1961, c. 308; 1967, c. 100, s. 2; c. 1122, s. 1; 1969, c. 944; 1971, c. 698, s. 1.)

CASE NOTES

Cited in Mulberry-Fairplains Water Ass'n v. Town of N. Wilkesboro, 105 N.C. App. 258, 412 S.E.2d 910 (1992).

§ 160A-323. Load management and peak load pricing of electric power.

In addition and supplemental to the powers conferred upon municipalities by the laws of the State and for the purposes of conserving electricity and increasing the economy of operation of municipal electric systems, any municipality owning or operating an electric distribution system, any municipality engaging in a joint project pursuant to Chapter 159B of the General Statutes and any joint agency created pursuant to Chapter 159B of the General Statutes, shall have and may exercise the power and authority:

(1) To investigate, study, develop and place into effect procedures and to investigate, study, develop, purchase, lease, own, operate, maintain, and put into service devices, which will temporarily curtail or cut off certain types of appliances or equipment for short periods of time whenever an unusual peak demand threatens to overload the electric system or economies would result; and

(2) To fix rates and bill customers by a system of nondiscriminatory peak pricing, with incentive rates for off-peak use of electricity charging more for peak periods than for off-peak periods to reflect the higher cost of providing electric service during periods of peak demand on the electric system. (1977, c. 232.)

§ 160A-324. Contract with private solid waste collection firm(s).

(a) If the area to be annexed described in an act of the General Assembly includes an area where a firm (i) meets the requirements of subsection (a1) of this section, (ii) on the ninetieth day preceding the date of introduction in the House of Representatives or the Senate of the bill which became the act making the annexation, was providing solid waste collection services in the area to be annexed, (iii) is still providing such services on the date the act becomes law, and (iv) by reason of the annexation the firm's franchise with a county or arrangements with third parties for solid waste collection will be terminated, the city shall do one of the following:

(1) Contract with the firm for a period of two years after the effective date of the annexation ordinance to allow the firm to provide collection

services to the city in the area to be annexed for sums determined under subsection (d) of this section.

(2) Pay the firm for the firm's economic loss, with one-third of the economic loss to be paid within 30 days of the termination and the balance paid in 12 equal monthly installments during the next succeeding 12 months. Any remaining economic loss payment is forfeited if the firm terminates service to customers in the annexation area prior to the effective date of the annexation.

(3) Make other arrangements satisfactory to the parties.

(a1) To qualify for the options set forth in subsection (a) of this section, a firm must have, subsequent to receiving notice of the annexation in accordance with subsection (b) of this section, filed with the city clerk at least 10 days prior to the effective date of the annexation a written request to contract with the city to provide solid waste collection services containing a certification, signed by an officer or owner of the firm, that the firm serves at least 50 customers within the county at that time.

(a2) Firms shall file notice of provision of solid waste collection service with the city clerk of all cities located in the firm's collection area or within five miles thereof.

(b) The city shall make a good faith effort to provide at least 30 days before the effective date of the annexation a copy of the act to each private firm providing solid waste collection services in the area to be annexed. The notice shall be sent to all firms that filed notice in accordance with subsection (a2) of this section by certified mail, return receipt requested, to the address provided by the firm under subsection (a2) of this section.

(c) The city may require that the contract contain:

(1) A requirement that the firm post a performance bond and maintain public liability insurance coverage;

(2) A requirement that the firm agree to service customers in the annexed area that were not served by that firm on the effective date of annexation;

(3) A provision that divides the annexed area into service areas if there were more than one firm being contracted within the area, such that the entire area is served by the firms, or by the city as to customers not served by the firms;

(4) A provision that the city may serve customers not served by the firm on the effective date of annexation;

(5) A provision that the contract can be cancelled in writing, delivered by certified mail to the firm in question with 30 days to cure, substantial violations of the contract, but no contract may be cancelled on these grounds unless the Local Government Commission finds that substantial violations have occurred, except that the city may suspend the contract for up to 30 days if it finds substantial violation of health laws;

(6) Performance standards, not exceeding city standards existing at the time of notice provided pursuant to subsection (b) of this section, with provision that the contract may be cancelled for substantial violations of those standards, but no contract may be cancelled on those grounds unless the Local Government Commission finds that substantial violations have occurred;

(7) A provision for monetary damages if there are violations of the contract or of performance standards.

(d) If the services to be provided to the city by reason of the annexation are substantially the same as rendered under the franchise with the county or arrangements with the parties, the amount paid by the city shall be at least ninety percent (90%) of the amount paid or required under the existing franchise or arrangements. If such services are required to be adjusted to conform to city standards or as a result of changes in the number of customers and as a result there are changes in disposal costs (including mileage and landfill charges), requirements for storage capacity (dumpsters and/or residential carts), and/or frequency of collection, the amount paid by the city for the service shall be increased or decreased to reflect the value of such adjusted services as if computed under the existing franchise or arrangements. In the event agreement cannot be reached between the city and the firm under this subsection, the matters shall be determined by the Local Government Commission.

(e), (f) Repealed by Session Laws 2006-193, s. 1, applicable to annexations for which the bill making the annexation is enacted on or after January 1, 2007.

(g) If the city fails to offer a contract to the firm within 30 days following the effective date of the annexation act, the firm may appeal within 60 days following the effective date of the annexation act to the Local Government Commission for an order directing the city to offer a contract. If the Local Government Commission finds that the city has not made an offer which complies with this section, it shall order the city to pay to the firm a civil penalty of the amount of payments it finds that the city would have had to make under the contract, during the noncompliance period until the contract offer is made. Either the firm or the city may obtain judicial review in accordance with Chapter 150B of the General Statutes.

(h) A firm which has given notice under subsection (a) of this section that it desires to contract, and any firm that the city believes is eligible to give such notice, shall make available to the city not later than 30 days following a written request of the city all information in its possession or control, including but not limited to operational, financial and budgetary information, necessary for the city to determine if the firm qualifies for the benefits of this section and to determine the nature and scope of the potential contract and/or economic loss. The firm forfeits its rights under this section if it fails to make a good faith response within 30 days following receipt of the written request for information from the city, provided that the city's written request so states by specific reference to this section.

(i) As used in this section, the following terms mean:

(1) Economic loss. — A sum equal to 15 times the average gross monthly revenue for the three months prior to the introduction of the bill under subsection (a) of this section, collected or due the firm for residential, commercial, and industrial collection service in the area annexed or to be annexed; provided that revenues shall be included in calculations under this subdivision only if policies of the city will provide solid waste collection to those customers such that arrangements between the firm and the customers will be terminated.

(2) Firm. — A private solid waste collection firm. (1989, c. 598, s. 1; 2006-193, s. 3.)

§ 160A-325. Selection or approval of sites for certain sanitary landfills; solid waste defined.

(a) The governing board of a city shall consider alternative sites and socioeconomic and demographic data and shall hold a public hearing prior to selecting or approving a site for a new sanitary landfill that receives residential solid waste that is located within one mile of an existing sanitary landfill within the State. The distance between an existing and a proposed site shall be determined by measurement between the closest points on the outer boundary of each site. The definitions set out in G.S. 130A-290 apply to this subsection. As used in this subsection:

(1) "Approving a site" refers to prior approval of a site under G.S. 130A-294(a)(4).

(2) "Existing sanitary landfill" means a sanitary landfill that is in operation or that has been in operation within the five-year period immediately prior to the date on which an application for a permit is submitted.

(3) "New sanitary landfill" means a sanitary landfill that includes areas not within the legal description of an existing sanitary landfill as set out in the permit for the existing sanitary landfill.

(4) "Socioeconomic and demographic data" means the most recent socioeconomic and demographic data compiled by the United States Bureau of the Census and any additional socioeconomic and demographic data submitted at the public hearing.

(b) As used in this Part, "solid waste" means nonhazardous solid waste, that is, solid waste as defined in G.S. 130A-290 but not including hazardous waste. (1991 (Reg. Sess., 1992), c. 1013, s. 3.)

Editor's Note. — Session Laws 1991 (Reg. Sess., 1992), c. 1013, which enacted this section, in s. 8 provides: "Any contract for solid waste collection or disposal entered into by any county, city, or town that would have been lawful if this act had been in effect at the time the contract was entered into is validated. The provisions of this act that limit a contract or franchise for the collection and disposal of solid waste to a period of not more than 30 years shall not be construed to invalidate any contract or franchise for a longer period up to 60 years that was entered into by any county, city, or town prior to the date this act is effective." The act became effective July 22, 1992.

Session Laws 1991 (Reg. Sess., 1992), c. 1013, s. 9 provides: "G.S. 153A-136(c), as enacted by Section 1 of this act, and G.S. 160A-325(a), as enacted by Section 3 of this act, shall not apply to the selection or approval of a site for a new sanitary landfill if, prior to the effective date of this act [July 22, 1992]:

"(1) The site was selected or approved by the board of commissioners of a county or the governing board of a city;

"(2) A public hearing on the selection or approval of the site has been held;

"(3) A long-term contract was approved by the Department of Environment, Health, and Natural Resources [now the Department of Environment and Natural Resources] under Part 4 of Article 15 of Chapter 153A of the General Statutes; or

"(4) An application for a permit for a sanitary landfill to be located on the site has been submitted to the Department of Environment, Health and Natural Resources [now the Department of Environment and Natural Resources]."

CASE NOTES

Exemption From Statute Prior to July 2, 1992. — The defendants were only required to comply with one of four conditions of Session Laws 1991 Reg. Sess., 1992, c. 1013, s. 9 in order to qualify for the exemption provided in this section; in this case, a showing that the site was selected and approved by Alderman was sufficient to comply with condition (1). Grassy Creek Neighborhood Alliance v. City of Winston-Salem, 142 N.C. App. 290, 542 S.E.2d 296, 2001 N.C. App. LEXIS 84 (2001).

Cited in County of Wake v. N.C. Dep't of Env't & Natural Res., 155 N.C. App. 225, 573 S.E.2d 572, 2002 N.C. App. LEXIS 1632 (2002).

§ 160A-326. Limitations on rail transportation liability.

(a) As used in this section:

(1) "Claim" means a claim, action, suit, or request for damages, whether compensatory, punitive, or otherwise, made by any person or entity against:

a. The City, a railroad, or an operating rights railroad; or

b. An officer, director, trustee, employee, parent, subsidiary, or affiliated corporation as defined in G.S. 105-130.6, or agent of: the City, a railroad, or an operating rights railroad.

(2) "Operating rights railroad" means a railroad corporation or railroad company that, prior to January 1, 2001, was granted operating rights by a State-Owned Railroad Company or operated over the property of a State-Owned Railroad Company under a claim of right over or adjacent to facilities used by or on behalf of the City.

(3) "Passenger rail services" means the transportation of rail passengers by or on behalf of the City and all services performed by a railroad pursuant to a contract with the City in connection with the transportation of rail passengers, including, but not limited to, the operation of trains; the use of right-of-way, trackage, public or private roadway and rail crossings, equipment, or station areas or appurtenant facilities; the design, construction, reconstruction, operation, or maintenance of rail-related equipment, tracks, and any appurtenant facilities; or the provision of access rights over or adjacent to lines owned by the City or a railroad, or otherwise occupied by the City or a railroad, pursuant to charter grant, fee-simple deed, lease, easement, license, trackage rights, or other form of ownership or authorized use.

(4) "Railroad" means a railroad corporation or railroad company, including a State-Owned Railroad Company as defined in G.S. 124-11, that has entered into any contracts or operating agreements of any kind with the City concerning passenger rail services.

(b) Contracts Allocating Financial Responsibility Authorized. — The City may contract with any railroad to allocate financial responsibility for passenger rail services claims, including, but not limited to, the execution of indemnity agreements, notwithstanding any other statutory, common law, public policy, or other prohibition against same, and regardless of the nature of the claim or the conduct giving rise to such claim.

(c) Insurance Required. —

(1) If the City enters into any contract authorized by subsection (b) of this section, the contract shall require the City to secure and maintain, upon and after the commencement of the operation of trains by or on behalf of the City, a liability insurance policy covering the liability of the parties to the contract, a State-Owned Railroad Company as defined in G.S. 124-11 that owns or claims an interest in any real property subject to the contract, and any operating rights railroad for all claims for property damage, personal injury, bodily injury, and death arising out of or related to passenger rail services. The policy shall name the parties to the contract, a State-Owned Railroad Company as defined in G.S. 124-11 that owns or claims an interest in any real property subject to the contract, and any operating rights railroad as named insureds and shall have policy limits of not less than two hundred million dollars ($200,000,000) per single accident or incident, and may include a self-insured retention in an amount of not more than five million dollars ($5,000,000).

(2) If the City does not enter into any contract authorized by subsection (b) of this section, upon and after the commencement of the operation of trains by or on behalf of the City, the City shall secure and maintain a liability insurance policy, with policy limits and a self-insured retention consistent with subdivision (1) of this subsection, for all claims for property damage, personal injury, bodily injury, and death arising out of or related to passenger rail services.

(d) Liability Limit. — The aggregate liability of the City, the parties to the contract or contracts authorized by subsection (b) of this section, a State-Owned Railroad Company as defined in G.S. 124-11, and any operating rights railroad for all claims arising from a single accident or incident related to passenger rail services for property damage, personal injury, bodily injury, and death is limited to two hundred million dollars ($200,000,000) per single accident or incident or to any proceeds available under any insurance policy secured pursuant to subsection (c) of this section, whichever is greater.

(e) Effect on Other Laws. — This section shall not affect the damages that may be recovered under the Federal Employers' Liability Act, 45 U.S.C. § 51, et seq., (1908); or under Article 1 of Chapter 97 of the General Statutes.

(f) Applicability. — This section shall apply only to municipalities with a population of more than 500,000 persons, according to the latest decennial census, or to municipalities that have entered into a transit governance interlocal agreement with, among other local governments, a city with a population of more than 500,000 persons. (2002-78, s. 3.)

Editor's Note. — The definitions in subsection (a) were redesignated at the direction of the Revisor of Statutes to preserve alphabetical order.

§ 160A-327. Displacement of private solid waste collection services.

(a) A unit of local government shall not displace a private company that is providing collection services for municipal solid waste or recovered materials, or both, except as provided for in this section.

(b) Before a local government may displace a private company that is providing collection services for municipal solid waste or recovered materials, or both, the unit of local government shall publish notice of the first meeting where the proposed change in solid waste collection service will be discussed. Notice shall be published once a week for at least four consecutive weeks in at least one newspaper of general circulation in the area in which the unit of local government and the proposed displacement area are located. The first public notice shall be given no less than 30 days but no more than 60 days prior to the displacement issue being placed on the agenda for discussion or action at an official meeting of the governing body of the unit of local government. The notice shall specify the date and place of the meeting, the geographic location in which solid waste collection services are proposed to be changed, and the types of solid waste collection services that may be affected. In addition, the unit of local government shall send written notice by certified mail, return receipt requested, to all companies that have filed notice with the unit of local government clerk pursuant to the provisions of subsection (f) of this section. The unit of local government shall deposit notice in the U.S. mail at least 30 days prior to the displacement issues being placed on the agenda for discussion or action at an official meeting of the governing body of the unit of local government.

(c) Following the public notice required by subsection (b) of this section, but in no event later than six months after the date of the first meeting pursuant to subsection (b) of this section, the unit of local government may proceed to take formal action to displace a private company. The unit of local government or other public or private entity selected by the unit of local government may not commence the actual provision of these services for a period of 15 months from the date of the first publication of notice, unless the unit of local government provides compensation to the displaced private company as follows:

(1) Subject to subdivision (3) of this subsection, if the private company has provided collection services in the displacement area prior to announcement of the displacement action, the unit of local government shall provide compensation to the displaced private company in an amount equal to the total gross revenues for collection services provided in the displacement area for the six months prior to the first publication of notice required under subsection (b) of this section.

(2) Subject to subdivision (3) of this subsection, if the displaced private company has provided collection services in the displacement area for less than six months prior to the first publication of notice required under subsection (b) of this section, the unit of local government shall provide compensation to the displaced private company in an amount equal to the total gross revenues for the period of time that the private company provided such services in the displacement area.

(3) If the displaced private company purchased an existing operation of another private company providing such services, compensation shall be for six months based on the monthly average total gross revenues for three months the immediate preceding the first publication of notice required under subsection (b) of this section.

(d) If the local government elects to provide compensation pursuant to subsection (c) of this section, the amount due from the unit of local government to the displaced company shall be paid as follows: one-third of the compensation to be paid within 30 days of the displacement and the balance paid in six equal monthly installments during the next succeeding six months.

(e) If the unit of local government fails to change the provision of solid waste services as described in the notices required under subsection (b) of this section within six months of the date of the first meeting pursuant to subsection (b) of this section, the unit of local government shall not take action to displace without complying again with the provisions of subsection (b) of this section.

(f) Notice of the provision of solid waste collection service shall be filed with the unit of local government clerk of all cities and counties located in the private company's collection area or within five miles thereof.

(g) This section shall not apply when a private company is displaced as the result of an annexation under Article 4A of Chapter 160A of the General Statutes or an annexation by an act of the General Assembly. The provisions of G.S. 160A-37.3, 160-49.3, or 160A-324 shall apply.

(h) If a unit of local government intends to provide compensation under subsection (c) of this section to a private company that has given notice under subsection (f) of this section, the private company shall make available to the unit of local government not later than 30 days following a written request of the unit of local government, sent by certified mail, return receipt requested, all information in its possession or control, including operational, financial, and budgetary information necessary for the unit of local government to determine if the private company qualifies for compensation. The private company forfeits its rights under this section if it fails to make a good faith response within 30 days following receipt of the written request for information from the unit of local government provided that the unit of local government's written request so states by specific reference to this section.

(i) Nothing in this section shall affect the authority of a city or county to establish recycling service where recycling service is not currently being offered.

(j) As used in this section, the following terms mean:

(1) Collection. — The gathering of municipal solid waste, recovered materials, or recyclables from residential, commercial, industrial, governmental, or institutional customers and transporting it to a sanitary landfill or other disposal facility. Collection does not include transport from a transfer station or processing point to a disposal facility.

(2) Displacement. — Any formal action by a unit of local government that prohibits a private company from providing all or a portion of the collection services for municipal solid waste, recovered materials, or recyclables that the company is providing in the affected area at least 90 days prior to the date of the first publication of notice required by

subsection (b) of this section. Displacement also means an action by a unit of local government to use an availability fee, nonoptional fee, or taxes to fund competing collection services for municipal solid waste, recovered materials, or recyclables that the private company is providing in the affected areas at least 90 days prior to the date of the first publication of notice required under subsection (b) of this section is given. Displacement does not include any of the following actions:

a. Failure to renew a franchise agreement or contract with a private company.

b. Taking action that results in a change in solid waste collection services because the private company's operations present an imminent and substantial threat to human health or safety or are causing a substantial public nuisance.

c. Taking action that results in a change in solid waste collection services because the private company has materially breached its franchise agreement or the terms of a contract with the local government, or the company has notified the local government that it no longer intends to honor the terms of the franchise agreement or contract. Notice of breach must be delivered in writing, delivered by certified mail to the firm in question with 30 days to cure the violation of the contract.

d. Terminating an existing contract or franchise in accordance with the provisions of the contract or franchise agreement.

e. Providing temporary collection services under a declared state of emergency.

f. Taking action that results in a change in solid waste collection services due to the existing providers' felony conviction of a violation in the State of federal or State law governing the solid waste collection or disposal.

g. Contracting with a private company to continue its existing services or provide a different level of service at a negotiated price on terms agreeable to the parties.

(3) Municipal solid waste. — As defined in G.S. 130A-290(18a).

(4) Unit of local government. — A county, municipality, authority, or political subdivision that is authorized by law to provide for collection of solid waste or recovered materials, or both. (2006-193, s. 4.)

Editor's Note. — Session Laws 2006-193, s. 5, made this section effective August 3, 2006, and applicable to actions taken on or after January 1, 2007.

§ 160A-328. Local government landfill liaison.

(a) A city that has planning jurisdiction over any portion of the site of a sanitary landfill may employ a local government landfill liaison. No person who is responsible for any aspect of the management or operation of the landfill may serve as a local government landfill liaison. A local government landfill liaison shall have a right to enter public or private lands on which the landfill facility is located at reasonable times to inspect the landfill operation in order to:

(1) Ensure that the facility meets all local requirements.

(2) Identify and notify the Department of suspected violations of applicable federal or State laws, regulations, or rules.

(3) Identify and notify the Department of potentially hazardous conditions at the facility.

(b) Entry pursuant to this section shall not constitute a trespass or taking of property. (2007-550, s. 11(b).)

Editor's Note. — Session Laws 2007-550, s. 11(b), enacted this section as G.S. 160A-325. It has been renumbered as this section at the direction of the Revisor of Statutes.

Session Laws 2007-550, s. 11(c), made this section effective August 1, 2007.

Session Laws 2007-550, s. 19, is a severability clause.

§§ 160A-329, 160A-330: Reserved for future codification purposes.

Part 2. Electric Service in Urban Areas.

§ 160A-331. Definitions.

Unless the context otherwise requires, the following words and phrases shall have the meanings indicated when used in this Part:

(1) "Assigned area" means any portion of an area annexed to or incorporated into a city which, on or before the effective date of annexation or incorporation, had been assigned by the North Carolina Utilities Commission to a specific electric supplier pursuant to G.S. 62-110.2.

(1a) "Assigned supplier" means a person, firm, or corporation to which the North Carolina Utilities Commission had assigned a specific area for service as an electric supplier pursuant to G.S. 62-110.2, which area, in whole or in part, is subsequently annexed to or incorporated into a city.

(1b) The "determination date" is

- a. April 20, 1965, with respect to areas within the corporate limits of any city as of April 20, 1965;
- b. The effective date of annexation with respect to areas annexed to any city after April 20, 1965;
- c. The date a primary supplier comes into being with respect to any city first incorporated after April 20, 1965.

(2) "Line" means any conductor located inside the city, or any conductor within 300 feet of areas annexed by the city that is a primary supplier, for distributing or transmitting electricity, except as follows:

- a. For overhead construction, a conductor from the pole nearest the premises of a consumer to such premises, or a conductor from a line tap to such premises.
- b. For underground construction, a conductor from the transformer (or the junction point, if there be one) nearest the premises of a consumer to such premises.

(3) "Premises" means the building, structure, or facility to which electricity is being or is to be furnished. Two or more buildings, structures, or facilities that are located on one tract or contiguous tracts of land and are used by one electric consumer for commercial, industrial, institutional, or governmental purposes, shall together constitute one "premises," except that any such building, structure, or facility shall not, together with any other building, structure, or facility, constitute one "premises" if the electric service to it is separately metered and the charges for such service are calculated independently of charges for service to any other building, structure, or facility.

(4) "Primary supplier" means a city that owns and maintains its own electric system, or a person, firm, or corporation that furnishes electric service within a city pursuant to a franchise granted by, or contract with, a city, or that, having furnished service pursuant to a franchise or contract, is continuing to furnish service within a city after the expiration of the franchise or contract.

(5) "Secondary supplier" means a person, firm, or corporation that is not a primary supplier, but that furnishes electricity at retail to one or

more consumers other than itself within the limits of a city, or that has a conductor located within 300 feet of an area annexed by a city that is a primary supplier. A primary supplier that furnishes electric service within a city pursuant to a franchise or contract that limits or restricts the classes of consumers or types of electric service permitted to such supplier shall, in and with respect to any area annexed by the city after April 20, 1965, be a primary supplier for such classes of consumers or types of service, and if it furnishes other electric service in the annexed area on the effective date of annexation, shall be a secondary supplier, in and with respect to such annexed area, for all other electric service. A primary supplier that continues to furnish electric service after the expiration of a franchise or contract that limited or restricted such primary supplier with respect to classes of consumers or types of electric service shall, in and with respect to any area annexed by the city after April 20, 1965, be a secondary supplier for all electric service if it is furnishing electric service in the annexed area on the effective date of annexation. (1965, c. 287, s. 1; 1971, c. 698, s. 1; 1973, c. 426, s. 52; 1997-346, s. 1; 1999-111, s. 1; 2003-24, s. 1; 2005-150, s. 2.)

Editor's Note. — Session Laws 1997-346, s. 6, as amended by Session Laws 1999-111, s. 1, which added subdivision (1), defining "Assigned area", and subdivision (1a), defining "Assigned supplier", provides in part: "This act expires on December 31, 2003." Session Laws 2003-24, s. 1, repealed the expiration provision.

Legal Periodicals. — For note, "Utilities—Extension of Electric Service: The Municipalities' Power Play," see 63 N.C.L. Rev. 1095 (1985).

CASE NOTES

Legislative Intent. — By defining and restricting the rights of competing electric companies, the Legislature, in the 1965 Electric Act, limited free competition among private electric suppliers in rural areas. It is for the Legislature, not for the court to determine whether legislation other than G.S. 160A-312 is needed to curtail the competitive rights of municipal electric suppliers in rural areas. Duke Power Co. v. City of High Point, 69 N.C. App. 378, 317 S.E.2d 701, cert. denied, 312 N.C. 82, 321 S.E.2d 895 (1984).

The Electric Act of 1965 was originally intended to prevent or reduce litigation regarding electric service rights between competing suppliers. City of Concord v. Duke Power Co., 346 N.C. 211, 485 S.E.2d 278 (1997).

Section 62-110.2 was passed together with this Part, as part of the same act. Domestic Elec. Serv., Inc. v. City of Rocky Mount, 20 N.C. App. 347, 201 S.E.2d 508, aff'd on other grounds, 285 N.C. 135, 203 S.E.2d 838 (1974).

Purpose of § 62-110.2 and This Part. — Both G.S. 62-110.2, applying to rural areas, and this Part, applying to municipalities, sought to eliminate the wasteful duplication of power lines by assigning territories to specific suppliers of electricity. Domestic Elec. Serv., Inc. v. City of Rocky Mount, 20 N.C. App. 347, 201 S.E.2d 508, aff'd on other grounds, 285 N.C. 135, 203 S.E.2d 838 (1974).

Considered together, § 62-110.2 and this Part cover the entire State, and reflect the interests of municipalities, utility companies and cooperatives. They form a unified plan for eliminating duplication of electric facilities by assigning territories to particular suppliers. Domestic Elec. Serv., Inc. v. City of Rocky Mount, 20 N.C. App. 347, 201 S.E.2d 508, aff'd on other grounds, 285 N.C. 135, 203 S.E.2d 838 (1974).

Common-law doctrine of abandonment does not apply to the 1965 Electric Act. Duke Power Co. v. City of Morganton, 90 N.C. App. 755, 370 S.E.2d 54, cert. denied, 323 N.C. 364, 373 S.E.2d 544 (1988).

Rights of Certain Nonmunicipal Suppliers Recognized. — By the enactment of this Part, the General Assembly took a considerable step in recognizing rights of nonmunicipal suppliers of electric power in cities operating their own systems. Duke Power Co. v. City of High Point, 22 N.C. App. 91, 205 S.E.2d 774, cert. denied, 285 N.C. 661, 207 S.E.2d 752 (1974).

The Territorial Assignment Act of 1965, as codified at G.S. 62-110.2 and G.S. 160A-331 to 160A-338, represents an attempt to eliminate the uneconomic duplication of transmission and distribution systems bred of unbridled competition between public utilities, electric membership corporations and municipalities by designating the various competitors' rights.

Morgan v. Town of Hertford, 70 N.C. App. 725, 321 S.E.2d 170 (1984).

Municipality as "Secondary Supplier". — A town, a municipal corporation, is a "person" or "corporation" within the meaning of subdivision (5) of this section and therefore qualifies as a "secondary supplier." Morgan v. Town of Hertford, 70 N.C. App. 725, 321 S.E.2d 170 (1984).

Applicability of Provisions to Municipality. — A municipality operating an electric service within the corporate limits of another municipality is subject to the provisions of G.S. 160A-331 to 160A-338. Morgan v. Town of Hertford, 70 N.C. App. 725, 321 S.E.2d 170 (1984).

The clause "subject to part 2 of this article," as used in G.S. 160A-312, refers to those situations where a city extending its electric lines outside its corporate limits necessarily begins construction within its corporate limits. When a city extending service outside its corporate limits constructs lines beginning at some point within its corporate limits, then pursuant to G.S. 160A-312 and 160A-332, such lines as are within the city limits may not infringe on the guaranteed corridor rights of a secondary supplier. Duke Power Co. v. City of High Point, 69 N.C. App. 378, 317 S.E.2d 701, cert. denied, 312 N.C. 82, 321 S.E.2d 895 (1984).

The furnishing of electric service to an area subsequently annexed must be carried out pursuant to the 1965 Electric Act (G.S. 160A-331 to 160A-338 and 62-110.1 to 62-110.2). State ex rel. Utils. Comm'n v. VEPCO, 310 N.C. 302, 311 S.E.2d 586 (1984).

Operation of Electric System Outside Municipality. — The 1965 Electric Act, appearing in G.S. 160A-331 through 160A-338 and G.S. 62-110.2, does not empower or authorize municipalities to operate electric systems outside corporate limits, nor does it restrict such service. Insofar as the General Statutes are concerned, the sole authority for, and the only restriction upon municipalities furnishing electric service outside corporate limits is found in G.S. 160A-312. Lumbee River Elec. Membership Corp. v. City of Fayetteville, 309 N.C. 726, 309 S.E.2d 209 (1983).

Nothing in this Part empowers or restricts municipalities in the operation of their electric systems outside their corporate limits. State ex rel. Utils. Comm'n v. VEPCO, 310 N.C. 302, 311 S.E.2d 586 (1984).

For analysis of the dichotomy between a city's rights to extend electric service outside city limits under G.S. 160A-312 and its rights to extend such service within city limits under G.S. 160A-331 to 160A-338, see Duke Power Co. v. City of High Point, 69 N.C. App. 378, 317 S.E.2d 701, cert. denied, 312 N.C. 82, 321 S.E.2d 895 (1984).

Section 160A-312 does not affect a city's right to furnish electric service to a newly annexed territory within its corporate limits, such right being determined solely by the provisions of G.S. 160A-331 to 160A-338. Duke Power Co. v. City of High Point, 69 N.C. App. 378, 317 S.E.2d 701, cert. denied, 312 N.C. 82, 321 S.E.2d 895 (1984).

In situations in which multiple annexations have occurred, the determination date is the annexation date in which a primary and secondary supplier competing for the right to service a premises initially requiring electric service first existed. City of Concord v. Duke Power Co., 346 N.C. 211, 485 S.E.2d 278 (1997).

The definition of premises is clearly and unambiguously defined; both buildings constructed by the hospital on its contiguous tracts of land constituted one premises that was being served by the city. City of New Bern v. Carteret-Craven Elec. Membership Corp., 145 N.C. App. 140, 548 S.E.2d 845, 2001 N.C. App. LEXIS 580 (2001), cert. granted, 354 N.C. 215, 553 S.E.2d 909 (2001).

Where a customer constructed a new building on an adjacent lot, that was separately metered, and then demolished the old building, the new building was considered a new premises, and the customer was entitled to choose between secondary electric service providers under Electric Act, under the specific facts of the instant case. City of New Bern v. Carteret-Craven Elec. Membership Corp., 356 N.C. 123, 567 S.E.2d 131, 2002 N.C. LEXIS 681 (2002).

Applied in State ex rel. Utils. Comm'n v. Hunt Mfg. Co., 16 N.C. App. 335, 192 S.E.2d 16 (1972); State ex rel. Utils. Comm'n v. VEPCO, 62 N.C. App. 262, 302 S.E.2d 642 (1983); City of Concord v. Duke Power Co., 122 N.C. App. 248, 468 S.E.2d 615 (1996).

§ **160A-331.1:** Repealed by Session Laws 2007-419, s. 3, effective August 21, 2007.

Editor's Note. — Session Laws 2007-419, s. 3, provides in part: "Agreements previously entered into pursuant to G.S. 117-10.3 and G.S. 160A-331.1 shall not be affected by this repeal."

§ 160A-331.2. Agreements of electric suppliers.

(a) The General Assembly finds and determines that, in order to avoid the unnecessary duplication of electric facilities and to facilitate the settlement of disputes between cities that are primary suppliers and other electric suppliers, it is desirable for the State to authorize electric suppliers to enter into agreements pursuant to which the parties to the agreements allocate to each other the right to provide electric service to premises each would not have the right to serve under this Article but for the agreement, provided that no agreement between a city that is a primary supplier and another electric supplier shall be enforceable by or against an electric supplier that is subject to the territorial assignment jurisdiction of the North Carolina Utilities Commission until the agreement has been approved by the Commission. The Commission shall approve an agreement entered into pursuant to this section unless it finds that such agreement is not in the public interest. Such agreements may allocate the right to serve premises by reference to specific premises, geographical boundaries, or amounts of unspecified load to be served, but no agreement shall affect in any way the rights of other electric suppliers who are not parties to the relevant agreement. The provisions of this section apply to agreements relating to electric service inside and outside the corporate limits of a city.

(b) Repealed by Session Laws 2007-419, s. 1, effective August 21, 2007.

(c) To the extent negotiations undertaken pursuant to subsection (b) of this section, as enacted by S.L. 2005-150, have not resulted in an agreement between a negotiating electric membership corporation and a negotiating city by May 31, 2007, jurisdiction shall immediately lie in the North Carolina Utilities Commission to resolve all issues related to those negotiations. Either party to the negotiations may petition the Commission to exercise the jurisdiction conferred in this subsection upon the filing of a petition and the payment of a filing fee of five hundred dollars ($500.00). In reaching its decision, the Commission shall include consideration of the public convenience and necessity. The Commission shall not consider rate differentials between the involved city and the involved electric membership corporation.

(d) Notwithstanding an order of the Commission issued pursuant to subsection (c) of this section:

(1) Any electric membership corporation or city may furnish electric service to any consumer who desires service from that electric membership corporation or city at any premises being served by another electric membership corporation or city, or at premises which another electric membership corporation or city has the right to serve pursuant to subsection (c) of this section, upon agreement of the affected electric membership corporation or city, subject to approval by the Commission.

(2) The Commission shall have the authority and jurisdiction, after notice to all affected electric membership corporations and cities and after a hearing, if a hearing is requested by any affected electric membership corporation or city, or any other interested party, to order any electric membership corporation or city which may reasonably do so to furnish electric service to any consumer who desires service from that electric membership corporation or city at any premises being served by another electric membership corporation or city pursuant to subsection (c) of this section or subdivision (1) of this subsection, or which another electric membership corporation or city has the right to serve pursuant to subsection (c) of this section or subdivision (1) of this subsection, and to order the other electric membership corporation or city to cease and desist from furnishing electric service to such premises, upon finding that service to the consumer by the electric membership corporation or city which is then furnishing service, or which has the right to furnish service to those premises, is or will be

inadequate or undependable, or that the rates, conditions of service, or service regulations, applied to such consumer, are unreasonably discriminatory.

(e) Assignments or reassignments made or approved by the Commission pursuant to subsection (c) or (d) of this section shall be deemed to be service area agreements approved pursuant to subsection (a) of this section. (2005-150, s. 3; 2007-419, s. 1.)

Editor's Note. — Session Laws 2007-419, s. 4, provides in part: "Any disputes submitted to the Public Staff of the North Carolina Utilities Commission pursuant to G.S. 7A-38.3C(i) [repealed] are transferred to the North Carolina Utilities Commission to be considered by the Commission pursuant to G.S. 160A-331.2(c), as enacted by this act, and the Commission shall exercise its jurisdiction upon payment of the filing fee required by that subsection by the petitioner."

§ 160A-332. Electric service within city limits.

(a) The suppliers of electric service inside the corporate limits of any city in which a secondary supplier was furnishing electric service on the determination date (as defined in G.S. 160A-331(1)) shall have rights and be subject to restrictions as follows:

(1) The secondary supplier shall have the right to serve all premises being served by it, or to which any of its facilities are attached, on the determination date.

(2) The secondary supplier shall have the right, subject to subdivision (3) of this section, to serve all premises initially requiring electric service after the determination date which are located wholly within 300 feet of its lines and located wholly more than 300 feet from the lines of the primary supplier, as such suppliers' lines existed on the determination date.

(3) Any premises initially requiring electric service after the determination date which are located wholly within 300 feet of a secondary supplier's lines and wholly within 300 feet of another secondary supplier's lines, but wholly more than 300 feet from the primary supplier's lines, as the lines of all suppliers existed on the determination date, may be served by the secondary supplier which the consumer chooses, and no other supplier shall thereafter furnish electric service to such premises, except with the written consent of the supplier then serving the premises.

(4) A primary supplier shall not furnish electric service to any premises which a secondary supplier has the right to serve as set forth in subdivisions (1), (2), and (3) of this section, except with the written consent of the secondary supplier.

(5) Any premises initially requiring electric service after the determination date which are located wholly or partially within 300 feet of the primary supplier's lines and are located wholly or partially within 300 feet of the secondary supplier's lines, as such suppliers' lines existed on the determination date, may be served by either the secondary supplier or the primary supplier, whichever the consumer chooses, and no other supplier shall thereafter furnish service to such premises, except with the written consent of the supplier then serving the premises.

(6) Any premises initially requiring electric service after the determination date, which are located only partially within 300 feet of the secondary supplier's lines and are located wholly more than 300 feet from the primary supplier's lines, as such supplier's lines existed on the determination date, may be served either by the secondary

supplier or the primary supplier, whichever the consumer chooses, and no other supplier shall thereafter furnish service to such premises, except with the written consent of the supplier then serving the premises.

(6a) Notwithstanding any other provision of law, a secondary supplier, upon obtaining the prior written consent of the city, shall be the exclusive provider of electric service within (i) any assigned area for which that secondary supplier had been assigned supplier prior to the determination date; or (ii) any area previously unassigned by the North Carolina Utilities Commission pursuant to G.S. 62-110.2. However, any rights of other electric suppliers existing under G.S. 62-110.2 prior to the determination date to provide service shall continue to exist without impairment in the areas described in (i) and (ii) above.

(6b) A primary supplier or secondary supplier that, after the determination date, offers to serve any premises initially requiring electric service for which a consumer has a right to choose suppliers under subsections (5) or (6) of this section, without providing the consumer written notice that the consumer may be entitled to choose another electric supplier for the premises, shall not have the right to serve those premises.

(7) Except as provided in subdivisions (1), (2), (3), (5), (6), and (6a) of this section, a secondary supplier shall not furnish electric service within the corporate limits of any city unless it first obtains the written consent of the city and the primary supplier.

(b) In any city that is first incorporated after April 20, 1965, in which, on the effective date of the incorporation, there is more than one supplier of electric service, all suppliers of electric service therein shall continue to have the rights and be subject to the restrictions in effect before the city was incorporated until there is a primary supplier within the city.

(c) It shall be unlawful for a primary supplier or secondary supplier to serve premises within a city that the supplier does not have the right to serve under the provisions of this Article. Upon receiving written notice from another supplier of electric service that has authority to lawfully provide service to the premises in dispute that the provision of service by the current supplier is unlawful, the primary supplier or secondary supplier that is providing electric service shall be obligated to discontinue service and remove all of its facilities used in the provision of the unlawful service within 30 days after substitute electric service can be provided by an electric supplier with authority to lawfully provide service to the premises, unless the supplier currently providing service has a good faith basis for believing it has authority to continue rendering such service. If the primary or secondary supplier is determined to be providing electric services unlawfully, and is found to have unreasonably failed to fulfill its obligation to discontinue service as required above, the supplier of electric service that has authority to lawfully provide service to the premises may bring an action to compel performance of those obligations, and may recover in that action its costs of enforcing this subsection, including its reasonable attorneys' fees. (1965, c. 287, s. 1; 1971, c. 698, s. 1; 1997-346, s. 2; 1999-111, s. 1; 2003-24, s. 1; 2005-150, ss. 4, 5.)

Editor's Note. — Session Laws 1997-346, s. 6, as amended by Session Laws 1999-111, s. 1, which added subdivision (a)(6a), making certain secondary suppliers exclusive, provides in part: "This act expires on December 31, 2003." Session Laws 2003-24, s. 1, repealed the expiration provision.

Legal Periodicals. — For note, "Utilities—Extension of Electric Service: The Municipalities' Power Play," see 63 N.C.L. Rev. 1095 (1985).

CASE NOTES

Legislative Intent. — By defining and restricting the rights of competing electric companies, the Legislature in the 1965 Electric Act, limited free competition among private electric suppliers in rural areas. It is for the Legislature, not for the court to determine whether legislation other than G.S. 160A-312 is needed to curtail the competitive rights of municipal electric suppliers in rural areas. Duke Power Co. v. City of High Point, 69 N.C. App. 378, 317 S.E.2d 701, cert. denied, 312 N.C. 82, 321 S.E.2d 895 (1984).

The Electric Act of 1965 was originally intended to prevent or reduce litigation regarding electric service rights between competing suppliers. City of Concord v. Duke Power Co., 346 N.C. 211, 485 S.E.2d 278 (1997).

Common-law doctrine of abandonment does not apply to the 1965 Electric Act. Duke Power Co. v. City of Morganton, 90 N.C. App. 755, 370 S.E.2d 54, cert. denied, 323 N.C. 364, 373 S.E.2d 544 (1988).

In situations in which multiple annexations have occurred, the determination date is the annexation date in which a primary and secondary supplier competing for the right to service a premises initially requiring electric service first existed. City of Concord v. Duke Power Co., 346 N.C. 211, 485 S.E.2d 278 (1997).

Applied in State ex rel. Utils. Comm'n v. Hunt Mfg. Co., 16 N.C. App. 335, 192 S.E.2d 16 (1972); Morgan v. Town of Hertford, 70 N.C. App. 725, 321 S.E.2d 170 (1984); City of Concord v. Duke Power Co., 122 N.C. App. 248, 468 S.E.2d 615 (1996).

§ 160A-333. Temporary electric service.

No electric supplier shall furnish temporary electric service for the construction of premises which it would not have the right to serve under this Part if such premises were already constructed. The construction of lines for, and the furnishing of, temporary electric service for the construction of premises which any other electric supplier, if chosen by the consumer, would have the right to serve if such premises were already constructed, shall not impair the right of such other electric supplier to furnish service to such premises after the construction thereof, if then chosen by the consumer; nor, unless the consumer chooses to have such premises served by the supplier that furnished the temporary service, shall the furnishing of such temporary service or the construction of a line therefor impair the right of any other electric supplier to furnish service to any other premises which, without regard to the construction of such temporary service line, it has the right to serve. (1965, c. 287, s. 1; 1971, c. 698, s. 1; 1973, c. 426, s. 53.)

§ 160A-334. Authority and jurisdiction of Utilities Commission.

Notwithstanding G.S. 160A-332 and 160A-333, if the North Carolina Utilities Commission finds that service being furnished to or to be furnished to the consumer by a secondary supplier is or will be inadequate or undependable, or that rates, conditions of service or service regulations, applied to such consumer, are unreasonably discriminatory, the Commission shall have the authority and jurisdiction, after notice to each affected electric supplier, and after hearing, if a hearing is requested by an interested party, to:

(1) Order a primary supplier that is subject to the jurisdiction of the Commission to furnish electric service to any consumer who desires service from the primary supplier at any premises served by a secondary supplier, or at premises which a secondary supplier has the right to serve pursuant to other sections of this Part, and to order such secondary supplier to cease and desist from furnishing electric service to such premises, or

(2) Order any secondary supplier to cease and desist from furnishing electric service to any premises being served by it or to any premises which it has the right to serve pursuant to other sections of this Part,

if the consumer desires service from a primary supplier that is not subject to the jurisdiction of the Commission and which is willing to furnish service to such premises. (1965, c. 287, s. 1; 1971, c. 698, s. 1; 1973, c. 426, s. 54.)

CASE NOTES

Applied in State ex rel. Utils. Comm'n v. Hunt Mfg. Co., 16 N.C. App. 335, 192 S.E.2d 16 (1972); Morgan v. Town of Hertford, 70 N.C. App. 725, 321 S.E.2d 170 (1984).

§ 160A-335. Discontinuance of service and transfer of facilities by secondary supplier.

A secondary supplier may voluntarily discontinue its service to any premises and remove any of its electric facilities located inside the corporate limits of a city or sell and transfer such facilities to a primary supplier in such city, subject to approval by the North Carolina Utilities Commission, if the Commission determines that the public interest will not thereby be adversely affected. (1965, c. 287, s. 1; 1971, c. 698, s. 1.)

§ 160A-336. Electric service for city facilities.

No provisions of this Part shall prevent a city that is a primary supplier from furnishing its own electric service for city facilities, or prevent any other primary supplier from furnishing electric street lighting service to a city inside its corporate limits. (1965, c. 287, s. 1; 1971, c. 698, s. 1.)

§ 160A-337. Effect of Part on rights and duties of primary supplier.

Except for the rights granted to and restrictions upon primary suppliers contained in the provisions of this Part, nothing in this Part shall diminish, enlarge, alter, or affect in any way the rights and duties of a primary supplier to furnish electric service to premises within the corporate limits of a city. (1965, c. 287, s. 1; 1971, c. 698, s. 1.)

§ 160A-338. Electric suppliers subject to police power.

No provisions of this Part shall restrict the exercise of the police power of a city over the erection and maintenance of poles, wires, and other facilities of electric suppliers in streets, alleys, and other public ways. (1965, c. 287, s. 1; 1971, c. 698, s. 1.)

Legal Periodicals. — For note, "Utilities—Extension of Electric Service: The Municipalities' Power Play," see 63 N.C.L. Rev. 1095 (1985).

CASE NOTES

Cited in City of Concord v. Duke Power Co., 346 N.C. 211, 485 S.E.2d 278 (1997).

§§ 160A-339, 160A-340: Reserved for future codification purposes.

Article 17.

Cemeteries.

§ 160A-341. Authority to establish and operate cemeteries.

A city shall have authority to establish, operate, and maintain cemeteries either inside or outside its corporate limits, may acquire and hold real and personal property for cemetery purposes by gift, purchase, or (for real property) by exercise of the power of eminent domain, may devote any property owned by the city to use as a cemetery, may prohibit burials at any place within the city other than city cemeteries, and may regulate the manner of burial in city cemeteries. Nothing in this section shall confer upon any city authority to prohibit or regulate burials in cemeteries licensed by the State Burial Association Commissioner, or in church cemeteries.

As used in this Article "cemetery" includes columbariums and facilities for cremation. (1917, c. 136, subch. 5, s. 1; 1919, cc. 136, 237; C.S., s. 2787; 1969, c. 402; 1971, c. 698, s. 1.)

CASE NOTES

City's Power over Interment. — The ownership of a lot in a cemetery or a license to inter therein is subject to the police power of the State; interments may be forbidden, and bodies already interred removed, by ordinance of the city, if authorized by act of the legislature. Humphrey v. Board of Trustees, 109 N.C. 132, 13 S.E. 793 (1891), decided under former § 160-2(3).

Town was not impliedly authorized to enact an ordinance reserving to itself the exclusive right to set memorial markers in cemeteries and requiring the payment of a special charge for setting such markers not purchased from the town by former G.S. 160-2(3). Grave constitutional questions would be raised by any statute giving a town such authority. State v. McGraw, 249 N.C. 205, 105 S.E.2d 659 (1958).

§ 160A-342. Authority to transfer cemeteries.

A city may transfer and convey any city cemetery property, together with any accumulated perpetual care trust funds set aside for the maintenance of the cemetery, to any religious organization or cemetery licensed by the State Burial Association Commissioner, upon condition that the transferee will continue use of the property as a cemetery, will perpetually maintain it, and will apply any perpetual care trust funds so transferred only for maintenance of the cemetery. (1917, c. 136, subch. 5, s. 1; 1919, cc. 136, 237; C.S., s. 2787; 1969, c. 402; 1971, c. 698, s. 1.)

§ 160A-343. Authority to abandon cemeteries.

A city shall have authority to abandon any cemetery that has not been used for interment purposes within 10 years. Upon abandonment, all monuments, tombstones, and the contents of all graves within the cemetery shall be transferred at city expense to another city cemetery, or to a cemetery licensed by the State Burial Association Commissioner. After the transfer of monuments, tombstones, and the contents of graves, the city may take possession of, convey, or use the former cemetery property for any lawful purpose. (1917, c. 136, subch. 5, s. 1; 1919, cc. 136, 237; C.S., s. 2787; 1969, c. 402; 1971, c. 698, s. 1.)

§ 160A-344. Authority to assume control of abandoned cemeteries.

(a) Whenever property not under the control or in the possession of any church or religious organization in any city has been heretofore set aside or used for cemetery purposes, and the trustees or owners named in the deed or deeds for the property have died, or are unknown, or the deeds of conveyance have been lost or misplaced and no record of title thereto has been found, and the property has been occupied and used for burial purposes for a time sufficient to identify its use as cemetery property, the city in which the cemetery is located is authorized to take possession of the land and any adjoining land not held by known claimants of title, have the property surveyed and lines established, and to designate and appropriate the property as a city cemetery.

(b) The city may have the land subdivided and laid off into family burial plots, may sell any of the unused lots so laid off to any person for burial purposes, and may use the proceeds of the sale for the improvement and upkeep of the cemetery.

(c) The city may appropriate and use funds for the improvement and maintenance of the cemetery, and all laws and ordinances applicable to city cemeteries shall apply to the cemetery from and after the date that the city assumes control of it. (1971, c. 698, s. 1.)

§ 160A-345. Authority to condemn cemeteries.

A city shall have authority to acquire title in fee simple by purchase or exercise of the power of eminent domain to any cemetery, graveyard, or burial place within the city and to operate and maintain the property so acquired as a city cemetery. This section shall not apply to a cemetery licensed by the North Carolina State Burial Association Commissioner, nor to property owned or controlled by any church or religious organization, unless the owner of the property consents to the acquisition. (1951, c. 385, s. 1; 1971, c. 698, s. 1.)

§ 160A-346. Authority to condemn easements for perpetual care.

A city shall have authority to acquire an easement for perpetual care by gift, grant, purchase, or exercise of the power of eminent domain in any cemetery, graveyard, or burial place within the city. When a perpetual care easement is acquired under this section, all city ordinances concerning the care and upkeep of city cemeteries shall be applicable to the cemetery, and the income from city perpetual care trust funds may be used to care for and maintain the cemetery. This section shall not apply to a cemetery licensed by the North Carolina State Burial Association Commissioner or to property owned or controlled by any church or religious organization unless the owner of the property consents to the acquisition. (1951, c. 385, s. 2; 1971, c. 698, s. 1.)

§ 160A-347. Perpetual care trust funds.

(a) A city is authorized to create a perpetual care trust fund for any cemeteries under its ownership or control, to accept gifts, grants, bequests, and devises on behalf of the perpetual care trust fund, to deposit any revenues realized from the sale of lots in or the operation of city cemeteries in the perpetual care trust fund, and to hold and administer the trust fund for the purpose of perpetually caring for and beautifying the city's cemeteries. The city may make contracts with the owners of plots in city cemeteries obligating the city to maintain the plots in perpetuity upon payment of such sums as the council may fix.

(b) The principal of perpetual care trust funds shall be held intact, and the income from such funds shall be used to carry out contracts with plot owners for the perpetual care of the plots, and to maintain and perpetually care for the cemetery.

(c) Perpetual care trust funds shall be kept separate and apart from all other city funds, and shall in no case be appropriated by, lent to, or in any manner used by the city for any purpose other than the perpetual care of city cemeteries. (1917, c. 136, subch. 9, s. 1; C.S., ss. 2810, 2811, 2812; 1927, c. 254; 1971, c. 698, s. 1.)

§ 160A-348. Regulation of city cemeteries.

A city may by ordinance adopt rules and regulations concerning the opening of graves, the erection of tombstones and monuments, the building of walls and fences, the hours of opening and closing and all other matters concerning the use, operation, and maintenance of city cemeteries. The ordinance may impose a schedule of prices for lots and fees for the opening of graves in the cemetery, but it may not require the owners of plots to purchase monuments, vaults, or other items from the city. (1971, c. 698, s. 1.)

§ 160A-349: Reserved for future codification purposes.

ARTICLE 17A.

Cemetery Trustees.

§ 160A-349.1. Creation of board authorized; official title; terms of office; vacancies.

The governing body of any municipal corporation which now owns or shall hereafter own a cemetery is authorized, if it is deemed proper, to create a board composed of not less than three nor more than five persons, to be known as "Cemetery Trustees of the Town or City of ...., North Carolina"; shall fix the term of office of each member, in no case to exceed five years, and in case of any vacancy by death, resignation or otherwise, elect a successor. (Pub. Loc. 1923, c. 583, s. 1.)

Editor's Note. — This Article, which is derived from Public-Local Laws 1923, c. 583, as amended by Session Laws 1951, c. 87, and Session Laws 1973, c. 474, s. 31, was omitted from the General Statutes of 1943, and was codified for the first time in 1973.

§ 160A-349.2. Members to meet and organize; meetings; bond of secretary and treasurer; record of proceedings.

The members of said board, when properly elected, shall within 30 days after notice of their election convene and designate one of their number chairman, one secretary and treasurer, and provide for regular meetings at such times as the said board shall fix; it shall also fix the bond to be given by the secretary and treasurer, conditioned for the faithful accounting of all moneys which shall come into his hands; shall provide for special meetings, and shall cause the secretary to keep a record of its proceedings. (Pub. Loc. 1923, c. 583, s. 2.)

§ 160A-349.3. Property vested.

Upon the creation of such board the title to all property held by the town or city and used for cemetery purposes shall pass to and vest in said board, subject to the same limitations, conditions and restrictions as it was held by the town or city; provided, that the governing body of the town or city may at any time by resolution direct that title to such property shall pass to and vest in the town or city itself, and in such event it shall be the duty of the board and its officers to execute all necessary documents to effect such transfer and vesting. (Pub. Loc. 1923, c. 583, s. 3; 1979, 2nd Sess., c. 1247, s. 30.)

§ 160A-349.4. Control and management; superintendent and assistants; enumeration of powers.

The said board shall have the exclusive control and management of such cemetery; shall have the power to employ a superintendent and such assistants as may be needed, and may do any and all things pertaining to the control, maintenance, management and upkeep of the cemetery which the governing body of the town or city could have done, or which by law the governing body of the town or city shall hereafter be authorized to do. (Pub. Loc. 1923, c. 583, s. 4.)

§ 160A-349.5. Rules continued in force.

All rules and regulations heretofore adopted by the town or city for the control, upkeep, management, and maintenance, as well as policing of the cemetery, shall continue in force and effect until and after the said board shall have changed the same as herein provided for. (Pub. Loc. 1923, c. 583, s. 5.)

§ 160A-349.6. Rules for maintaining order and policing; force of rules; copy to governing body; publication.

The said board shall have power to adopt rules and regulations for maintaining order in the cemetery and policing the same, and such rules and regulations, when adopted, shall have the same force and effect as ordinances adopted and passed by the governing body of the town or city. When any such rules and regulations shall be adopted the secretary of the board shall transmit a copy thereof to the governing body of the town or city, and shall cause a copy to be published in some newspaper published in the town or city, and the said rules and regulations shall be in force and effect 10 days after their publication. (Pub. Loc. 1923, c. 583, s. 6.)

§ 160A-349.7. Presentation of budget; details of budget; appropriation; payment to board.

Thirty days prior to the adoption of the annual budget by the governing body of the town or city, the said trustees shall present to such governing body a budget for the ensuing year, in which said budget there shall be set out in detail an accurate account of the receipts and expenditures of the board for the previous year, the estimated expense for the ensuing year, the estimated source of income from all sources, other than appropriation by the governing body of the town or city, any balance on hand, and such other information as the said trustees may think proper; and the said governing body of the town or city shall in the annual budget include such appropriation as it deems proper for the care and maintenance of the said cemetery for the ensuing year, which shall be paid over to the board of trustees in monthly installments.

For purposes of the Local Government Budget and Fiscal Control Act (Chapter 159, Subchapter III), the board of trustees of a cemetery is a board of the municipal corporation establishing the board of trustees and is not a public authority as defined by G.S. 159-7. (Pub. Loc. 1923, c. 583, s. 7; 1971, c. 780, s. 37.3; 1973, c. 474, s. 31; 1979, 2nd Sess., c. 1247, s. 31.)

§ 160A-349.8. Commissioners to obtain maps, plats and deeds; list of lots sold and owners; surveys and plats to be made; additional lots, streets, walks and parkways; price of lots; regulation of sale of lots.

The board of trustees shall obtain from the governing body all maps, plats, deeds and other evidences relating to the lands, lots and property of the cemetery; they shall also obtain from the governing body of the town or city, as nearly as possible, an accurate list of the lots theretofore sold, together with the names of the owners thereof. The said board of trustees shall from time to time cause surveys to be made, maps and plats prepared, laying out additional lots, streets, paths, walks and parkways; shall fix a price at which such lots shall be sold, which price may from time to time, in the discretion of the board, be changed; shall adopt rules and regulations as to the sale of said lots and deliver to the purchaser or purchasers deed or evidences of title thereto. (Pub. Loc. 1923, c. 583, s. 8.)

§ 160A-349.9. Power to acquire land; adjacent property; disposal of money from lot sales; investments; income from investment.

The said board shall have the power to acquire additional lands for cemetery purposes, either by purchase or otherwise. In making such additional acquisitions of property, if possible, they shall acquire adjacent property; all moneys received from the sale of lots shall be held by the board of trustees intact and used for the purchase of additional lands; to beautify and otherwise maintain and keep the present property and the future acquired property. The board may, if it seems best to it, invest the said money in good, interest-bearing securities, payable to the said board, and the income derived therefrom shall be by the board used in the beautifying, maintenance and upkeep of the cemetery or cemeteries under its control. (Pub. Loc. 1923, c. 583, s. 9.)

§ 160A-349.10. Power to condemn land; procedure for condemnation; board incorporated.

If it becomes necessary to acquire additional lands for cemetery purposes and the board cannot agree with the owners upon the price thereof, the board shall have the power to condemn the lands for cemetery purposes, and in so doing the provisions of Chapter 40A of the General Statutes shall be followed as nearly as possible, and to that end, and for that purpose, the board of trustees of any cemetery acquired under this Article shall be deemed and considered a corporation and a body politic. (Pub. Loc. 1923, c. 583, s. 10; 2001-487, s. 38(i).)

§ 160A-349.11. Price of lands included in budget.

If any lands are acquired by purchase or condemnation for cemetery purposes and the board of trustees shall not have sufficient funds with which to pay for the same, the amount necessary shall be included in their budget request, and the governing body of any town or city may make an appropriation to complete the purchase. (Pub. Loc. 1923, c. 583, s. 11; 1979, 2nd Sess., c. 1247, s. 32.)

§ 160A-349.12. Power to accept gifts; exclusive use of gifts.

The board of trustees of any cemetery shall have the power to accept gifts, either by devise, bequeath or otherwise, and hold the same for the purposes expressed in the gift, and any moneys coming into the hands of such board by devise or otherwise shall be by the board used exclusively for the purposes for which it is given. (Pub. Loc. 1923, c. 583, s. 12.)

§ 160A-349.13. Sale of unnecessary property.

The board of trustees of any cemetery, created pursuant to this Article, shall have the power to sell at public auction, as provided by G.S. 160-59, any real property, title to which is held by it, which it shall determine to be unfit or unnecessary for cemetery purposes, except when such sale would violate the terms of any deed, gift or trust pursuant to which the property proposed to be sold was acquired. Any such sales and conveyances heretofore made by any such board of trustees are hereby validated. (1951, c. 87.)

Editor's Note. — Section 160-59, referred to in this section, was repealed by Session Laws 1971, c. 698, s. 2. For present provisions as to sale of municipal property at public auction, see G.S. 160A-270.

§ 160A-349.14. Exercise of powers subject to approval.

The board may not act to acquire or sell land pursuant to G.S. 160A-349.9, G.S. 160A-349.10, or G.S. 160A-349.13 unless such action was approved in advance by the governing body of the town or city. (1979, 2nd Sess., c. 1247, s. 33.)

§ 160A-349.15. Termination.

The governing body of the town or city shall have the authority to terminate the existence of the board at any time. In the event of such termination, all property and assets of the board shall automatically become the property of the town or city and the town or city shall succeed to all rights, obligations and liabilities of the board. Further, in the event of such termination, it shall be the duty of the board and its officers to execute all necessary documents to effect the transfer of property and assets to the town or city. (1979, 2nd Sess., c. 1247, s. 34.)

Article 18.

Parks and Recreation.

§ 160A-350. Short title.

This Article shall be known and may be cited as the "Recreation Enabling Law." (1945, c. 1052; 1971, c. 698, s. 1.)

Cross References. — As to power of counties to establish parks and recreational programs pursuant to this Article, see G.S. 153A-444.

CASE NOTES

Construction of Swimming Pool as Public Purpose. — While the construction of a swimming pool as a part of a city's recreation system may not be financed as a necessary expense of government under our constitutional limitation, N.C. Const., Art. V, § 4, without a vote of the people, nevertheless, such a facility is for a public purpose. City of Greensboro v. Smith, 239 N.C. 138, 79 S.E.2d 486 (1954), decided prior to enactment of this Article.

§ 160A-351. Declaration of State policy.

The lack of adequate recreational programs and facilities is a menace to the morals, happiness, and welfare of the people of this State. Making available recreational opportunities for citizens of all ages is a subject of general interest and concern, and a function requiring appropriate action by both State and local government. The General Assembly therefore declares that the public good and the general welfare of the citizens of this State require adequate recreation programs, that the creation, establishment, and operation of parks and recreation programs is a proper governmental function, and that it is the policy of North Carolina to forever encourage, foster, and provide these facilities and programs for all its citizens. (1945, c. 1052; 1971, c. 698, s. 1.)

CASE NOTES

Cited in River Birch Assocs. v. City of Raleigh, 326 N.C. 100, 388 S.E.2d 538 (1990); Hickman ex rel. Womble v. Fuqua, 108 N.C. App. 80, 422 S.E.2d 449 (1992).

§ 160A-352. Recreation defined.

"Recreation" means activities that are diversionary in character and aid in promoting entertainment, pleasure, relaxation, instruction, and other physical, mental, and cultural development and leisure time experiences. (1945, c. 1052; 1971, c. 698, s. 1.)

CASE NOTES

Cited in Hickman ex rel. Womble v. Fuqua, 108 N.C. App. 80, 422 S.E.2d 449 (1992).

§ 160A-353. Powers.

In addition to any other powers it may possess to provide for the general welfare of its citizens, each county and city in this State shall have authority to:

(1) Establish and conduct a system of supervised recreation;
(2) Set apart lands and buildings for parks, playgrounds, recreational centers, and other recreational programs and facilities;
(3) Acquire real property, either within or without the corporate limits of the city or the boundaries of the county, including water and air rights, for parks and recreation programs and facilities by gift, grant, purchase, lease, exercise of the power of eminent domain, or any other lawful method.
(4) Provide, acquire, construct, equip, operate, and maintain parks, playgrounds, recreation centers, and recreation facilities, including all buildings, structures, and equipment necessary or useful in connection therewith;
(5) Appropriate funds to carry out the provisions of this Article;

(6) Accept any gift, grant, lease, loan, bequest, or devise of real or personal property for parks and recreation programs. Devises, bequests, and gifts may be accepted and held subject to such terms and conditions as may be imposed by the grantor or trustor, except that no county or city may accept or administer any terms that require it to discriminate among its citizens on the basis of race, sex, or religion. (1945, c. 1052; 1971, c. 698, s. 1; 1973, c. 426, s. 55.)

Local Modification. — City of Asheville: 1981, c. 23.

CASE NOTES

Recreational Facility Need Not Be Designed Before Land Is Acquired. — Neither G.S. 40A-3(b)(3), which vests municipalities with the power of eminent domain to establish, enlarge or improve parks, playgrounds and other recreational facilities, nor this section, of similar import, nor any other statute, contains any requirement that the city design a public facility authorized by resolution before the land for the facility is acquired. City of Charlotte v. Rousso, 82 N.C. App. 588, 346 S.E.2d 693 (1986).

Dedication for Recreation Facilities Is for Public Purpose. — The power of cities to dedicate real property for use as recreation centers and for other recreational purposes was expressly conferred by former G.S. 160-156, and the exercise of this power was in the public interest and for a public purpose. Brumley v. Baxter, 225 N.C. 691, 36 S.E.2d 281, 162 A.L.R. 930 (1945). See also, White v. City of Charlotte, 209 N.C. 573, 183 S.E. 730 (1936); Atkins v. City of Durham, 210 N.C. 295, 186 S.E. 330 (1936).

Issuance of Bonds to Establish Parks and Playgrounds Upheld. — Municipal corporations were given authority by former G.S. 160-156, 160-200(12), and 160-229, to establish parks and playgrounds necessary to the maintenance of the health of their inhabitants; hence, an ordinance of a populous industrial city which provided for the issuance of bonds to establish and maintain parks and playgrounds for the children of the city was a valid exercise of its police power under legislative authority for the promotion of the public health, safety, and morals. Atkins v. City of Durham, 210 N.C. 295, 186 S.E. 330 (1936).

Abandonment of Public Park. — The authority to acquire, establish, and regulate parks conferred by former G.S. 160-200(12) did not give a municipality the power to abandon an established public park. Wishart v. City of Lumberton, 254 N.C. 94, 118 S.E.2d 35 (1961).

Eminent Domain Proper Exercise of Power to Acquire Land for Parks. — It was not error to find that plaintiff was authorized to acquire land for parks, recreational programs and facilities through exercise of power of eminent domain. Town of Chapel Hill v. Burchette, 100 N.C. App. 157, 394 S.E.2d 698 (1990).

Cited in Hickman ex rel. Womble v. Fuqua, 108 N.C. App. 80, 422 S.E.2d 449 (1992).

§ 160A-354. Administration of parks and recreation programs.

A city or county may operate a parks and recreation system as a line department, or it may create a parks and recreation commission and vest in it authority to operate the parks and recreation system. (1945, c. 1052; 1971, c. 698, s. 1.)

§ 160A-355. Joint parks and recreation systems.

Any two or more units of local government may cooperate in establishing parks and recreation systems as authorized in Article 20, Part 1, of this Chapter. (1945, c. 1052; 1967, c. 1228; 1971, c. 698, s. 1.)

§ 160A-356. Financing parks and recreation.

Each county and city is authorized to expend for its parks and recreation system any of its revenues not otherwise limited as to use by law. (1945, c. 1052; 1971, c. 698, s. 1; 1975, c. 664, s. 12.)

§ 160A-357: Repealed by Session Laws 1975, c. 664, s. 13.

§§ 160A-358, 160A-359: Reserved for future codification purposes.

ARTICLE 19.

Planning and Regulation of Development.

Part 1. General Provisions.

§ 160A-360. Territorial jurisdiction.

(a) All of the powers granted by this Article may be exercised by any city within its corporate limits. In addition, any city may exercise these powers within a defined area extending not more than one mile beyond its limits. With the approval of the board or boards of county commissioners with jurisdiction over the area, a city of 10,000 or more population but less than 25,000 may exercise these powers over an area extending not more than two miles beyond its limits and a city of 25,000 or more population may exercise these powers over an area extending not more than three miles beyond its limits. The boundaries of the city's extraterritorial jurisdiction shall be the same for all powers conferred in this Article. No city may exercise extraterritorially any power conferred by this Article that it is not exercising within its corporate limits. In determining the population of a city for the purposes of this Article, the city council and the board of county commissioners may use the most recent annual estimate of population as certified by the Secretary of the North Carolina Department of Administration.

(a1) Any municipality planning to exercise extraterritorial jurisdiction under this Article shall notify the owners of all parcels of land proposed for addition to the area of extraterritorial jurisdiction, as shown on the county tax records. The notice shall be sent by first-class mail to the last addresses listed for affected property owners in the county tax records. The notice shall inform the landowner of the effect of the extension of extraterritorial jurisdiction, of the landowner's right to participate in a public hearing prior to adoption of any ordinance extending the area of extraterritorial jurisdiction, as provided in G.S. 160A-364, and the right of all residents of the area to apply to the board of county commissioners to serve as a representative on the planning board and the board of adjustment, as provided in G.S. 160A-362. The notice shall be mailed at least four weeks prior to the public hearing. The person or persons mailing the notices shall certify to the city council that the notices were sent by first-class mail, and the certificate shall be deemed conclusive in the absence of fraud.

(b) Any council wishing to exercise extraterritorial jurisdiction under this Article shall adopt, and may amend from time to time, an ordinance specifying the areas to be included based upon existing or projected urban development and areas of critical concern to the city, as evidenced by officially adopted plans for its development. Boundaries shall be defined, to the extent feasible, in terms of geographical features identifiable on the ground. A council may, in its discretion, exclude from its extraterritorial jurisdiction areas lying in another county, areas separated from the city by barriers to urban growth, or areas whose projected development will have minimal impact on the city. The boundaries specified in the ordinance shall at all times be drawn on a map, set forth in a written description, or shown by a combination of these techniques. This delineation shall be maintained in the manner provided in G.S. 160A-22 for the delineation of the corporate limits, and shall be recorded in the office of the register of deeds of each county in which any portion of the area lies.

(c) Where the extraterritorial jurisdiction of two or more cities overlaps, the jurisdictional boundary between them shall be a line connecting the midway points of the overlapping area unless the city councils agree to another boundary line within the overlapping area based upon existing or projected patterns of development.

(d) If a city fails to adopt an ordinance specifying the boundaries of its extraterritorial jurisdiction, the county of which it is a part shall be authorized to exercise the powers granted by this Article in any area beyond the city's corporate limits. The county may also, on request of the city council, exercise any or all these powers in any or all areas lying within the city's corporate limits or within the city's specified area of extraterritorial jurisdiction.

(e) No city may hereafter extend its extraterritorial powers under this Article into any area for which the county at that time has adopted and is enforcing a zoning ordinance and subdivision regulations and within which it is enforcing the State Building Code. However, the city may do so where the county is not exercising all three of these powers, or when the city and the county have agreed upon the area within which each will exercise the powers conferred by this Article.

(f) When a city annexes, or a new city is incorporated in, or a city extends its jurisdiction to include, an area that is currently being regulated by the county, the county regulations and powers of enforcement shall remain in effect until (i) the city has adopted such regulations, or (ii) a period of 60 days has elapsed following the annexation, extension or incorporation, whichever is sooner. During this period the city may hold hearings and take any other measures that may be required in order to adopt its regulations for the area.

(f1) When a city relinquishes jurisdiction over an area that it is regulating under this Article to a county, the city regulations and powers of enforcement shall remain in effect until (i) the county has adopted this regulation or (ii) a period of 60 days has elapsed following the action by which the city relinquished jurisdiction, whichever is sooner. During this period the county may hold hearings and take other measures that may be required in order to adopt its regulations for the area.

(g) When a local government is granted powers by this section subject to the request, approval, or agreement of another local government, the request, approval, or agreement shall be evidenced by a formally adopted resolution of that government's legislative body. Any such request, approval, or agreement can be rescinded upon two years' written notice to the other legislative bodies concerned by repealing the resolution. The resolution may be modified at any time by mutual agreement of the legislative bodies concerned.

(h) Nothing in this section shall repeal, modify, or amend any local act which defines the boundaries of a city's extraterritorial jurisdiction by metes and bounds or courses and distances.

(i) Whenever a city or county, pursuant to this section, acquires jurisdiction over a territory that theretofore has been subject to the jurisdiction of another local government, any person who has acquired vested rights under a permit, certificate, or other evidence of compliance issued by the local government surrendering jurisdiction may exercise those rights as if no change of jurisdiction had occurred. The city or county acquiring jurisdiction may take any action regarding such a permit, certificate, or other evidence of compliance that could have been taken by the local government surrendering jurisdiction pursuant to its ordinances and regulations. Except as provided in this subsection, any building, structure, or other land use in a territory over which a city or county has acquired jurisdiction is subject to the ordinances and regulations of the city or county.

(j) Repealed by Session Laws 1973, c. 669, s. 1. (1959, c. 1204; 1961, c. 103; c. 548, ss. 1, 13/4; c. 1217; 1963, cc. 519, 889, 1076, 1105; 1965, c. 121; c. 348, s. 2; c. 450, s. 1; c. 864, ss. 3-6; 1967, cc. 15, 22, 149; c. 197, s. 2; cc. 246, 685; c. 1208, s. 3; 1969, cc. 11, 53; c. 1010, s. 5; c. 1099; 1971, c. 698, s. 1; c. 1076, s. 3; 1973, c. 426, s. 56; c. 525; c. 669, s. 1; 1977, c. 882; c. 912, ss. 2, 4; 1995 (Reg. Sess., 1996), c. 746, s. 1; 2005-418, s. 10.)

Local Modification. — (As to Article 19) Cabarrus and municipalities therein: 1987, c. 233, s. 1; 1991, c. 685, ss. 7, 9; 2004-39, s. 5; (As to this section) Davie: 1989 (Reg. Sess., 1990), c. 853; Durham: 1989 (Reg. Sess., 1990), c. 841, s. 3; Johnston: 1985: (Reg. Sess., 1986), c. 804; Mecklenburg: 1971, c. 860; 1991, (Reg. Sess., 1992), c. 884; (As to Article 19) Orange and municipalities therein: 1987, c. 233, s. 1; 1991, c. 685, ss. 7, 9; Pamlico (except for town of Minnesott Beach): 1977, c. 478, s.3; 2001-134; (As to Article 19) Pitt: 2002-19, s. 1; (As to Article 19) Wake: 1998-192, s. 1, as amended by 2000-66, s. 1; 2005-89, ss. 1, 2; (As to Article 19) city of Archdale: 2005-115, s. 1; city of Belmont: 1991, c. 596, s. 3; (As to Article 19) city of Charlotte: 1987, c. 123; 1991, c. 161; 2001-228; city of Mount Holly: 1991, c. 289, s. 3; (As to Article 19) city of Raleigh: 1998-192, s. 1, as amended by 2000-66, s. 1; 2005-89, ss. 1, 2; city of Whiteville: 2000-78, s. 1; town of Aberdeen: 1985, c. 308; town of Apex: 1993, c. 312, ss. 1, 2; (As to Article 19) 1998-192, s. 1, as amended by 2000-66, s. 1; 2005-89, ss. 1, 2; (As to Article 19) town of Bethel: 2002-19, s. 1; town of Burgaw: 2009-371; (As to Article 19) town of Butner: 2007-269, s. 1.1; town of Carthage: 1999-239, s. 1; (As to Article 19) town of Cary: 1998-192, s. 1, as amended by 2000-66, s. 1; 2005-89, ss. 1, 2; (As to subsection (a) of this section) town of Chadbourn: 2004-4, s. 1; (As to Article 19) town of Chocowinity: 2006-51, s. 1; (As to Article 19) town of Cornelius: 1991 (Reg. Sess., 1992), c. 884, s. 1; 1997-106; town of Davidson: 1991 (Reg. Sess., 1992), c. 884, s. 1; 1997-106; town of Faison: 1993 (Reg. Sess., 1994), c. 769, s. 28.16; (As to Article 19) 2009-426, s. 1 (effective upon adoption by Sampson County of certain zoning provisions and approval thereof by both Sampson County and town of Faison prior to July 1, 2010); town of Farmville: 1999-43, s. 1; (As to Article 19) town of Garner: 1998-192, s. 1, as amended by 2000-66, s. 1; 2005-89, ss. 1, 2; (As to Article 19) town of Grifton: 1993, c. 53, s. 1; town of Huntersville: 1983: (Reg. Sess., 1984), c. 966; 1995, c. 362, s. 3.1; 1997-106; town of Kings Mountain: 1999-259, s. 1; town of Knightdale: 1985, c. 564; town of Marshville: 2006-171, s. 8(a); (As to Article 19) town of Matthews: 1991, c. 161; 1999-69, s. 1; (As to Article 19) town of Mint Hill: 1991, c. 161; 1993 (Reg. Sess., 1994), c. 590; s. 1; town of Mooresville: 1991, c. 289, s. 2; town of Nashville: 1985, c. 217; town of Navassa: 1987, c. 10; town of Oak Ridge: 1998-113, s. 1.3, as added by 2009-251, s. 1; town of Pinebluff: 1999-35, ss. 1, 2; (As to Article 19) town of Pineville: 1991, c. 161; town of Pittsboro: 1987, c. 460, s. 30; (As to Article 19) town of St. James, 1999-241; 2005-305, s. 2; town of St. Pauls: 1987, c. 200; town of Sandyfield: 1993 (Reg. Sess., 1994), c. 729, s. 1; town of Southern Pines: 1985, c. 308; town of Stanley: 1991, c. 289, s. 3; town of Tabor City: 1997-281, s. 2; town of Taylortown: 1987, c. 601, s. 2; town of Unionville: 1999-90, s. 2; town of Wake Forest: 1985, c. 196; town of Warsaw: 1985, c. 5; town of Williamston: 1997-281, s. 1; town of Wingate: 2006-171, s. 8(a); village of Pinehurst: 1985, c. 379, s. 4; c. 308; 1991 (Reg. Sess., 1992), c. 808, s. 2; village of Sugar Mountain: 1985, c. 395; village of Woodlake: 1991 (Reg. Sess., 1992), c. 859, s. 1 (contingent on referendum).

Cross References. — As to powers of counties under this Article, see also G.S. 153A-320 through 153A-324. As to territorial jurisdiction of counties under this Article, see G.S. 153A-320. As to procedure for adopting or amending county ordinances under this Article, see G.S. 153A-323. As to validation of certain ordinances not in compliance with this section, see G.S. 160A-366.

Extension of Permits. — For provisions pertaining to extension of permits during state of economic emergency in the real estate sector, pursuant to Session Laws 2009-406, ss. 1 through 5.1, as amended by Session Laws 2009-484, s. 5.1, 2009-550, s. 5.2, and 2009-572, ss. 1-3, see the Editor's note at G.S. 160A-385.1.

Study Commission on Residential and Urban Development Encroachment on Military Bases and Training Areas. — Session Laws 2004-161, ss. 4.1 to 4.5, create the Study Commission on Residential and Urban Development Encroachment on Military Bases and Training Areas.

Session Laws 2004-161, s. 4.2, provides: "The Commission shall study the following concerning residential and urban development encroachment on military bases and training areas:

"(1) Restricting the zoning in the areas around military bases and training areas.

"(2) How encroachment affects deed registration.

"(3) Protecting the areas around military bases and training areas by purchasing development rights and buffers using all available State trust funds and other available funding mechanisms.

"(4) Any other issue the Commission considers relevant."

Session Laws 2004-161, s. 4.4, provides that the Commission shall submit a final report of findings and recommendations, including any legislative recommendations, to the 2005 General Assembly upon its convening. The Commission shall terminate upon the convening of the 2005 General Assembly.

Editor's Note. — Session Laws 2005-418, s. 14, provides: "The provisions of this act shall not be deemed to repeal or amend the validity or enforceability of any local act or charter provision previously enacted by the General Assembly."

Legal Periodicals. — For article, "Out of Focus: The Fuzzy Line Between Regulatory 'Takings' and Valid Zoning-Related 'Exactions' in North Carolina and Federal Jurisprudence," see 16 Campbell L. Rev. 333 (1994).

CASE NOTES

The obvious purpose of the statutory mandate in subsection (b) requiring that boundaries be defined in terms of geographical features identifiable on the ground is that boundaries be defined, to the extent feasible, so that owners of property outside the city can easily and accurately ascertain whether their property is within the area over which the city exercises its extraterritorial zoning authority. Sellers v. City of Asheville, 33 N.C. App. 544, 236 S.E.2d 283 (1977).

Standing to Contest Annexation Scheme of Neighboring Town. — Section 160A-31 describes a voluntary annexation undertaken at the request of land owners and does not authorize suit by neighboring municipalities; only if another town owned property in the annexed area, or if both towns were simultaneously attempting to annex controverted property, could there be a justiciable controversy, giving one town standing to contest the annexation by the other, and, even then, this section provides a way to resolve such a conflict. Town of Ayden v. Town of Winterville, 143 N.C. App. 136, 544 S.E.2d 821, 2001 N.C. App. LEXIS 223 (2001).

Standing to Contest City's Attempt to Exercise Extraterritorial Jurisdiction. — Trial court properly dismissed the claims brought by a county and the county commissioners in their official capacities challenging a city's attempt to exercise extraterritorial jurisdiction because the county had stated no legal or factual basis for its claim that its tax base and planning jurisdiction would be affected by the city exercising extraterritorial jurisdiction, and the commissioners acknowledged that they were not the real parties in interest; thus, neither the county nor the commissioners were the real parties in interest. Macon County v. Town of Highlands, 187 N.C. App. 752, 654 S.E.2d 17, 2007 N.C. App. LEXIS 2530 (2007).

A county may not exercise jurisdiction over any part of a city located within its borders. Davidson County v. City of High Point, 321 N.C. 252, 362 S.E.2d 553 (1987).

Statutes do not give a county authority over provision of sewer services within a city, or over newly annexed areas of the city which also lie in the county. Davidson County v. City of High Point, 321 N.C. 252, 362 S.E.2d 553 (1987).

Use of City-Owned Sewage Treatment Plant Without Prior Approval of County. — Since county had no authority to restrict or regulate city's provision of sewer service to its residents, the city could use city-owned sewage treatment plant located outside the city but within the county, which was upgraded pursuant to the county's special use permit, with a condition attached to the permit requiring the county's prior approval of service to county citizens, to meet its statutory mandate to provide sewer service to residents in newly annexed areas without seeking the county's prior approval, even though the facility was located in the county. Davidson County v. City of High Point, 321 N.C. 252, 362 S.E.2d 553 (1987).

Town Not Exempt from Description Requirements. — By enacting Session Laws 1973, c. 131, which provided that Town of Lake Waccamaw "may exercise the powers set forth" in this section, et seq. within one mile of the town limits and within 2,000 feet of Lake Waccamaw's high water mark, the legislature did not exercise extraterritorial jurisdiction on behalf of Lake Waccamaw, but merely permitted it to be done. Therefore, the Town of Lake Waccamaw was not exempted thereby from the description requirements of subsection (b) of this section. Town of Lake Waccamaw v. Savage, 86 N.C. App. 211, 356 S.E.2d 810, cert. denied, 320 N.C. 797, 361 S.E.2d 89 (1987).

County Zoning Ordinance Did Not Preclude Town's Extension. — Town was not precluded from extending its extraterritorial jurisdiction pursuant to G.S. 160A-360(e) because an earlier county ordinance did not extend zoning into the proposed area under G.S. 153A-344(a), and a subsequent county zoning ordinance was enacted arbitrarily and capriciously under G.S. 153A-340(a) and G.S. 153A-341. Town of Green Level v. Alamance County, 184 N.C. App. 665, 646 S.E.2d 851, 2007 N.C. App. LEXIS 1622 (2007).

Definition of Boundaries Held Not to Comply with Subsection (b). — Extraterritorial jurisdiction ordinance exacted by town, which defined extraterritorial boundaries by reference to a map showing the boundaries drawn in sweeping curves around town limits and lake, did not comply with the description requirements of subsection (b) of this section. Town of Lake Waccamaw v. Savage, 86 N.C. App. 211, 356 S.E.2d 810, cert. denied, 320 N.C. 797, 361 S.E.2d 89 (1987).

Definiteness in Boundary Descriptions Not Met. — The boundaries of a city's proposed extraterritorial zone failed to meet the degree of definiteness mandated by subsection (b) where the only description merely referred to "the territory beyond the corporate limits for a distance of one mile in all directions" and the map showed the "mile boundary" drawn in sweeping curves. Sellers v. City of Asheville, 33 N.C. App. 544, 236 S.E.2d 283 (1977).

Failure to Record Descriptions Not Fatal. — The city substantially complied with this section although it failed to timely record the map or written description of the ordinance in which it exercised extraterritorial jurisdiction; therefore, the plaintiff-store owner was barred from attacking the validity of the ordinance based on procedural grounds by the statute of limitations provided in G.S. 160A-364.1. Potter v. City of Hamlet, 141 N.C. App. 714, 541 S.E.2d 233, 2001 N.C. App. LEXIS 18 (2001), cert. denied, 355 N.C. 379, 547 S.E.2d 814 (2001).

Adult Business Ordinance Held Vague. — Because a county's adult business ordinance was ambiguous as to whether it applied to businesses outside a city's business limits or only to businesses outside the city's extraterritorial jurisdiction, it was interpreted as applying only to the latter. State v. Baggett, 133 N.C. App. 47, 514 S.E.2d 536 (1999).

Zoning Ordinance Held Void. — Plaintiff town did not satisfy requirements of this section and G.S. 160A-364 where its notice of a public hearing failed to apprise defendants, or any other property owners within the affected area, of the nature and character of proposed actions to exert extra-territorial jurisdiction, failed to describe in any way the area in question, and failed to comport with the clear requirements of G.S. 160A-364 in that it was not published in two successive calendar weeks, and where, furthermore, plaintiff's ordinance was adopted in a proceeding held over eight months subsequent to its initial hearing, and without either further public hearing or notice, and plaintiff never recorded a boundary description as required by subsection (b) of this section; therefore, the court correctly ruled plaintiff's extraterritorial zoning ordinance void and ineffective as against defendants. Town of Swansboro v. Odum, 96 N.C. App. 115, 384 S.E.2d 302 (1989).

Cited in Taylor v. City of Raleigh, 290 N.C. 608, 227 S.E.2d 576 (1976); County of Cumberland v. Eastern Fed. Corp., 48 N.C. App. 518, 269 S.E.2d 672 (1980); Sherrill v. Town of Wrightsville Beach, 81 N.C. App. 369, 344 S.E.2d 357 (1986); Bryan v. Raynor, 94 N.C. App. 91, 379 S.E.2d 880 (1989).

§ 160A-361. Planning boards.

(a) Any city may by ordinance create or designate one or more boards or commissions to perform the following duties:

(1) Make studies of the area within its jurisdiction and surrounding areas;
(2) Determine objectives to be sought in the development of the study area;
(3) Prepare and adopt plans for achieving these objectives;
(4) Develop and recommend policies, ordinances, administrative procedures, and other means for carrying out plans in a coordinated and efficient manner;
(5) Advise the council concerning the use and amendment of means for carrying out plans;
(6) Exercise any functions in the administration and enforcement of various means for carrying out plans that the council may direct;
(7) Perform any other related duties that the council may direct.

(b) A board or commission created or designated pursuant to this section may include, but shall not be limited to, one or more of the following:

(1) A planning board or commission of any size (with not fewer than three members) or composition deemed appropriate, organized in any manner deemed appropriate;
(2) A joint planning board created by two or more local governments pursuant to Article 20, Part 1, of this Chapter. (1919, c. 23, s. 1; C.S., s. 2643; 1945, c. 1040, s. 2; 1955, cc. 489, 1252; 1959, c. 327, s. 2; c. 390; 1971, c. 698, s. 1; 1973, c. 426, s. 57; 1979, 2nd Sess., c. 1247, s. 35; 1997-309, s. 7; 1997-456, s. 27; 2004-199, s. 41(a).)

Editor's Note. — The subsection (a) and (b) designations were inserted pursuant to Session Laws 1997-456, s. 27 which authorized the Revisor of Statutes to renumber or reletter sections and parts of sections having a number or letter designation that is incompatible with the General Assembly's computer database.

CASE NOTES

The planning board (zoning commission) has no legislative, judicial or quasi-judicial power. Its recommendations do not restrict or otherwise affect the legislative power of the legislative body, i.e., the city council. Allred v. City of Raleigh, 277 N.C. 530, 178 S.E.2d 432 (1971), decided under former §§ 160-22 and 160-177.

Cited in County of Lancaster v. Mecklenburg County, 334 N.C. 496, 434 S.E.2d 604 (1993).

§ 160A-362. Extraterritorial representation.

When a city elects to exercise extraterritorial zoning or subdivision-regulation powers under G.S. 160A-360, it shall in the ordinance creating or designating its planning board provide a means of proportional representation based on population for residents of the extraterritorial area to be regulated. Representation shall be provided by appointing at least one resident of the entire extraterritorial zoning and subdivision regulation area to the planning board and the board of adjustment that makes recommendations or grants relief in these matters. For purposes of this section, an additional member must be appointed to the planning board or board of adjustment to achieve proportional representation only when the population of the entire extraterritorial zoning and subdivision area constitutes a full fraction of the municipality's population divided by the total membership of the planning board or board of adjustment. Membership of joint municipal county planning agencies or boards of adjustment may be appointed as agreed by counties and municipalities. Any advisory board established prior to July 1, 1983, to provide the required extraterritorial representation shall constitute compliance with this section until the board is abolished by ordinance of the city. The representatives on the planning board and the board of adjustment shall be appointed by the board of county commissioners with jurisdiction over the area. When selecting a new representative to the planning board or to the board of adjustment as a result of an extension of the extraterritorial jurisdiction, the board of county commissioners shall hold a public hearing on the selection. A notice of the hearing shall be given once a week for two successive calendar weeks in a newspaper having general circulation in the area. The board of county commissioners shall select appointees only from those who apply at or before the public hearing. The county shall make the appointments within 45 days following the public hearing. Once a city provides proportional representation, no power available to a city under G.S. 160A-360 shall be ineffective in its extraterritorial area solely because county appointments have not yet been made. If there is an insufficient number of qualified residents of the area to meet membership requirements, the board of county commissioners may appoint as many other residents of the county as necessary to make up the requisite number. When the extraterritorial area extends into two or more counties, each board of county commissioners concerned shall appoint representatives from its portion of the area, as specified in the ordinance. If a board of county commissioners fails to make these appointments within 90 days after receiving a resolution from the city council requesting that they be made, the city council may make them. If the ordinance so provides, the outside representatives may have equal rights, privileges, and duties with the other members of the board to which they are appointed, regardless of whether the matters at issue arise within the city or within the extraterritorial area; otherwise they shall function only with respect to matters within the extra-

territorial area. (1959, c. 1204; 1961, c. 103; c. 548, ss. 1, 13/4; c. 1217; 1963, cc. 519, 889, 1076, 1105; 1965, c. 121; c. 348, s. 2; c. 450, s. 1; c. 864, ss. 3-6; 1967, cc. 15, 22, 149; c. 197, s. 2; cc. 246, 685; c. 1208, s. 3; 1969, cc. 11, 53; c. 1010, s. 5; c. 1099; 1971, c. 698, s. 1; 1983, c. 584, ss. 1-4; 1995 (Reg. Sess., 1996), c. 746, s. 2; 2005-418, s. 11.)

Local Modification. — City of Greensboro: 1975, c. 100, amending 1973, c. 213; city of Lexington: 1993, c. 267, s. 2; city of Thomasville: 1993, c. 267, s. 2; town of Forest City: 1993, c. 267, s. 2; town of King: 1993, c. 267, s. 2; town of Mocksville: 1993, c. 267, s. 2; town of Pittsboro: 1993, c. 358, s. 8(b).

Editor's Note. — Session Laws 2005-418, s. 14, provides: "The provisions of this act shall not be deemed to repeal or amend the validity or enforceability of any local act or charter provision previously enacted by the General Assembly."

CASE NOTES

Proportional Representation. — Trial court properly granted a city summary judgment on the claims brought by one commissioner in his individual capacity challenging the city's attempt to exercise extraterritorial jurisdiction because the commissioner failed to demonstrate that the city's method of proportional representation under G.S. 160A-362 was unreasonable, nor had the commissioner demonstrated that a city could not provide its own means of proportional representation. Macon County v. Town of Highlands, 187 N.C. App. 752, 654 S.E.2d 17, 2007 N.C. App. LEXIS 2530 (2007).

Cited in Behringer v. City of Raleigh, 107 N.C. App. 505, 421 S.E.2d 179 (1992).

§ 160A-363. Supplemental powers.

(a) A city or its designated planning board may accept, receive, and disburse in furtherance of its functions any funds, grants, and services made available by the federal government and its agencies, the State government and its agencies, any local government and its agencies, and any private and civic sources. Any city, or its designated planning board with the concurrence of the council, may enter into and carry out contracts with the State and federal governments or any agencies thereof under which financial or other planning assistance is made available to the city and may agree to and comply with any reasonable conditions that are imposed upon such assistance.

(b) Any city, or its designated planning board with the concurrence of the council, may enter into and carry out contracts with any other city, county, or regional council or planning agency under which it agrees to furnish technical planning assistance to the other local government or planning agency. Any city, or its designated planning board with the concurrence of its council, may enter into and carry out contracts with any other city, county, or regional council or planning agency under which it agrees to pay the other local government or planning board for technical planning assistance.

(c) Any city council is authorized to make any appropriations that may be necessary to carry out any activities or contracts authorized by this Article or to support, and compensate members of, any planning board that it may create pursuant to this Article, and to levy taxes for these purposes as a necessary expense.

(d) A city may elect to combine any of the ordinances authorized by this Article into a unified ordinance. Unless expressly provided otherwise, a city may apply any of the definitions and procedures authorized by law to any or all aspects of the unified ordinance and may employ any organizational structure, board, commission, or staffing arrangement authorized by law to any or all aspects of the ordinance.

(e) If the city is found to have illegally exacted a tax, fee, or monetary contribution for development or a development permit not specifically authorized by law, the city shall return the tax, fee, or monetary contribution plus interest of six percent (6%) per annum. (1919, c. 23, s. 1; C.S., s. 2643; 1945, c. 1040, s. 2; 1955, cc. 489, 1252; 1959, c. 327, s. 2; c. 390; 1971, c. 698, s. 1; 1983, c. 377, s. 9; 2004-199, s. 41(b); 2005-418, s. 1(a); 2007-371, s. 2.)

Editor's Note. — Session Laws 2005-418, s. 14, provides: "The provisions of this act shall not be deemed to repeal or amend the validity or enforceability of any local act or charter provision previously enacted by the General Assembly."

§ 160A-364. Procedure for adopting, amending, or repealing ordinances under Article.

(a) Before adopting, amending, or repealing any ordinance authorized by this Article, the city council shall hold a public hearing on it. A notice of the public hearing shall be given once a week for two successive calendar weeks in a newspaper having general circulation in the area. The notice shall be published the first time not less than 10 days nor more than 25 days before the date fixed for the hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included.

(b) If the adoption or modification of the ordinance would result in changes to the zoning map or would change or affect the permitted uses of land located five miles or less from the perimeter boundary of a military base, the governing body of the local government shall provide written notice of the proposed changes by certified mail, return receipt requested, to the commander of the military base not less than 10 days nor more than 25 days before the date fixed for the public hearing. If the military provides comments or analysis regarding the compatibility of the proposed ordinance or amendment with military operations at the base, the governing body of the local government shall take the comments and analysis into consideration before making a final determination on the ordinance. (1923, c. 250, s. 4; C.S., s. 2776(u); 1927, c. 90; 1955, c. 1334, s. 1; 1971, c. 698, s. 1; 1973, c. 426, s. 58; 1977, c. 912, s. 5; 1979, 2nd Sess., c. 1247, s. 36; 1981, c. 891, s. 1; 2004-75, s. 2; 2005-426, s. 1(a).)

Local Modification. — City of Fayetteville: 1981, c. 756; 1995 (Reg. Sess., 1996), c. 684; city of Greensboro: 1975, c. 100, amending 1973, c. 213; city of Lexington: 1993, c. 267, s. 2; city of Thomasville: 1993, c. 267, s. 2; town of Forest City: 1993, c. 267, s. 2; town of King: 1993, c. 267, s. 2; town of Mocksville: 1993, c. 267, s. 2; town of Pittsboro: 1993, c. 358, s. 8(b).

Cross References. — As to validation of certain ordinances not in compliance with this section, see G.S. 160A-366.

Legal Periodicals. — For note on historic district zoning, see 16 Wake Forest L. Rev. 495 (1980).

CASE NOTES

Notice Must Reveal Nature and Character of Proposed Action. — To be adequate, the notice of public hearing required by this section must fairly and sufficiently apprise those whose rights may be affected of the nature and character of the action proposed. Sellers v. City of Asheville, 33 N.C. App. 544, 236 S.E.2d 283 (1977).

G.S. 160A-364 plainly states that it is the "city council" that shall hold a public hearing and that it is notice of that public hearing which must be given; this language in no way permits the argument that notice can somehow be given for a hearing before a body other than a city council in order to satisfy the statute. Molamphy v. Town of S. Pines, — F. Supp. 2d —, 2004 U.S. Dist. LEXIS 3594 (M.D.N.C. Mar. 3, 2004).

Notice Held Adequate. — Where defendant's published notice of zoning action stated that village would consider extending its extraterritorial zoning jurisdiction, and metes and bounds description included land owned by plaintiff, that description put plaintiff on notice that changes would be made affecting its property. Pinehurst Area Realty, Inc. v. Village of Pinehurst, 100 N.C. App. 77, 394 S.E.2d 251 (1990), review denied and appeal dismissed, 328 N.C. 92, 402 S.E.2d 417 (1991), cert. denied, 501 U.S. 1251, 111 S. Ct. 2890, 115 L. Ed. 2d 1055 (1991).

Notices Held Inadequate. — Where none of the notices published pursuant to this section informed the public that the city intended, for the first time in its history, to make its zoning ordinance applicable to property outside its city limits, the notices were not in compliance with this section, since they failed adequately to alert owners of property outside the city that their rights might be affected. Sellers v. City of Asheville, 33 N.C. App. 544, 236 S.E.2d 283 (1977).

Amendment to a town's development ordinance, which would have prohibited convenience stores in certain zoning districts, was invalid under G.S. 160A-364 and under the development ordinance itself because the preadoption notice did not satisfy requirements for adequacy of description and publication; the fact that the landowner who challenged the amendment had actual notice prior to adoption did not prevent the amendment from being void. Molamphy v. Town of S. Pines, — F. Supp. 2d —, 2004 U.S. Dist. LEXIS 3594 (M.D.N.C. Mar. 3, 2004).

Zoning Ordinance Held Void. — Plaintiff town did not satisfy requirements of G.S. 160A-360 and this section where its notice of a public hearing failed to apprise defendants, or any other property owners within the affected area, of the nature and character of proposed actions to exert extraterritorial jurisdiction, failed to describe in any way the area in question, and failed to comport with the clear requirements of this section in that it was not published in two successive calendar weeks, and where, furthermore, plaintiff's ordinance was adopted in a proceeding held over eight months subsequent to its initial hearing, and without either further public hearing or notice, and plaintiff never recorded a boundary description as required by G.S. 160A-360(b); therefore, the court correctly ruled plaintiff's extraterritorial zoning ordinance void and ineffective as against defendants. Town of Swansboro v. Odum, 96 N.C. App. 115, 384 S.E.2d 302 (1989).

Applied in Town of Mount Olive v. Price, 20 N.C. App. 302, 201 S.E.2d 362 (1973); Board of Adjustment v. Town of Swansboro, 108 N.C. App. 198, 423 S.E.2d 498 (1992); Naegele Outdoor Adv., Inc. v. City of Winston-Salem, 113 N.C. App. 758, 440 S.E.2d 842 (1994).

Cited in Bryan v. Raynor, 94 N.C. App. 91, 379 S.E.2d 880 (1989); Sofran Corp. v. City of Greensboro, 327 N.C. 125, 393 S.E.2d 767 (1990); Northeast Concerned Citizens, Inc. v. City of Hickory, 143 N.C. App. 272, 545 S.E.2d 768, 2001 N.C. App. LEXIS 264 (2001); Summers v. City of Charlotte, 149 N.C. App. 509, 562 S.E.2d 18, 2002 N.C. App. LEXIS 272 (2002); Rakestraw v. Town of Knightdale, 188 N.C. App. 129, 654 S.E.2d 825, 2008 N.C. App. LEXIS 69 (2008).

§ 160A-364.1. Statute of limitations.

A cause of action as to the validity of any zoning ordinance, or amendment thereto, adopted under this Article or other applicable law shall accrue upon adoption of the ordinance, or amendment thereto, and shall be brought within two months as provided in G.S. 1-54.1. (1981, c. 891, s. 3; 1995 (Reg. Sess., 1996), c. 746, s. 7.)

CASE NOTES

Public Policy Includes Need for Finality in Zoning Matters. — Zoning claims raised important public policy considerations, and there is a strong need for finality with respect to zoning matters so that landowners may use their property without fear of challenge years after zoning has apparently been determined. Pinehurst Area Realty, Inc. v. Village of Pinehurst, 100 N.C. App. 77, 394 S.E.2d 251 (1990), review denied and appeal dismissed, 328 N.C. 92, 402 S.E.2d 417 (1991), cert. denied, 501 U.S. 1251, 111 S. Ct. 2890, 115 L. Ed. 2d 1055 (1991).

Plaintiff's challenge to zoning law based on alleged state and federal constitutional violations was not subject to three-year personal injury statute of limitations, but rather, was subject to the nine-month period contained in this section. Pinehurst Area Realty, Inc. v. Village of Pinehurst, 100 N.C. App. 77, 394 S.E.2d 251 (1990), review denied and appeal dismissed, 328 N.C. 92, 402 S.E.2d 417 (1991), cert. denied, 501 U.S. 1251, 111 S. Ct. 2890, 115 L. Ed. 2d 1055 (1991).

Injury in Clear and Concrete Fashion. — Plaintiffs' cause of action, for statute of limitations purposes, arose at the time the city's billboard ordinance first became effective because it was then that the regulation injured plaintiffs' property in clear and concrete fashion. Capital Outdoor Adv., Inc. v. City of Raleigh, 337 N.C. 150, 446 S.E.2d 289, rehearing denied, 337 N.C. 807, 449 S.E.2d 566 (1994).

Challenge to Zoning Amendment Barred. — Challenge by plaintiffs to 1975 amendment prohibiting duplexes in R-1 districts as being violative of the purposes of zoning was barred by the statute of limitations of G.S. 1-54.1, even though the ordinance was already in effect when plaintiffs acquired their interest in the property. Sherrill v. Town of Wrightsville Beach, 81 N.C. App. 369, 344 S.E.2d 357, cert. denied and appeal dismissed, 318 N.C. 417, 349 S.E.2d 600 (1986).

Where every landowner affected by zoning change was informed by letter that planning board would make a recommendation to the board based upon public hearing and where plaintiffs were given a full public hearing on their petition to "downzone" the property at issue, plaintiffs were given proper notice and had the opportunity to remedy their lack of diligence; therefore, the statute of limitations barred plaintiff's action challenging the zoning change. Bryan v. Raynor, 94 N.C. App. 91, 379 S.E.2d 880, cert. denied, 325 N.C. 707, 388 S.E.2d 448 (1989).

Failure to Record Land Descriptions Not Fatal. — Because the city substantially complied with G.S. 160A-360 although it failed to timely record the map or written description of the ordinance in which it exercised extraterritorial jurisdiction, the plaintiff-store owner was barred from attacking the validity of the ordinance based on procedural grounds by the statute of limitations provided in this section. Potter v. City of Hamlet, 141 N.C. App. 714, 541 S.E.2d 233, 2001 N.C. App. LEXIS 18 (2001), cert. denied, 355 N.C. 379, 547 S.E.2d 814 (2001).

Judicial Review. — While the legal principles involved in the review of zoning issues were relevant as to a review of design guidelines for new structures erected within a town's historic district, the zoning statutes did not limit how an applicant for a certificate of appropriateness was to seek judicial review. Meares v. Town of Beaufort, — N.C. App. —, 667 S.E.2d 239, 2008 N.C. App. LEXIS 1746 (2008).

Applied in Issuance of Cama Minor Dev. Permit No. 82-0010 v. Town of Bath, 82 N.C. App. 32, 345 S.E.2d 699 (1986).

Cited in Baucom's Nursery Co. v. Mecklenburg County, 89 N.C. App. 542, 366 S.E.2d 558 (1988); Messer v. Town of Chapel Hill, 125 N.C. App. 57, 479 S.E.2d 221 (1996); Nazziola v. Landcraft Properties, Inc., 143 N.C. App. 564, 545 S.E.2d 801, 2001 N.C. App. LEXIS 290 (2001); Hyatt v. Town of Lake Lure, 225 F. Supp. 2d 647, 2002 U.S. Dist. LEXIS 16862 (W.D.N.C. 2002).

§ 160A-365. Enforcement of ordinances.

Subject to the provisions of the ordinance, any ordinance adopted pursuant to authority conferred by this Article may be enforced by any remedy provided by G.S. 160A-175. (1971, c. 698, s. 1.)

CASE NOTES

Legislative Intent. — Section 160A-175(f) and this section demonstrate a general intent by the legislature to defer to the decisions of cities on which remedies and penalties shall be used to achieve enforcement of planning and zoning ordinances. Town of Pine Knoll Shores v. Evans, 104 N.C. App. 79, 407 S.E.2d 895 (1991).

City Has Limited Choice of Remedies and Penalties. — Under G.S. 160A-175(f) and this section, the choice of remedies and penalties for enforcement of planning and zoning ordinances remains with the city. The choice of remedies and penalties, however, is limited to those remedies and penalties available in G.S. 160A-175. Town of Pine Knoll Shores v. Evans, 104 N.C. App. 79, 407 S.E.2d 895 (1991).

Cited in Town of Pine Knoll Shores v. Evans, 331 N.C. 361, 416 S.E.2d 4 (1992).

§ 160A-366. Validation of ordinance.

Any city ordinance regularly adopted before January 1, 1972, under authority of general laws revised and reenacted in Chapter 160A, Article 19, or under authority of any city charter or local act concerning the same subject matter, is validated with respect to its application within the corporate limits of the city and as to its application within the extraterritorial jurisdiction of the city. Such an ordinance, and any city ordinance adopted since January 1, 1972, under authority of general laws revised and reenacted in Chapter 160A, Article 19, are hereby validated, notwithstanding the fact that such ordinances were not recorded pursuant to G.S. 160A-360(b) or 160A-364 and notwithstanding the fact that the adopting city council did not also adopt an ordinance defining or delineating by specific description the areas within its extraterritorial jurisdiction pursuant to G.S. 160A-360; provided that this act shall be deemed to validate ordinances of cities in Mecklenburg County only with respect to their application within the corporate limits of such cities. (1973, c. 669, s. 2.)

CASE NOTES

Cited in Potter v. City of Hamlet, 141 N.C. App. 714, 541 S.E.2d 233, 2001 N.C. App. LEXIS 18 (2001).

§§ 160A-367 through 160A-370: Reserved for future codification purposes.

Part 2. Subdivision Regulation.

§ 160A-371. Subdivision regulation.

A city may by ordinance regulate the subdivision of land within its territorial jurisdiction. In addition to final plat approval, the ordinance may include provisions for review and approval of sketch plans and preliminary plats. The ordinance may provide for different review procedures for differing classes of subdivisions. The ordinance may be adopted as part of a unified development ordinance or as a separate subdivision ordinance. Decisions on approval or denial of preliminary or final plats may be made only on the basis of standards explicitly set forth in the subdivision or unified development ordinance. Whenever the ordinance includes criteria for decision that require application of judgment, those criteria must provide adequate guiding standards for the entity charged with plat approval. (1955, c. 1334, s. 1; 1971, c. 698, s. 1; 2005-418, s. 2(a).)

Cross References. — As to compliance of subdivision streets with minimum standards of the Board of Transportation required of developers, see G.S. 136-102.6. As to subdivision regulation in counties, see G.S. 153A-330, et seq.

Editor's Note. — Session Laws 2005-418, s. 14, provides: "The provisions of this act shall not be deemed to repeal or amend the validity or enforceability of any local act or charter provision previously enacted by the General Assembly."

Legal Periodicals. — For comment, "Urban Planning And Land Use Regulation: The Need For Consistency," see 14 Wake Forest L. Rev. 81 (1978).

CASE NOTES

Failure to Follow Quasi-Judicial Process. — Where ordinance adopted by city required the city to use a quasi-judicial process when reviewing an application to develop property, council's decision denying a developer's application to build affordable housing would be reversed, because the council did not use fair-trial standards in reaching its decision and did not state the facts upon which it based its decision with sufficient specificity that the appellate court could review the decision to determine if it was lawful. Guilford Fin. Servs., LLC v. City of Brevard, 150 N.C. App. 1, 563 S.E.2d 27, 2002 N.C. App. LEXIS 399 (2002).

Conditions on Approval of Subdivision Plan. — Merely changing the location of a recreation area as a condition of approval of a subdivision plan does not amount to a taking so as to require compensation and is a valid exercise of a municipality's police power under G.S. 160A-372. Messer v. Town of Chapel Hill, 59 N.C. App. 692, 297 S.E.2d 632 (1982), cert. denied and appeal dismissed, 307 N.C. 697, 301 S.E.2d 390 (1983).

Denial of Subdivision Application. — Denial of a property owner's subdivision application was properly reversed because the property owner complied with the general and technical requirements of the town's subdivision ordinance since substantial evidence did not support findings regarding overcrowding of schools, increased traffic, and incompatibility with the existing neighborhood; also, remand for clarification of subjective criteria in the ordinance was reasonable. Blue Ridge Co., L.L.C. v. Town of Pineville, 188 N.C. App. 466, 655 S.E.2d 843, 2008 N.C. App. LEXIS 227 (2008).

Cited in Town of Nags Head v. Tillett, 68 N.C. App. 554, 315 S.E.2d 740 (1984); Batch v. Town of Chapel Hill, 92 N.C. App. 601, 376 S.E.2d 22 (1989); Homebuilders Ass'n v. City of Charlotte, 336 N.C. 37, 442 S.E.2d 45 (1994).

§ 160A-372. Contents and requirements of ordinance.

(a) A subdivision control ordinance may provide for the orderly growth and development of the city; for the coordination of transportation networks and utilities within proposed subdivisions with existing or planned streets and highways and with other public facilities; for the dedication or reservation of recreation areas serving residents of the immediate neighborhood within the subdivision or, alternatively, for provision of funds to be used to acquire recreation areas serving residents of the development or subdivision or more than one subdivision or development within the immediate area, and rights-of-way or easements for street and utility purposes including the dedication of rights-of-way pursuant to G.S. 136-66.10 or G.S. 136-66.11; and for the distribution of population and traffic in a manner that will avoid congestion and overcrowding and will create conditions that substantially promote public health, safety, and the general welfare.

(b) The ordinance may require a plat be prepared, approved, and recorded pursuant to the provisions of the ordinance whenever any subdivision of land takes place. The ordinance may include requirements that plats show sufficient data to determine readily and reproduce accurately on the ground the location, bearing, and length of every street and alley line, lot line, easement boundary line, and other property boundaries, including the radius and other data for curved property lines, to an appropriate accuracy and in conformance with good surveying practice.

(c) The ordinance may provide for the more orderly development of subdivisions by requiring the construction of community service facilities in accordance with municipal plans, policies, and standards. To assure compliance with these and other ordinance requirements, the ordinance may provide for performance guarantees to assure successful completion of required improvements. If a performance guarantee is required, the city shall provide a range of options of types of performance guarantees, including, but not limited to, surety bonds or letters of credit, from which the developer may choose. For any specific development, the type of performance guarantee from the range specified by the city shall be at the election of the developer.

The ordinance may provide for the reservation of school sites in accordance with comprehensive land use plans approved by the council or the planning board. In order for this authorization to become effective, before approving such plans the council or planning board and the board of education with jurisdiction over the area shall jointly determine the specific location and size of any school sites to be reserved, which information shall appear in the comprehensive land use plan. Whenever a subdivision is submitted for approval which includes part or all of a school site to be reserved under the plan, the council or planning board shall immediately notify the board of education and the board of education shall promptly decide whether it still wishes the site to be reserved. If the board of education does not wish to reserve the site, it shall so notify the council or planning board and no site shall be reserved. If the board of education does wish to reserve the site, the subdivision shall not be approved without such reservation. The board of education shall then have 18 months beginning on the date of final approval of the subdivision within which to acquire the site by purchase or by initiating condemnation proceedings. If the board of education has not purchased or begun proceedings to condemn the site within 18 months, the subdivider may treat the land as freed of the reservation.

The ordinance may provide that a developer may provide funds to the city whereby the city may acquire recreational land or areas to serve the development or subdivision, including the purchase of land that may be used to serve more than one subdivision or development within the immediate area. All funds received by the city pursuant to this paragraph shall be used only for the acquisition or development of recreation, park, or open space sites. Any formula enacted to determine the amount of funds that are to be provided under this paragraph shall be based on the value of the development or subdivision for property tax purposes. The ordinance may allow a combination or partial payment of funds and partial dedication of land when the governing body of the city determines that this combination is in the best interests of the citizens of the area to be served.

The ordinance may provide that in lieu of required street construction, a developer may be required to provide funds that the city may use for the construction of roads to serve the occupants, residents, or invitees of the subdivision or development and these funds may be used for roads which serve more than one subdivision or development within the area. All funds received by the city pursuant to this paragraph shall be used only for development of roads, including design, land acquisition, and construction. However, a city may undertake these activities in conjunction with the Department of Transportation under an agreement between the city and the Department of Transportation. Any formula adopted to determine the amount of funds the developer is to pay in lieu of required street construction shall be based on the trips generated from the subdivision or development. The ordinance may require a combination of partial payment of funds and partial dedication of constructed streets when the governing body of the city determines that a combination is in the best interests of the citizens of the area to be served. (1955, c. 1334, s. 1; 1961, c. 1168; 1971, c. 698, s. 1; 1973, c. 426, s. 59; 1985, c. 146, ss. 1, 2; 1987, c. 747, ss. 9, 18; 1989 (Reg. Sess., 1990), c. 1024, s. 39; 2005-426, s. 2(a).)

Legal Periodicals. — For comment, "Sunbathers Versus Property Owners: Public Access to North Carolina Beaches," see 64 N.C.L. Rev. 159 (1985).

For note, *Batch v. Town of Chapel Hill,* Takings Law and Exactions: Where Should North Carolina Stand?, see 21 Campbell L. Rev. 49 (1998).

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Legislative Intent. — The plain words of this section make it abundantly clear that the legislative intent is to somehow secure to the residents of the immediate neighborhood within the subdivision the benefit of particular recreation areas. River Birch Assocs. v. City of Raleigh, 326 N.C. 100, 388 S.E.2d 538 (1990).

Section Subject to Broad Interpretation. — The broad interpretation of Chapter 160A mandated by G.S. 160A-4 applies to this section. River Birch Assocs. v. City of Raleigh, 326 N.C. 100, 388 S.E.2d 538 (1990).

This section permits city ordinances to provide for the conveyance of recreation areas in accordance with approved plats to home owners' associations, in order to set aside to the residents of a subdivision certain areas for recreation purposes. River Birch Assocs. v. City of Raleigh, 326 N.C. 100, 388 S.E.2d 538 (1990).

The requirement of a conveyance of common recreation areas to the home owners' association of a subdivision is an additional and supplementary power reasonably necessary or expedient to carry into effect the legislative intent to secure to the residents of the subdivision the benefits of the recreation areas. River Birch Assocs. v. City of Raleigh, 326 N.C. 100, 388 S.E.2d 538 (1990).

Conditions on Approval of Subdivision Plan. — Merely changing the location of a recreation area as a condition of approval of a subdivision plan does not amount to a taking so as to require compensation and is a valid exercise of a municipality's police power under this section. Messer v. Town of Chapel Hill, 59 N.C.

App. 692, 297 S.E.2d 632 (1982), cert. denied and appeal dismissed, 307 N.C. 697, 301 S.E.2d 390 (1983).

Town Had Authority Under Its Development Ordinance as authorized by this section to require plaintiff to take future road plans into account in designing her subdivision and denial of plaintiff's permit for her failure to do so was neither ultra vires nor unconstitutionally vague. Batch v. Town of Chapel Hill, 326 N.C. 1, 387 S.E.2d 655, cert. denied, 496 U.S. 931, 110 S. Ct. 2631, 110 L. Ed. 2d 651 (1990).

Park and Open Space Zoning Ordinance Not a Taking. — Town's enactment of a zoning ordinance requiring that real estate developers reserve open space and install a mini-park in subdivisions was not an unconstitutional taking. Town of Pinebluff v. Marts, — N.C. App. —, 673 S.E.2d 740, 2009 N.C. App. LEXIS 261 (2009).

Summary Judgment Found In Error. — The trial court's grant of summary judgment for defendant, implicitly finding as a matter of law that defendant could compel plaintiffs to construct access roads, was error where: defendant-town had no authority under this section to require plaintiffs to pave, curb and gutter streets abutting their subdivision because these streets were not within plaintiffs' subdivision; where plaintiffs were not fee simple owners of the roads deeded as a right-of-way to the State Highway Commission; and where there was no evidence that the defendants sought funds from the plaintiffs for road construction although they had that option. Buckland v. Town of Haw River, 141 N.C. App. 460, 541 S.E.2d 497, 2000 N.C. App. LEXIS 1307 (2000).

Applied in Dellinger v. City of Charlotte, 114 N.C. App. 146, 441 S.E.2d 626 (1994).

Cited in Town of Nags Head v. Tillett, 68 N.C. App. 554, 315 S.E.2d 740 (1984).

§ 160A-373. Ordinance to contain procedure for plat approval; approval prerequisite to plat recordation; statement by owner.

Any subdivision ordinance adopted pursuant to this Part shall contain provisions setting forth the procedures to be followed in granting or denying approval of a subdivision plat prior to its registration.

The ordinance may provide that final decisions on preliminary plats and final plats are to be made by:

(1) The city council,
(2) The city council on recommendation of a designated body, or
(3) A designated planning board, technical review committee, or other designated body or staff person.

From and after the effective date of a subdivision ordinance that is adopted by the city, no subdivision plat of land within the city's jurisdiction shall be filed or recorded until it shall have been submitted to and approved by the council or appropriate agency, as specified in the subdivision ordinance, and until this approval shall have been entered on the face of the plat in writing by an authorized representative of the city. The Review Officer, pursuant to G.S. 47-30.2, shall not certify a plat of a subdivision of land located within the territorial jurisdiction of a city that has not been approved in accordance with these provisions, nor shall the clerk of superior court order or direct the recording of a plat if the recording would be in conflict with this section. (1955, c. 1334, s. 1; 1971, c. 698, s. 1; 1973, c. 426, s. 60; 1997-309, s. 8; 2005-418, s. 3(a).)

Local Modification. — City of Raleigh: 1985, c. 498, s. 3; town of Knightdale: 1989, c. 430, s. 2; town of Zebulon: 1989, c. 606, s. 2.

Editor's Note. — Session Laws 2005-418, s. 14, provides: "The provisions of this act shall not be deemed to repeal or amend the validity or enforceability of any local act or charter provision previously enacted by the General Assembly."

Legal Periodicals. — For article, "Transferring North Carolina Real Estate, Part I: How the Present System Functions," see 49 N.C.L. Rev. 413 (1971).

CASE NOTES

Hearing. — Defendant city did not act in an arbitrary and capricious manner in granting permits for residential development, where it met the minimum procedural requirements and was not required by this section to provide a hearing or notice to nearby property owners. Nazziola v. Landcraft Properties, Inc., 143 N.C. App. 564, 545 S.E.2d 801, 2001 N.C. App. LEXIS 290 (2001).

Failure to Follow Quasi-Judicial Process. — Where ordinance adopted by city required the city to use a quasi-judicial process when reviewing an application to develop property, council's decision denying a developer's application to build affordable housing would be reversed, because the council did not use fair-trial standards in reaching its decision and did not state the facts upon which it based its decision with sufficient specificity that the court could review the decision to determine if it was lawful. Guilford Fin. Servs., LLC v. City of Brevard, 150 N.C. App. 1, 563 S.E.2d 27, 2002 N.C. App. LEXIS 399 (2002).

OPINIONS OF ATTORNEY GENERAL

Subdivision ordinances and amendments thereto must be filed with Register of Deeds; recording these ordinances includes indexing and filing. See opinion of Attorney General to Mr. James Dick Proctor, 41 N.C.A.G. 752 (1972).

§ 160A-374. Effect of plat approval on dedications.

The approval of a plat shall not be deemed to constitute or effect the acceptance by the city or public of the dedication of any street or other ground, public utility line, or other public facility shown on the plat. However, any city council may by resolution accept any dedication made to the public of lands or facilities for streets, parks, public utility lines, or other public purposes, when the lands or facilities are located within its subdivision-regulation jurisdiction. Acceptance of dedication of lands or facilities located within the subdivision-regulation jurisdiction but outside the corporate limits of a city shall not place on the city any duty to open, operate, repair, or maintain any street, utility line, or other land or facility, and a city shall in no event be held to answer in any civil action or proceeding for failure to open, repair, or maintain any street located outside its corporate limits. Unless a city, county or other public entity operating a water system shall have agreed to begin operation and maintenance of the water system or water system facilities within one year of the time of issuance of a certificate of occupancy for the first unit of housing in the subdivision, a city or county shall not, as part of its subdivision regulation applied to facilities or land outside the corporate limits of a city, require dedication of water systems or facilities as a condition for subdivision approval. (1955, c. 1334, s. 1; 1971, c. 698, s. 1; 1983 (Reg. Sess., 1984), c. 1080; 1985, c. 635.)

§ 160A-375. Penalties for transferring lots in unapproved subdivisions.

(a) If a city adopts an ordinance regulating the subdivision of land as authorized herein, any person who, being the owner or agent of the owner of any land located within the jurisdiction of that city, thereafter subdivides his land in violation of the ordinance or transfers or sells land by reference to, exhibition of, or any other use of a plat showing a subdivision of the land before the plat has been properly approved under such ordinance and recorded in the office of the appropriate register of deeds, shall be guilty of a Class 1 misdemeanor. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring land shall not exempt the transaction from this penalty. The city may bring an action for injunction of any illegal subdivision, transfer, conveyance, or sale of land, and the court shall, upon appropriate findings, issue an injunction and order requiring the offending party to comply with the subdivision ordinance. Building permits required pursuant to G.S. 160A-417 may be denied for lots that have been illegally subdivided. In addition to other remedies, a city may institute any appropriate action or proceedings to prevent the unlawful subdivision of land, to restrain, correct, or abate the violation, or to prevent any illegal act or conduct.

(b) The provisions of this section shall not prohibit any owner or its agent from entering into contracts to sell or lease by reference to an approved preliminary plat for which a final plat has not yet been properly approved under the subdivision ordinance or recorded with the register of deeds, provided the contract does all of the following:

(1) Incorporates as an attachment a copy of the preliminary plat referenced in the contract and obligates the owner to deliver to the buyer a copy of the recorded plat prior to closing and conveyance.

(2) Plainly and conspicuously notifies the prospective buyer or lessee that a final subdivision plat has not been approved or recorded at the time of the contract, that no governmental body will incur any obligation to the prospective buyer or lessee with respect to the approval of the final subdivision plat, that changes between the preliminary and final plats are possible, and that the contract or lease may be terminated without breach by the buyer or lessee if the final recorded plat differs in any material respect from the preliminary plat.

(3) Provides that if the approved and recorded final plat does not differ in any material respect from the plat referred to in the contract, the buyer or lessee may not be required by the seller or lessor to close any earlier than five days after the delivery of a copy of the final recorded plat.

(4) Provides that if the approved and recorded final plat differs in any material respect from the preliminary plat referred to in the contract, the buyer or lessee may not be required by the seller or lessor to close any earlier than 15 days after the delivery of the final recorded plat, during which 15-day period the buyer or lessee may terminate the contract without breach or any further obligation and may receive a refund of all earnest money or prepaid purchase price.

(c) The provisions of this section shall not prohibit any owner or its agent from entering into contracts to sell or lease land by reference to an approved preliminary plat for which a final plat has not been properly approved under the subdivision ordinance or recorded with the register of deeds where the buyer or lessee is any person who has contracted to acquire or lease the land for the purpose of engaging in the business of construction of residential, commercial, or industrial buildings on the land, or for the purpose of resale or lease of the land to persons engaged in that kind of business, provided that no conveyance of that land may occur and no contract to lease it may become effective until after the final plat has been properly approved under the subdivision ordinance and recorded with the register of deeds. (1955, c. 1334, s. 1; 1971, c. 698, s. 1; 1977, c. 820, s. 2; 1993, c. 539, s. 1087; 1994, Ex. Sess., c. 24, s. 14(c); 2005-426, s. 3(a).)

CASE NOTES

This section and § 160A-389 Compared. — The specific penal and equitable relief set out in this section is relief intended to deter those who violate subdivision ordinances; G.S. 160A-389 permits broader, appropriate action and proceedings to prevent or correct the violation of a zoning ordinance. Town of Nags Head v. Tillett, 314 N.C. 627, 336 S.E.2d 394 (1985).

Enforcement of Subdivision Ordinances. — Although the Town of Nags Head may deny a building permit to applicants whose property violates zoning ordinances, as authorized by G.S. 3.08 of the Nags Head Code of Ordinances and by G.S. 160A-389, its enforcement of subdivision ordinances is restricted to the penal and injunctive relief of this section and G.S. 17.10 of the Code of Ordinances. Town of Nags Head v. Tillett, 314 N.C. 627, 336 S.E.2d 394 (1985).

Town was entitled to seek an injunction against real estate developers, pursuant to G.S. 160A-375 and G.S. 160A-389, requiring the developers to comply with a zoning ordinance for the establishment of a minipark and an open space in a real estate subdivision as the developers did not point to any inequities resulting from the injunction itself. Town of Pinebluff v. Marts, — N.C. App. —, 673 S.E.2d 740, 2009 N.C. App. LEXIS 261 (2009).

Cited in River Birch Assocs. v. City of Raleigh, 326 N.C. 100, 388 S.E.2d 538 (1990).

§ 160A-376. Definition.

(a) For the purpose of this Part, "subdivision" means all divisions of a tract or parcel of land into two or more lots, building sites, or other divisions when any one or more of those divisions is created for the purpose of sale or building development (whether immediate or future) and shall include all divisions of land involving the dedication of a new street or a change in existing streets; but the following shall not be included within this definition nor be subject to the regulations authorized by this Part:

(1) The combination or recombination of portions of previously subdivided and recorded lots where the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the municipality as shown in its subdivision regulations.
(2) The division of land into parcels greater than 10 acres where no street right-of-way dedication is involved.
(3) The public acquisition by purchase of strips of land for the widening or opening of streets or for public transportation system corridors.
(4) The division of a tract in single ownership whose entire area is no greater than two acres into not more than three lots, where no street right-of-way dedication is involved and where the resultant lots are equal to or exceed the standards of the municipality, as shown in its subdivision regulations.

(b) A city may provide for expedited review of specified classes of subdivisions. (1955, c. 1334, s. 1; 1971, c. 698, s. 1; 1973, c. 426, s. 61; 1977, c. 912, s. 6; 2003-284, s. 29.23(a); 2005-426, s. 4(a).)

Local Modification. — Town of Rose Hill: 1995 (Reg. Sess., 1996), c. 565, s. 1. Session Laws 2004-46, s. 1, repealed local modifications by S.L. 1997-246, s. 2, and S.L. 2001-50, s. 2, effective January 1, 2005.

CASE NOTES

Cited in Joyner v. Town of Weaverville, 94 N.C. App. 588, 380 S.E.2d 536 (1989).

§ 160A-377. Appeals of decisions on subdivision plats.

(a) When a subdivision ordinance adopted under this Part provides that the decision whether to approve or deny a preliminary or final subdivision plat is to be made by a city council or a planning board, other than a planning board comprised solely of members of a city planning staff, and the ordinance authorizes the council or planning board to make a quasi-judicial decision in deciding whether to approve the subdivision plat, then that quasi-judicial decision of the council or planning board shall be subject to review by the superior court by proceedings in the nature of certiorari. The provisions of G.S. 160A-381(c), 160A-388(e2), and 160A-393 shall apply to those appeals.

(b) When a subdivision ordinance adopted under this Part provides that a city council, planning board, or staff member is authorized to make only an administrative or ministerial decision in deciding whether to approve a preliminary or final subdivision plat, then any party aggrieved by that administrative or ministerial decision may seek to have the decision reviewed by filing an action in superior court seeking appropriate declaratory or equitable relief. Such an action must be filed within the time frame specified in G.S. 160A-381(c) for petitions in the nature of certiorari.

(c) For purposes of this section, an ordinance shall be deemed to authorize a quasi-judicial decision if the city council or planning board is authorized to decide whether to approve or deny the plat based not only upon whether the application complies with the specific requirements set forth in the ordinance, but also on whether the application complies with one or more generally stated standards requiring a discretionary decision to be made by the city council or planning board. (2009-421, s. 2(a).)

Editor's Note. — Session Laws 2009-421, s. 7, made this section effective January 1, 2010, and applicable to quasi-judicial decisions rendered on or after that date.

§§ 160A-378 through 106A-380: Reserved for future codification purposes.

Part 3. Zoning.

§ 160A-381. Grant of power.

(a) For the purpose of promoting health, safety, morals, or the general welfare of the community, any city may adopt zoning and development regulation ordinances. These ordinances may be adopted as part of a unified development ordinance or as a separate ordinance. A zoning ordinance may regulate and restrict the height, number of stories and size of buildings and other structures, the percentage of lots that may be occupied, the size of yards, courts and other open spaces, the density of population, the location and use of buildings, structures and land. The ordinance may provide density credits or severable development rights for dedicated rights-of-way pursuant to G.S. 136-66.10 or G.S. 136-66.11.

(b) Expired.

(b1) These regulations may provide that a board of adjustment may determine and vary their application in harmony with their general purpose and intent and in accordance with general or specific rules therein contained, provided no change in permitted uses may be authorized by variance.

(c) The regulations may also provide that the board of adjustment, the planning board, or the city council may issue special use permits or conditional use permits in the classes of cases or situations and in accordance with the principles, conditions, safeguards, and procedures specified therein and may impose reasonable and appropriate conditions and safeguards upon these permits. When deciding special use permits or conditional use permits, the city council or planning board shall follow quasi-judicial procedures. No vote greater than a majority vote shall be required for the city council or planning board to issue such permits. For the purposes of this section, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered "members of the board" for calculation of the requisite majority. Every such decision of the city council or planning board shall be subject to review of the superior court in the nature of certiorari in accordance with G.S. 160A-388.

Where appropriate, such conditions may include requirements that street and utility rights-of-way be dedicated to the public and that provision be made of recreational space and facilities.

(d) A city council member shall not vote on any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. Members of appointed boards providing advice to the city council shall not vote on recommendations regarding any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.

(e) As provided in this subsection, cities may adopt temporary moratoria on any city development approval required by law. The duration of any moratorium shall be reasonable in light of the specific conditions that warrant imposition of the moratorium and may not exceed the period of time necessary to correct, modify, or resolve such conditions. Except in cases of imminent and substantial threat to public health or safety, before adopting an ordinance imposing a development moratorium with a duration of 60 days or any shorter period, the governing board shall hold a public hearing and shall publish a notice of the hearing in a newspaper having general circulation in the area not less than seven days before the date set for the hearing. A development moratorium with a duration of 61 days or longer, and any extension of a moratorium so that the total duration is 61 days or longer, is subject to the notice and hearing requirements of G.S. 160A-364. Absent an imminent threat to public health or safety, a development moratorium adopted pursuant to this section shall not apply to any project for which a valid building permit issued pursuant to G.S. 160A-417 is outstanding, to any project for which a conditional use permit application or special use permit application has been accepted, to development set forth in a site-specific or phased development plan approved pursuant to G.S. 160A-385.1, to development for which substantial expenditures have already been made in good faith reliance on a prior valid administrative or quasi-judicial permit or approval, or to preliminary or final subdivision plats that have been accepted for review by the city prior to the call for public hearing to adopt the moratorium. Any preliminary subdivision plat accepted for review by the city prior to the call for public hearing, if subsequently approved, shall be allowed to proceed to final plat approval without being subject to the moratorium.

Any ordinance establishing a development moratorium must expressly include at the time of adoption each of the following:

(1) A clear statement of the problems or conditions necessitating the moratorium and what courses of action, alternative to a moratorium, were considered by the city and why those alternative courses of action were not deemed adequate.

(2) A clear statement of the development approvals subject to the moratorium and how a moratorium on those approvals will address the problems or conditions leading to imposition of the moratorium.

(3) An express date for termination of the moratorium and a statement setting forth why that duration is reasonably necessary to address the problems or conditions leading to imposition of the moratorium.

(4) A clear statement of the actions, and the schedule for those actions, proposed to be taken by the city during the duration of the moratorium to address the problems or conditions leading to imposition of the moratorium.

No moratorium may be subsequently renewed or extended for any additional period unless the city shall have taken all reasonable and feasible steps proposed to be taken by the city in its ordinance establishing the moratorium to address the problems or conditions leading to imposition of the moratorium and unless new facts and conditions warrant an extension. Any ordinance renewing or extending a development moratorium must expressly include, at the time of adoption, the findings set forth in subdivisions (1) through (4) of this subsection, including what new facts or conditions warrant the extension.

Any person aggrieved by the imposition of a moratorium on development approvals required by law may apply to the appropriate division of the General Court of Justice for an order enjoining the enforcement of the moratorium, and the court shall have jurisdiction to issue that order. Actions brought pursuant to this section shall be set down for immediate hearing, and subsequent proceedings in those actions shall be accorded priority by the trial and appellate courts. In any such action, the city shall have the burden of showing compliance with the procedural requirements of this subsection.

(f) In order to encourage construction that uses sustainable design principles and to improve energy efficiency in buildings, a city may charge reduced building permit fees or provide partial rebates of building permit fees for buildings that are constructed or renovated using design principles that conform to or exceed one or more of the following certifications or ratings:

(1) Leadership in Energy and Environmental Design (LEED) certification or higher rating under certification standards adopted by the U.S. Green Building Council.

(2) A One Globe or higher rating under the Green Globes program standards adopted by the Green Building Initiative.

(3) A certification or rating by another nationally recognized certification or rating system that is equivalent or greater than those listed in subdivisions (1) and (2) of this subsection. (1923, c. 250, s. 1; C.S., s. 2776(r); 1967, c. 1208, s. 1; 1971, c. 698, s. 1; 1981, c. 891, s. 5; 1985, c. 442, s. 1; 1987, c. 747, s. 11; 1995, c. 357, s. 1; 2005-426, s. 5(a); 2007-381, s. 2.)

Local Modification. — Town of Chapel Hill: (as to subsection (c)) 1975, c. 473, s. 5.42, as added by 1993, c. 549, s. 3, as amended by 2008-76, s. 1; (as to subsection (d), and applicable in that area where the town exercises territorial planning jurisdiction, including any area under the town's jurisdiction pursuant to a Joint Planning Agreement with Orange County) 2003-237, s. 2; 2004-27, s. 1.

Editor's Note. — Subsection (b) expired pursuant to the terms of Session Laws 1995, c. 357, s. 2.

Session Laws 2005-426, s. 11, provides that G.S. 160A-381(e), as added by Section 5(a) of this act, is effective September 1, 2005 and any renewal or extension on or after September 1, 2005, of a moratorium on development approvals that is in effect prior to or on that date, is subject to the provisions of this act.

Legal Periodicals. — For survey of 1972 case law on spot and contract zoning, see 51 N.C.L. Rev. 1132 (1973).

For comment, "Planned Unit Development and North Carolina Enabling Legislation," see 51 N.C.L. Rev. 1455 (1973).

For article discussing North Carolina special exception and zoning amendment cases, see 53 N.C.L. Rev. 925 (1975).

For comment, "Exclusionary Zoning and a Reluctant Supreme Court" (U.S.), see 13 Wake Forest L. Rev. 107 (1977).

For comment, "Urban Planning And Land Use Regulation: The Need For Consistency," see 14 Wake Forest L. Rev. 81 (1978).

For article, "The North Carolina Historic Preservation and Conservation Agreements Act: Assessment and Implications for Historic Preservation," see 11 N.C. Cent. L.J. 362 (1980).

For comment on exclusionary zoning of community facilities, see 12 N.C. Cent. L.J. 167 (1980).

For article, "Zoning for Direct Social Control," see 1982 Duke L.J. 761.

For comment discussing aesthetic zoning in North Carolina in light of State v. Jones, 305 N.C. 520, 290 S.E.2d 675 (1982), see 61 N.C.L. Rev. 942 (1983).

For article, "Moving Toward the Bargaining Table: Contract Zoning, Development Agreements, and the Theoretical Foundations of Government Land Use Deals," see 65 N.C.L. Rev. 957 (1987).

For note, "The North Carolina Supreme Court Solves a City-County Conflict," see 66 N.C.L. Rev. 1266 (1988).

For comment discussing contract zoning and conditional use zoning in North Carolina, see 68 N.C.L. Rev. 177 (1989).

CASE NOTES

I. In General.
II. Power to Zone.
III. Zoning Ordinances, Generally.
IV. Specific Zoning Ordinances.
V. Conditional or Special Use Permits.
VI. Building Permits.
VII. Certiorari.

I. IN GENERAL.

Editor's Note. — *Many of the cases cited in the annotations to this section were decided under former G.S. 160-172 to 160-181.2 and other similar provisions.*

Rezoning is a legislative act, whereas a proceeding to grant a variance or special use permit is quasi-judicial in nature. Sherrill v. Town of Wrightsville Beach, 81 N.C. App. 369, 344 S.E.2d 357, cert. denied and appeal dismissed, 318 N.C. 417, 349 S.E.2d 600 (1986).

Enforcement Provisions. — The broad enforcement provisions of G.S. 160A-389, a zoning statute, could not serve as the statutory basis for denying a building permit to one whose lot violated the subdivision requirements of Chapter 17 of the Nags Head Code of Ordinances. However, insofar as the Town of Nags Head rested its denial of a building permit upon the violation of zoning laws, the broader enforcement license of this section would apply and would sustain such a remedy. Town of Nags Head v. Tillett, 314 N.C. 627, 336 S.E.2d 394 (1985).

Concrete mixing facility did not forfeit its nonconforming use under ordinance providing for forfeiture in the event that such use ceased for six months, although the plant was not operated for more than six months due to a slump in business, where the owner maintained the plant, equipment, inventories, and utilities as before, and could have resumed operations within two hours after deciding to do so. Southern Equip. Co. v. Winstead, 80 N.C. App. 526, 342 S.E.2d 524 (1986).

City's practice of referring all privilege license applicants to the zoning administrator does not convert a privilege license into a regulatory license; the city's zoning compliance process does not involve or permit any discretion on the part of the zoning administrator as to whether a particular use is allowed in a particular district, in contrast to the special conditional use scheme of this section. Mom N Pops, Inc. v. City of Charlotte, 979 F. Supp. 372 (W.D.N.C. 1997), aff'd, 162 F.3d 1155 (4th Cir. 1998).

City had the authority to allow the city tax collector to assess zoning compliance as part of the administration of the business privilege license tax and to deny a business privilege license to a sexually oriented business because the business sought to operate in violation of a zoning ordinance. Fantasy World, Inc. v. Greensboro Bd. of Adjustment, 162 N.C. App. 603, 592 S.E.2d 205, 2004 N.C. App. LEXIS 267 (2004), cert. denied, 358 N.C. 543, 599 S.E.2d 43 (2004).

Applied in Redevelopment Comm'n v. Ford, 67 N.C. App. 470, 313 S.E.2d 211 (1984); Hayes v. Fowler, 123 N.C. App. 400, 473 S.E.2d 442 (1996); Village Creek Property Owners Ass'n v. Town of Edenton, 135 N.C. App. 482, 520 S.E.2d 793, 1999 N.C. App. LEXIS 1159 (1999).

Cited in Harts Book Stores, Inc. v. City of Raleigh, 53 N.C. App. 753, 281 S.E.2d 761 (1981); Wenco Mgt. Co. v. Town of Carrboro, 53 N.C. App. 480, 281 S.E.2d 74 (1981); Town of Kenansville v. Summerlin, 70 N.C. App. 601, 320 S.E.2d 428 (1984); Batch v. Town of Chapel Hill, 92 N.C. App. 601, 376 S.E.2d 22 (1989); Bryan v. Raynor, 94 N.C. App. 173, 379 S.E.2d 884 (1989); Midgette v. Pate, 94 N.C. App. 498, 380 S.E.2d 572 (1989); Kirby v. Board of Adjustment, 95 N.C. App. 182, 381 S.E.2d 889 (1989); Dale v. Town of Columbus, 101 N.C. App. 335, 399 S.E.2d 350 (1991); Town of Pine Knoll Shores v. Evans, 104 N.C. App. 79, 407 S.E.2d 895 (1991); Town of Pine Knoll Shores v. Evans, 331 N.C. 361, 416 S.E.2d 4 (1992); County of Lancaster v. Mecklenburg County, 334 N.C. 496, 434 S.E.2d 604 (1993); Homebuilders Ass'n v. City of Charlotte, 336 N.C. 37, 442 S.E.2d 45 (1994); Simpson v. City of Charlotte, 115 N.C. App. 51, 443 S.E.2d 772 (1994); Browning-Ferris Indus. of S. Atl., Inc. v. Wake County, 905 F. Supp. 312 (E.D.N.C. 1995); AT&T Wireless PCS, Inc. v. Winston-Salem Zoning Bd. of Adjustment, 172 F.3d 307 (4th Cir. 1999); SBA, Inc. v. City of Asheville City Council, 141 N.C. App. 19, 539 S.E.2d 18, 2000 N.C. App. LEXIS 1291 (2000); Coffey v. Town of Waynesville, 143 N.C. App. 624, 547 S.E.2d 132, 2001 N.C. App. LEXIS 348 (2001); Hyatt v. Town of Lake Lure, 225 F. Supp. 2d 647, 2002 U.S. Dist. LEXIS 16862 (W.D.N.C. 2002).

II. POWER TO ZONE.

The original zoning power of the State reposes in the General Assembly. Schloss v. Jamison, 262 N.C. 108, 136 S.E.2d 691 (1964); Allred v. City of Raleigh, 277 N.C. 530, 178 S.E.2d 432 (1971); Keiger v. Winston-Salem Bd.

of Adjustment, 278 N.C. 17, 178 S.E.2d 616 (1971); Allgood v. Town of Tarboro, 281 N.C. 430, 189 S.E.2d 255 (1972).

The power to zone is the power of the State and rests initially in the General Assembly. Zopfi v. City of Wilmington, 273 N.C. 430, 160 S.E.2d 325 (1968); Decker v. Coleman, 6 N.C. App. 102, 169 S.E.2d 487 (1969).

The power to zone is the power originally vested in the General Assembly to legislate with reference to the use which may be made of land and the structures which may be erected or located thereon. Keiger v. Winston-Salem Bd. of Adjustment, 278 N.C. 17, 178 S.E.2d 616 (1971).

Rezoning must be effected by the exercise of legislative power, rather than by special arrangements with the owner of a particular tract or parcel of land. Rose v. Guilford County, 60 N.C. App. 170, 298 S.E.2d 200 (1982).

Which May Delegate It as Exercise of Police Power. — The General Assembly may delegate power to a municipal corporation to enact zoning ordinances in the exercise of police power of the State. Jackson v. Guilford County Bd. of Adjustment, 275 N.C. 155, 166 S.E.2d 78 (1969).

Statutes which have been passed authorizing the governing bodies of municipal corporations to enact zoning ordinances prescribing that in certain areas only designated types of buildings may be erected and used have been generally upheld by the courts as an exercise of the police power of the State. Vance S. Harrington & Co. v. Renner, 236 N.C. 321, 72 S.E.2d 838 (1952); City of Raleigh v. Morand, 247 N.C. 363, 100 S.E.2d 870 (1957), appeal dismissed, 357 U.S. 343, 78 S. Ct. 1369, 2 L. Ed. 2d 1367 (1958).

And the zoning power of municipalities is derived from the State. State v. Joyner, 286 N.C. 366, 211 S.E.2d 320, appeal dismissed, 422 U.S. 1002, 95 S. Ct. 2618, 45 L. Ed. 2d 666 (1975).

As Delegated by the General Assembly. — The General Assembly has delegated to the legislative body of cities and incorporated towns the power to adopt zoning regulations and, from time to time, to amend or repeal such regulations. In re Markham, 259 N.C. 566, 131 S.E.2d 329, cert. denied, 375 U.S. 931, 84 S. Ct. 332, 11 L. Ed. 2d 263 (1963).

The General Assembly has delegated its police powers to enact zoning regulations to municipal corporations. Armstrong v. McInnis, 264 N.C. 616, 142 S.E.2d 670 (1965).

Through the provisions of former Article 14 of Chapter 160, fourteen cities and towns of this State were delegated the authority to zone property within their boundaries and to restrict to specified purposes the uses of private property within each zone. Allred v. City of Raleigh, 7 N.C. App. 602, 173 S.E.2d 533 (1970), rev'd on other grounds, 277 N.C. 530, 178 S.E.2d 432 (1971).

The General Assembly has delegated to the legislative body of a municipality the power to adopt zoning regulations for the purpose of promoting health, safety, morals or the general welfare of the community. Allgood v. Town of Tarboro, 281 N.C. 430, 189 S.E.2d 255 (1972).

Promoting the general welfare of the community through control of lot size and population density is a legitimate use of the police power. Messer v. Town of Chapel Hill, 125 N.C. App. 57, 479 S.E.2d 221 (1996).

A municipal corporation has no inherent power to zone its territory and restrict to specified purposes the use of private property in each such zone. Such power has, however, been delegated to the cities and incorporated towns of this State by the General Assembly. Zopfi v. City of Wilmington, 273 N.C. 430, 160 S.E.2d 325 (1968); Decker v. Coleman, 6 N.C. App. 102, 169 S.E.2d 487 (1969).

A municipality has no inherent power to zone its territory and possesses only such power to zone as is delegated to it by the enabling statutes. Heaton v. City of Charlotte, 277 N.C. 506, 178 S.E.2d 352 (1971).

A city has power to zone only as delegated to it by enabling statutes. Sellers v. City of Asheville, 33 N.C. App. 544, 236 S.E.2d 283 (1977).

Delegation of Zoning Power as Exception to General Rule. — The authority of the General Assembly to delegate to municipal corporations power to legislate concerning local problems, such as zoning, is an exception to the general rule that legislative powers, vested in the General Assembly by N.C. Const., Art. II, § 1, may not be delegated by it. This exception to the doctrine of nondelegation is not limited to a delegation of such legislative authority to incorporated cities and towns, but extends, as to other types of local matters, to a like delegation to counties and other units established by the General Assembly for local government. Jackson v. Guilford County Bd. of Adjustment, 275 N.C. 155, 166 S.E.2d 78 (1969).

Delegation of Zoning Power Cannot Exceed Power of General Assembly. — The General Assembly cannot delegate to a municipal corporation more extensive power to regulate the use of private property than the General Assembly itself possesses. Zopfi v. City of Wilmington, 273 N.C. 430, 160 S.E.2d 325 (1968).

Zoning Power Cannot Be Further Delegated to Board of Adjustment. — The power to zone is conferred upon the governing body of the municipality and cannot be delegated to the board of adjustment. Hence, a board of adjustment has no power to permit a type of business or building prohibited by an ordinance, for to do so would be an amendment of the law and not a variance of its regulations. James v. Sutton, 229 N.C. 515, 50 S.E.2d 300 (1948); In re O'Neal, 243 N.C. 714, 92 S.E.2d 189 (1956).

The privilege of erecting a nonconforming building or a building for a nonconforming use may not be granted by the board of adjustment under the guise of a variance permit, as the board of adjustment has no power to amend the ordinance under which it functions. Lee v. Board of Adjustment, 226 N.C. 107, 37 S.E.2d 128 (1946).

The legislative body of the municipal corporation may not delegate to the municipal board of adjustment the power to zone; that is, the power originally vested in the General Assembly to legislate with reference to the use which may be made of land and the structures which may be erected or located thereon. It follows that a county zoning ordinance may not delegate such legislative powers to the county board of adjustment. Jackson v. Guilford County Bd. of Adjustment, 275 N.C. 155, 166 S.E.2d 78 (1969).

The legislative body of the municipal corporation may not delegate to the municipal board of adjustment the power to zone. Keiger v. Winston-Salem Bd. of Adjustment, 278 N.C. 17, 178 S.E.2d 616 (1971).

It would constitute an unlawful delegation and exercise of the legislative power vested by the General Assembly in the board of aldermen of Winston-Salem to allow the board of adjustment to deny a special permit on the ground that the board of adjustment did not consider a use specified in the ordinance as a conditional permissible use to be in accord with the "purpose and intent" of the ordinance. Keiger v. Winston-Salem Bd. of Adjustment, 278 N.C. 17, 178 S.E.2d 616 (1971).

Power to Zone Need Not Be Exercised. — The grant of the power to zone to a municipal corporation imposes no duty upon the city or town to exercise it, and the courts may not require the city or town to enact zoning legislation. This is a matter within the discretion of the legislative body of the city or town. Zopfi v. City of Wilmington, 273 N.C. 430, 160 S.E.2d 325 (1968).

And Is Not Exhausted by Adoption of a Zoning Ordinance. — The adoption of a zoning ordinance in exercise of the police power, delegated to a municipal corporation, does not exhaust that power. Zopfi v. City of Wilmington, 273 N.C. 430, 160 S.E.2d 325 (1968).

Municipality exercises the police power of the State within the limits of zoning power delegated. Schloss v. Jamison, 262 N.C. 108, 136 S.E.2d 691 (1964); Keiger v. Winston-Salem Bd. of Adjustment, 278 N.C. 17, 178 S.E.2d 616 (1971).

In enacting and enforcing zoning regulations, a municipality acts as a governmental agency and exercises the police power of the State. Armstrong v. McInnis, 264 N.C. 616, 142 S.E.2d 670 (1965); Taylor v. Bowen, 272 N.C. 726, 158 S.E.2d 837 (1968).

Zoning laws, when valid, are an exercise of the police power of the sovereign to reasonably regulate or restrict the use of private property to promote the public health, the public safety, the public morals or the public welfare. Zopfi v. City of Wilmington, 273 N.C. 430, 160 S.E.2d 325 (1968).

Power to Zone Is Subject to Limitations of Enabling Act. — The power to zone, conferred upon the legislative body of a municipality, is subject to the limitations of the enabling act. Schloss v. Jamison, 262 N.C. 108, 136 S.E.2d 691 (1964); Keiger v. Winston-Salem Bd. of Adjustment, 278 N.C. 17, 178 S.E.2d 616 (1971).

The power to zone, conferred upon the legislative body of a municipality, is subject to the limitations of the enabling act. Within the limits of the powers so delegated, the municipality exercises the police power of the State. Allred v. City of Raleigh, 277 N.C. 530, 178 S.E.2d 432 (1971).

A zoning ordinance or an amendment thereto which is not adopted in accordance with the enabling statutes is invalid and ineffective. Heaton v. City of Charlotte, 277 N.C. 506, 178 S.E.2d 352 (1971); Keiger v. Winston-Salem Bd. of Adjustment, 281 N.C. 715, 190 S.E.2d 175 (1972); Sellers v. City of Asheville, 33 N.C. App. 544, 236 S.E.2d 283 (1977).

And to Limitations Imposed by the Constitution. — The authority of a city or town to enact zoning ordinances is subject both to the limitations imposed by the Constitution and to the limitations of the enabling statute. Zopfi v. City of Wilmington, 273 N.C. 430, 160 S.E.2d 325 (1968).

The power to zone is subject to the limitations imposed by the Constitution upon the legislative power forbidding arbitrary and unduly discriminatory interference with the rights of property owners. Zopfi v. City of Wilmington, 273 N.C. 430, 160 S.E.2d 325 (1968).

Exercise by a city of delegated power to zone is subject both to limitations imposed by the Constitution upon the legislative power of the State itself, forbidding arbitrary and unduly discriminatory interference with the rights of property owners, and also to the limitations in the statutes by which the power was delegated. Decker v. Coleman, 6 N.C. App. 102, 169 S.E.2d 487 (1969).

The authority to zone property and to restrict to specified purposes the uses of private property within each zone is limited by the provisions of the enabling statute and also by constitutional provisions which forbid arbitrary and unduly discriminatory interference with the rights of property owners. Allred v. City of Raleigh, 7 N.C. App. 602, 173 S.E.2d 533

(1970), rev'd on other grounds, 277 N.C. 530, 178 S.E.2d 432 (1971).

The authority to enact zoning ordinances is subject to the limitations imposed by the enabling statute and by the Constitution. These limitations forbid arbitrary and unduly discriminatory interference with property rights in the exercise of such power. Heaton v. City of Charlotte, 277 N.C. 506, 178 S.E.2d 352 (1971); Keiger v. Winston-Salem Bd. of Adjustment, 281 N.C. 715, 190 S.E.2d 175 (1972).

Unlawful Contract Zoning. — Illegal contract zoning connotes a transaction wherein both the landowner who is seeking a certain zoning action and the zoning authority itself undertake reciprocal obligations in the context of a bilateral contract. This depends upon a finding of a transaction in which both the landowner seeking a rezoning and the zoning authority undertake reciprocal obligations; in short, a "meeting of the minds" must occur; mutual assurances must be exchanged. Hall v. City of Durham, 323 N.C. 293, 372 S.E.2d 564, cert. denied, 323 N.C. 629, 374 S.E.2d 586 (1988).

County Ordinances Inapplicable to Municipal Sewage Facility. — City which owned a sewage treatment facility located in a county and outside the city's boundaries was not required to comply with county's zoning ordinances in upgrading the facility and providing sewage service to newly annexed areas of city with that facility. Davidson County v. City of High Point, 85 N.C. App. 26, 354 S.E.2d 280, modified and aff'd, 321 N.C. 252, 362 S.E.2d 553 (1987).

As to similarity of former provisions regarding zoning by counties and municipalities, see Jackson v. Guilford County Bd. of Adjustment, 2 N.C. App. 408, 163 S.E.2d 265 (1968), aff'd, 275 N.C. 155, 166 S.E.2d 78 (1969); Keiger v. Winston-Salem Bd. of Adjustment, 278 N.C. 17, 178 S.E.2d 616 (1971).

Zoning Ordinance Validly Enacted Under Delegated Authority. — Wrightsville Beach, N.C., Zoning Ordinance § 155.009(A) was properly and validly established under a grant of power contained in 1981 N.C. Sess. Laws 904 and G.S. 160A-381(a); accordingly, where property owners' home was constructed too close to the property line, in violation of the ordinance's setback requirements, the town building inspector's refusal to issue them a certificate of occupancy was proper. Prewitt v. Town of Wrightsville Beach, 161 N.C. App. 481, 595 S.E.2d 442, 2003 N.C. App. LEXIS 2192 (2003).

III. ZONING ORDINANCES, GENERALLY.

Who May Challenge Rezoning Ordinance. — In order to challenge a rezoning ordinance, one must have a specific personal and legal interest in the subject matter affected by the ordinance and must be directly and adversely affected by the ordinance. Davis v. City of Archdale, 81 N.C. App. 505, 344 S.E.2d 369 (1986).

Alleged diminution in the value of the property of adjacent or nearby landowners due to increased traffic on roads which already carried traffic volumes in excess of capacity and due to increased demands upon already overburdened public utilities are not special damages distinct from those of the rest of the community, and plaintiffs did not have standing to challenge rezoning ordinances on such grounds. Davis v. City of Archdale, 81 N.C. App. 505, 344 S.E.2d 369 (1986).

Criteria for Validity of Zoning Ordinance. — As a general rule a zoning ordinance of a municipality is valid and enforceable if it emanates from ample grant of power by the legislature to the city or town, if it has a reasonable tendency to promote the public safety, health, morals, comfort, welfare and prosperity and if its provisions are not arbitrary, unreasonable or confiscatory. Helms v. City of Charlotte, 255 N.C. 647, 122 S.E.2d 817 (1961).

A zoning ordinance covering all land within the municipality and separating commercial and industrial districts of the city from those set apart for residences, schools, parks, libraries, churches, etc., which is uniform and operates alike on all territory within the respective zones, bears a reasonable relation to the health, safety, morals and general welfare of the entire community, and is a valid and constitutional exercise of the delegated police power of the municipality. Kinney v. Sutton, 230 N.C. 404, 53 S.E.2d 306 (1949).

An ordinance passed under an enabling statute, following its provisions and carrying it into effect in the city passing it, prescribing uniform regulations for each zone or district and giving an inspector certain judicial functions with respect to the kind or class of buildings under a board of adjustment and review, and providing for certiorari, is a valid exercise of power and not repugnant to the organic law prohibiting discriminations. Harden v. City of Raleigh, 192 N.C. 395, 135 S.E. 151 (1926).

Substantial Relation to Public Welfare Essential. — Zoning ordinances are upheld when, but only when, they bear a substantial relation to the public health, safety, morals, or general welfare. Schloss v. Jamison, 262 N.C. 108, 136 S.E.2d 691 (1964).

Depreciation of Property Not Enough to Invalidate Ordinance. — The mere fact that a zoning ordinance seriously depreciates the value of complainant's property is not enough, standing alone, to establish its invalidity. Helms v. City of Charlotte, 255 N.C. 647, 122

S.E.2d 817 (1961); County of Durham v. Addison, 262 N.C. 280, 136 S.E.2d 600 (1964).

If the police power is properly exercised in the zoning of a municipality, a resultant pecuniary loss to a property owner is a misfortune which he must suffer as a member of society. Schloss v. Jamison, 262 N.C. 108, 136 S.E.2d 691 (1964).

Unless Property Is Rendered Valueless by Impossibility of Permitted Use. — A municipal zoning ordinance is confiscatory and invalid in its application to a particular lot if it is practically impossible to use such lot for the purpose permitted by the ordinance so that the ordinance renders such property valueless for practical purposes. Helms v. City of Charlotte, 255 N.C. 647, 122 S.E.2d 817 (1961).

Fact that a lot would be more valuable if devoted to a nonconforming use does not deprive owner of property without due process of law when the zoning regulations are uniform in their application to all within the respective districts, and the differentiation of the uses of property within the respective districts is in accordance with a comprehensive plan in the interest of the health, safety, morals or general welfare of the entire community. Kinney v. Sutton, 230 N.C. 404, 53 S.E.2d 306 (1949).

Two of the essentials of a comprehensive zoning ordinance are: (1) It applies to all territory subject to the zoning jurisdiction of a city council, including the area beyond and surrounding the corporate limits of the city for a distance of one mile in all directions, and (2) with reference to property within a particular district or zone, all uses permissible in the zone are available as of right to the owner. Allred v. City of Raleigh, 277 N.C. 530, 178 S.E.2d 432 (1971).

The test of whether the means of the regulation of land use are reasonable is two pronged: 1) whether the ordinance as applied is reasonably necessary to promote the public good and, 2) whether the interference with the owner's right to use the property is reasonable in degree. Messer v. Town of Chapel Hill, 125 N.C. App. 57, 479 S.E.2d 221 (1996).

As to validity of comprehensive zoning ordinances, see Allred v. City of Raleigh, 277 N.C. 530, 178 S.E.2d 432 (1971). See also, Schloss v. Jamison, 262 N.C. 108, 136 S.E.2d 691 (1964).

Mere laxity of enforcement will not invalidate zoning restrictions. Sherrill v. Town of Wrightsville Beach, 81 N.C. App. 369, 344 S.E.2d 357, cert. denied and appeal dismissed, 318 N.C. 417, 349 S.E.2d 600 (1986).

As to the showing necessary to invalidate zoning ordinance on constitutional grounds, see Sherrill v. Town of Wrightsville Beach, 81 N.C. App. 369, 344 S.E.2d 357, cert. denied and appeal dismissed, 318 N.C. 417, 349 S.E.2d 600 (1986).

Zoning and Property Lines Need Not Coincide. — It is not a prerequisite to the validity of a zoning ordinance that the zoning district lines should coincide with property lines. Helms v. City of Charlotte, 255 N.C. 647, 122 S.E.2d 817 (1961).

City May Limit Use of Property in Residential District. — Former G.S. 160-172 authorized municipalities to enact zoning ordinances prohibiting the use of property within a residential district for business or commercial purposes. Kinney v. Sutton, 230 N.C. 404, 53 S.E.2d 306 (1949).

Same Restrictions Must Apply to All Areas in Each Class. — When a classification of a zone has been made, all the areas in each class must be subject to the same restrictions. Allred v. City of Raleigh, 277 N.C. 530, 178 S.E.2d 432 (1971).

Conversion of Apartments to Condominiums Not a Change in Use Subject to Zoning Regulation. — Contemplated change in ownership to condominiums does not constitute a change in use which a town may regulate by its zoning ordinance. Graham Court Assocs. v. Town Council, 53 N.C. App. 543, 281 S.E.2d 418 (1981).

Where petitioner's apartment complex property did not comply with zoning ordinance requirements for multi-family housing, but its continued use as multi-family housing was permitted as a prior nonconforming use under the zoning ordinance of respondent town, contemplated change in ownership to condominiums did not constitute a change in use which respondent town could regulate by a zoning ordinance, and respondent lacked the right or legal authority to require petitioner to apply for or receive a special use permit as a prerequisite to its right to sell the apartments as condominiums. Graham Court Assocs. v. Town Council, 53 N.C. App. 543, 281 S.E.2d 418 (1981).

In enacting a zoning ordinance a municipality is engaged in legislating, not in contracting. Allred v. City of Raleigh, 277 N.C. 530, 178 S.E.2d 432 (1971).

In enacting a zoning ordinance, a municipality is engaged in legislating and not in contracting. As a consequence, a zoning ordinance fixing the boundaries of zones does not result in a contract between the municipality and property owners precluding the municipality from afterwards changing the boundaries if it deems a change to be desirable. Moreover, a zoning ordinance does not vest in a property owner the right that the restrictions imposed by it upon his property or the property of others shall remain unaltered. Marren v. Gamble, 237 N.C. 680, 75 S.E.2d 880 (1953).

And zoning regulations may be amended or changed when such action is authorized by the enabling statute and does not contravene constitutional limitations on the zoning power. Marren v. Gamble, 237 N.C. 680, 75 S.E.2d 880 (1953).

Property may not be rezoned in reliance upon representations of the applicant. Hall v. City of Durham, 88 N.C. App. 53, 362 S.E.2d 791 (1987), aff'd, 323 N.C. 293, 372 S.E.2d 564 (1988).

Rezoning may not be based on assurances that the applicant will make a specific use of the property. Hall v. City of Durham, 88 N.C. App. 53, 362 S.E.2d 791 (1987), aff'd, 323 N.C. 293, 372 S.E.2d 564 (1988).

Rezoning must take into account all permitted uses under the new classification. Hall v. City of Durham, 88 N.C. App. 53, 362 S.E.2d 791 (1987), aff'd, 323 N.C. 293, 372 S.E.2d 564 (1988).

Provisions for amortization of non-conforming uses in zoning ordinances are valid if reasonable, and the per se rule holding all amortization provisions unconstitutional is rejected. State v. Joyner, 286 N.C. 366, 211 S.E.2d 320, appeal dismissed, 422 U.S. 1002, 95 S. Ct. 2618, 45 L. Ed. 2d 666 (1975).

Interpretation of Zoning Provisions. — With reference to zoning, the law is disposed to interpret language in the light of surrounding circumstances and to give to words their ordinary meaning and significance. Heaton v. City of Charlotte, 277 N.C. 506, 178 S.E.2d 352 (1971).

Zoning Ordinances to Be Liberally Construed in Favor of Owner. — Zoning ordinances are in derogation of the rights of private property and should be liberally construed in favor of the property owner. Clark v. Richardson, 24 N.C. App. 556, 211 S.E.2d 530 (1975).

Zoning ordinances are in derogation of the right of private property, and where exemptions appear in favor of the property owner, they must be liberally construed in favor of such owner. Heaton v. City of Charlotte, 277 N.C. 506, 178 S.E.2d 352 (1971).

Entire Ordinance to Be Considered on Review. — In examining the reasonableness of a zoning ordinance, due process dictates that the court look at the entire ordinance and not only at the provision as it applies to a particular inhabitant of the municipality. State v. Joyner, 286 N.C. 366, 211 S.E.2d 320, appeal dismissed, 422 U.S. 1002, 95 S. Ct. 2618, 45 L. Ed. 2d 666 (1975).

When Zoning Provisions Held Void for Vagueness. — A particular zoning enactment or provision thereof may be judicially declared to be inoperative and void for uncertainty, vagueness, or indefiniteness. However, the courts will not, in doubtful cases, declare a statute to be so meaningless and unintelligible as to be inoperative. Heaton v. City of Charlotte, 277 N.C. 506, 178 S.E.2d 352 (1971).

Court will not substitute its judgment for that of the legislative body charged with the primary duty and responsibility of determining whether its action is in the interest of the public health, safety, morals, or general welfare. Hence, when the most that can be said against an ordinance adopted in the proper exercise of the police power is that whether it was an unreasonable, arbitrary or unequal exercise of power is fairly debatable, the courts will not interfere. Schloss v. Jamison, 262 N.C. 108, 136 S.E.2d 691 (1964).

Controversies in respect of facts pertinent to the validity of a rezoning ordinance present questions of fact for determination by the superior court judge. Allred v. City of Raleigh, 277 N.C. 530, 178 S.E.2d 432 (1971).

IV. SPECIFIC ZONING ORDINANCES.

Ordinance Permitting Commercial Activities by Family Members in Residential District. — Provisions of a zoning ordinance which permit commercial and industrial activities within a residential district, provided such activities are carried on by members of the immediate family and not more than two persons are employed therein, does not render the ordinance void as being discriminatory, since the commercial activities permitted thereunder in a residential district are so intrinsically different from unlimited commercial and industrial activities in general as to permit their separate classification. Kinney v. Sutton, 230 N.C. 404, 53 S.E.2d 306 (1949).

Ordinance purporting to prohibit erection of a gin or mill without consent of neighboring property owners cannot be upheld. Wilcher v. Sharpe, 236 N.C. 308, 72 S.E.2d 662 (1952), commented on in 31 N.C.L. Rev. 308 (1953).

Zoning ordinance which prohibited operation of a building material salvage yard in certain districts, and which permitted a three-year period after it was adopted for the removal of such business, was not so arbitrary, unreasonable or unrelated to the general welfare of the community as to be unconstitutional by its terms; to the contrary, it represented a conscious effort on the part of the legislative body of the city to regulate the use of land throughout the city and thus promote the health, safety or general welfare of the community. State v. Joyner, 286 N.C. 366, 211 S.E.2d 320, appeal dismissed, 422 U.S. 1002, 95 S. Ct. 2618, 45 L. Ed. 2d 666 (1975).

Storage of Gasoline. — A municipal ordinance prohibiting storage of gasoline within the fire district of the city in tanks with a capacity greater than 4,400 gallons bore sufficient relationship to the public safety to come within the police power of the municipality, at least for purpose of sustaining a finding to that effect upon the hearing of an order to show cause why a temporary order restraining the violation of the ordinance should not be continued to the hearing. City of Fayetteville v. Spur Distrib. Co., 216 N.C. 596, 5 S.E.2d 838 (1939).

Ordinance that could effectively prohibit all off-premise outdoor advertising signs in the city was a proper exercise of city's police power and did not violate the plaintiff's rights under U.S. Const., Amend. I or U.S. Const., Amend. XIV. Nor was the ordinance invalid on its face as a "taking without just compensation." Whether the ordinance violated plaintiff's rights under U.S. Const., Amend. V. or U.S. Const., Amend. XIV required findings of fact to determine whether there had been an unconstitutional taking as applied to plaintiff. Georgia Outdoor Adv., Inc. v. City of Waynesville, 900 F.2d 783 (4th Cir. 1990).

Authority to Determine What Signs Will Be Permitted in Each District. — Subject to constitutional limitations, a city council has authority to determine and define legislatively what signs will be permitted in each respective zone or district. Schloss v. Jamison, 262 N.C. 108, 136 S.E.2d 691 (1964).

When rezoning property from one general use district with fixed permitted uses to another general use district with fixed permitted uses, a city council must determine that the property is suitable for all uses permitted in the new general use district, even where it has additional authority to consider a development plan in passing upon a rezoning request and to require any submitted site plan to conform therewith. Hall v. City of Durham, 323 N.C. 293, 372 S.E.2d 564, cert. denied, 323 N.C. 629, 374 S.E.2d 586 (1988).

Zoning Based on Race Invalid. — A zoning ordinance limiting the uses of property solely on the basis of race is beyond the scope of police power, since the reserved police power of the State must stop when it encroaches on the protection afforded the citizen by the federal Constitution. Clinard v. City of Winston-Salem, 217 N.C. 119, 6 S.E.2d 867, 126 A.L.R. 634 (1940).

Rezoning Held Invalid as Contract Zoning. — Where city council considered a proposed development plan, as well as collateral representations concerning adjacent property and deed restrictions controlling future use of the rezoned site, but did not determine the suitability of the land for other uses of the classification in question, the challenged rezoning constituted unlawful contract zoning. Hall v. City of Durham, 88 N.C. App. 53, 362 S.E.2d 791 (1987), aff'd, 323 N.C. 293, 372 S.E.2d 564 (1988).

Denial of a property owner's subdivision application was properly reversed because the property owner complied with the general and technical requirements of the town's subdivision ordinance since substantial evidence did not support findings regarding overcrowding of schools, increased traffic, and incompatibility with the existing neighborhood; also, remand for clarification of subjective criteria in the ordinance was reasonable. Blue Ridge Co., L.L.C. v. Town of Pineville, 188 N.C. App. 466, 655 S.E.2d 843, 2008 N.C. App. LEXIS 227 (2008).

Owner Occupancy Ordinance. — Wilmington, N.C., Land Development Code § 18-285(g), to the extent it required owner-occupancy of a property, was unconstitutional. It regulated the lawful ownership of property, rather than the use of it, and G.S. 160A-381(a), while allowing cities the power to regulate property, only allowed regulation to the extent of promoting health, safety, and general welfare principles as set forth in G.S. 160A-383. City of Wilmington v. Hill, 189 N.C. App. 173, 657 S.E.2d 670, 2008 N.C. App. LEXIS 385 (2008).

V. CONDITIONAL OR SPECIAL USE PERMITS.

Conditional or Special Use Permit Defined. — A conditional use or a special use permit is one issued for a use which the ordinance expressly permits in a designated zone upon proof that certain facts and conditions detailed in the ordinance exist. Coastal Ready-Mix Concrete Co. v. Board of Comm'rs, 299 N.C. 620, 265 S.E.2d 379, rehearing denied, 300 N.C. 562, 270 S.E.2d 106 (1980).

A "special exception" within the meaning of a zoning ordinance is one which is expressly permitted in a given zone upon proof that certain facts and conditions detailed in the ordinance exist. It is granted by the board of adjustment, after a public hearing, upon a finding that the specified conditions have been satisfied. Keiger v. Winston-Salem Bd. of Adjustment, 278 N.C. 17, 178 S.E.2d 616 (1971).

Special Use Permit Not Required Where No Power to Zone Exists. — Rocky Mount Board of Adjustment had no authority to require a special use permit on the part of the Nash-Rocky Mount Board of Education with regard to its erection of a parking lot, because a parking lot was not a building or the use of a building as that term was provided for in the 2003 version of G.S. 160A-392 applicable to the matter; therefore, the Board of Adjustment had no zoning power and no special use permit was needed. Nash-Rocky Mount Bd. of Educ. v. Rocky Mount Bd. of Adjustment, 169 N.C. App. 587, 610 S.E.2d 255, 2005 N.C. App. LEXIS 679 (2005).

Safeguards against arbitrary action by zoning boards in granting or denying special use permits are not only to be found in specific guidelines for their action. Equally important are requirements that in each instance the board (1) follow the procedures specified in the ordinance; (2) conduct its hearings in accordance with fair-trial standards; (3) base its findings of fact only upon competent, material, and substantial evidence; and (4) in allowing or denying the application, state the basic facts on which it relied with sufficient specificity to inform the parties, as well as the court, what induced its decision. Humble Oil & Ref. Co. v. Board of Aldermen, 284 N.C. 458, 202 S.E.2d 129 (1974).

In passing upon an application for a special permit, a town council may not violate at will the regulations it has established for its own procedure; it must comply with the provisions of the applicable ordinance. This requirement is necessary in order to accord due process and equal protection to applicants and to refute charges that any denial is an arbitrary discrimination against the property owner. Piney Mt. Neighborhood Ass'n v. Town of Chapel Hill, 63 N.C. App. 244, 304 S.E.2d 251 (1983).

When a town council conducts a quasi-judicial hearing to determine facts prerequisite to issuance of a permit, it can dispense with no essential element of a fair trial. The applicant must have the opportunity to give evidence, cross-examine witnesses, and inspect documents; and unsworn statements may not be used to support findings absent waiver or stipulation. In allowing or denying the application, the council must state the basic facts on which it relied with sufficient specificity to inform the parties, as well as the court, what induced its decision. Piney Mt. Neighborhood Ass'n v. Town of Chapel Hill, 63 N.C. App. 244, 304 S.E.2d 251 (1983).

Dismissal based on sovereign immunity was proper because conditional use permitting requires the exercise of substantial discretion on the part of local officials in deciding important community-wide land use policies, and therefore, is legislative and discretionary in nature. Stephenson v. Town of Garner, 136 N.C. App. 444, 524 S.E.2d 608, 2000 N.C. App. LEXIS 54 (2000).

Practice of conditional use zoning is an approved practice in North Carolina, so long as the action of the local zoning authority in accomplishing the zoning is reasonable, neither arbitrary nor unduly discriminatory, and in the public interest. Chrismon v. Guilford County, 322 N.C. 611, 370 S.E.2d 579 (1988).

Cities are not obliged to use a two-step legislative/quasi-judicial proceeding in ruling on requests for re-zoning; conditional use zoning is proper as long as the zoning is reasonable, neither arbitrary nor unduly discriminatory, and in the public interest. Massey v. City of Charlotte, 145 N.C. App. 345, 550 S.E.2d 838, 2001 N.C. App. LEXIS 637 (2001), cert. denied, 354 N.C. 219, 554 S.E.2d 342 (2001).

Principal differences between valid conditional use zoning and illegal contract zoning are related and are essentially two in number: First, valid conditional use zoning features merely a unilateral promise from the landowner to the local zoning authority as to the landowner's intended use of the land in question, while illegal contract zoning anticipates a bilateral contract in which the landowner and the zoning authority make reciprocal promises. Second, in the context of conditional use zoning, the local zoning authority maintains its independent decision-making authority, while in the contract zoning scenario, it abandons that authority by binding itself contractually with the landowner seeking a zoning amendment. Chrismon v. Guilford County, 322 N.C. 611, 370 S.E.2d 579 (1988).

It is not necessary that property rezoned to a conditional use district be available for all of the uses allowed under the corresponding general use district. Chrismon v. Guilford County, 322 N.C. 611, 370 S.E.2d 579 (1988).

Concerns about the adverse effect of a proposed development upon traffic congestion and safety are valid. Such concerns support the denial of a special use permit. Ghidorzi Constr., Inc. v. Town of Chapel Hill, 80 N.C. 438, 342 S.E.2d 545, cert. denied, 317 N.C. 703, 347 S.E.2d 41 (1986).

Denial of a special use permit should be based on findings which are supported by competent, material, and substantial evidence appearing in the record. Ghidorzi Constr., Inc. v. Town of Chapel Hill, 80 N.C. App. 438, 342 S.E.2d 545, cert. denied, 317 N.C. 703, 347 S.E.2d 41 (1986).

Where petitioners produced competent, material and substantial prima facie evidence to show their compliance with four general conditions required to obtain a special use permit needed to construct a mobile home park, and where the city council failed to make adequate findings of fact to support denial of the special use application, such action constituted "an unlawful exercise of legislative power by the Board ... in violation of Article II, Section I, of the Constitution of North Carolina." Clark v. City of Asheboro, 136 N.C. App. 114, 524 S.E.2d 46, 1999 N.C. App. LEXIS 1397 (1999).

Issuance of Special Use Permit by Board of Adjustment. — Where a municipal ordinance required the board of adjustment to issue a special use permit when it made certain affirmative findings specified in the ordinance, the board's determination of whether to issue a special use permit was not an unlawful exercise of legislative power. Kenan v. Board of Adjustment, 13 N.C. App. 688, 187 S.E.2d 496, cert. denied, 281 N.C. 314, 188 S.E.2d 897 (1972).

Spot zoning is not invalid per se, but rather, it is beyond the authority of the municipality or county and therefore void only in the absence of a clear showing of a reasonable basis therefor. Chrismon v. Guilford County, 322 N.C. 611, 370 S.E.2d 579 (1988).

Form of Spot Zoning Held Legal. — While the rezoning of two tracts from A-1 to CU-M-2, so as to allow the storage and sale of agricultural chemicals, constituted a form of spot zoning, this activity was not illegal spot zoning. Because of the substantial benefits created for the surrounding community by the rezoning and because of the close relationship between the likely uses of the rezoned property and the uses already present in the surrounding tracts, there was a clear showing of a reasonable basis for the spot zoning. Chrismon v. Guilford County, 322 N.C. 611, 370 S.E.2d 579 (1988).

Judicial review of town decisions to grant or deny conditional use permits is provided for in G.S. 160A-388(e). Coastal Ready-Mix Concrete Co. v. Board of Comm'rs, 299 N.C. 620, 265 S.E.2d 379, rehearing denied, 300 N.C. 562, 270 S.E.2d 106 (1980).

Civil Action Not Appropriate Avenue for Appeal. — Neither a trial court nor an appellate court had subject matter jurisdiction over a developer's appeal of a city council's denial of a special use permit to construct a cemetery where the proper avenue of appeal for the developer was to have petitioned for certiorari under G.S. 160A-381(c). Northfield Dev. Co. v. City of Burlington, 165 N.C. App. 885, 599 S.E.2d 921, 2004 N.C. App. LEXIS 1528 (2004), cert. denied, 359 N.C. 191, 607 S.E.2d 278 (2004).

Scope of Review of Denial of Permit. — In reviewing a municipality's decision on an application for a special use permit, the court's scope of review includes: (1) Reviewing the record for errors in law, (2) insuring that procedures specified by law in both statute and ordinance are followed, (3) insuring that appropriate due process rights of a petitioner are protected including the right to offer evidence, cross-examine witnesses, and inspect documents, (4) insuring that decisions of town boards are supported by competent, material and substantial evidence in the whole record, and (5) insuring that decisions are not arbitrary and capricious. Ghidorzi Constr., Inc. v. Town of Chapel Hill, 80 N.C. App. 438, 342 S.E.2d 545, cert. denied, 317 N.C. 703, 347 S.E.2d 41 (1986).

The question before the Court of Appeals is not whether the evidence before the superior court supported that court's order as to the special use application, but whether the evidence before the town council supported the council's action. The superior court is not the trier of fact. That is the function of the town council. Ghidorzi Constr., Inc. v. Town of Chapel Hill, 80 N.C. App. 438, 342 S.E.2d 545, cert. denied, 317 N.C. 703, 347 S.E.2d 41 (1986).

Where applicants for a conditional use permit did not show that a proposed crematorium would not be detrimental to or endanger the general welfare, they did not show that the proposed use would comply with all of a city's standards; in affirming the denial of the application, the trial court applied the proper standard of review in the nature of certiorari pursuant to G.S. 160A-381(c), and its decision was supported by substantial evidence. Butler v. City Council of Clinton, 160 N.C. App. 68, 584 S.E.2d 103, 2003 N.C. App. LEXIS 1672 (2003).

Whole Record Test. — In determining the sufficiency of the evidence supporting the town council's decision to deny an application for a special use permit, the whole record test is applied, considering not only the evidence which justifies the council's decision, but also that which fairly detracts from it. The whole record test does not allow the Court of Appeals or the superior court to replace the council's judgment as between two reasonably conflicting views. Ghidorzi Constr., Inc. v. Town of Chapel Hill, 80 N.C. App. 438, 342 S.E.2d 545, cert. denied, 317 N.C. 703, 347 S.E.2d 41 (1986).

In determining the sufficiency of the evidence to support a council's decision to issue special use permits, the court applies the whole record test which requires the examination of all competent evidence to determine if the council's decision is based upon substantial evidence. Behringer v. City of Raleigh, 107 N.C. App. 505, 421 S.E.2d 179 (1992).

County Zoning Board Exceeded Its Delegated Authority. — County zoning board exceeded its authority when it voided a mine operator's special use exception permit after finding violations, then treated the mine operator's current permit application as one for a new permit and applied the standard under a new ordinance; instead of voiding the original permit, which was issued in 1997, the board should have considered the application in light of the standards in effect prior to October of 2000, the date of the new ordinance, and had the board done so, it should have found that the mine operator met the burden when the mine operator produced a current permit from the Department of Environment, Health, and Natural Resources, Division of Land Resources for the activities contemplated and the 1997 ordinance had no other, more stringent conditions specified. Hewett v. County of Brunswick, 155 N.C. App. 138, 573 S.E.2d 688, 2002 N.C. App. LEXIS 1592 (2002).

VI. BUILDING PERMITS.

Building Inspector Must Follow Literal Provisions of Regulations. — In the issuing of building permits, the building inspector, a purely administrative agent, must follow the literal provisions of the zoning regulations. Lee v. Board of Adjustment, 226 N.C. 107, 37 S.E.2d 128 (1946).

Vested Rights Under Building Permit. — Issuance of a building permit creates no vested right to build contrary to the provisions of a subsequently enacted zoning ordinance, unless the permittee, acting in good faith, has made substantial expenditures in reliance upon the permit at a time when they did not violate declared public policy. Keiger v. Winston-Salem Bd. of Adjustment, 281 N.C. 715, 190 S.E.2d 175 (1972).

When builder obtains a permit knowing of a pending ordinance which would make authorized construction a nonconforming use and hereafter hurriedly makes expenditures in an attempt to acquire a vested right before the law can be changed, he does not act in good faith and acquires no rights under the permit. Keiger v. Winston-Salem Bd. of Adjustment, 281 N.C. 715, 190 S.E.2d 175 (1972).

Permit Could Not Be Arbitrarily Denied. — The town board could not deny the petitioners a conditional use permit where the decision was based on opinions and generalized fears, even those of a realtor, rather than on facts or other substantial evidence that the operation of an extended-stay hotel would "materially endanger the public health or safety" or that the project would "substantially injure the value of adjoining or abutting property"; although the project would increase traffic, no evidence indicated that this would mean an intensification of traffic congestion or a traffic hazard, nor were the expert opinions expressing concern about property values supported by certified appraisals or market studies. Sun Suites Holdings, L.L.C. v. Board of Aldermen, 139 N.C. App. 269, 533 S.E.2d 525, 2000 N.C. App. LEXIS 886 (2000), cert. denied, 353 N.C. 280, 546 S.E.2d 397 (2000).

Permit Could Not Be Denied Under Invalid Amendment. — An applicant's right to a permit, denied under an existing valid ordinance which entitled him to it, could not be defeated by a purported amendment which was void ab initio because it was not adopted as required by the enabling statute. Keiger v. Winston-Salem Bd. of Adjustment, 281 N.C. 715, 190 S.E.2d 175 (1972).

An ordinance which classifies mobile homes differently from modular and site-built homes is valid. The protection of property values in the zoned area is a legitimate governmental objective, and the method of construction of homes may be determined by a city governing board as affecting the price of homes. The prohibition of such buildings is rationally related to the protection of the value of other homes in the area. Duggins v. Town of Walnut Cove, 63 N.C. App. 684, 306 S.E.2d 186, cert. denied, 309 N.C. 819, 310 S.E.2d 348 (1983), appeal dismissed, 466 U.S. 946, 104 S. Ct. 2145, 80 L. Ed. 2d 532 (1984).

A town is clearly authorized by this section to regulate and restrict the location and use of any buildings or structures for residential and other purposes, including restricting the location of mobile homes. Duggins v. Town of Walnut Cove, 63 N.C. App. 684, 306 S.E.2d 186, cert. denied, 309 N.C. 819, 310 S.E.2d 348 (1983), appeal dismissed, 466 U.S. 946, 104 S. Ct. 2145, 80 L. Ed. 2d 532 (1984).

VII. CERTIORARI.

Aggrieved Party for Judicial Review. — An adjoining property owner was an aggrieved party, even though she failed to allege such, and the trial court had jurisdiction to allow her to amend her petition for certiorari, where she sought certiorari for judicial review of the zoning board's grant of a setback variance. Darnell v. Town of Franklin, 131 N.C. App. 846, 508 S.E.2d 841 (1998).

Timeliness of Certiorari Petition Is Determined by Superior Court. — Had the Legislature intended this section to contain a 30-day limit, it would have included one in the statute. As such a limit is not present in this section, the Supreme Court, must assume the Legislature intended to leave determination of the timeliness of a petition for certiorari to the superior court in which the petition is filed. White Oak Properties, Inc. v. Town of Carrboro, 313 N.C. 306, 327 S.E.2d 882 (1985).

Timeliness Depends on Circumstances. — In the absence of a designated time period within which to seek review of a decision by a board of aldermen, the superior court must determine, in its discretion, whether a petition for writ of certiorari has been filed within a reasonable time of the decision of the board of aldermen. What is a reasonable time must, in all cases, depend upon the circumstances. White Oak Properties, Inc. v. Town of Carrboro, 313 N.C. 306, 327 S.E.2d 882 (1985).

Timeliness Decided Under Equitable Doctrine of Laches. — Generally, whether a petition for certiorari has been timely filed can be decided by determining whether the petitioner's delay bars him under the equitable doctrine of laches from being afforded review. White Oak Properties, Inc. v. Town of Carrboro, 313 N.C. 306, 327 S.E.2d 882 (1985).

Section 160A-388(e) Compared. — As with this section, G.S. 160A-388(e) provides that "[e]very decision of the board [of adjustment] shall be subject to review by the superior court by proceedings in the nature of certiorari." Unlike this section, however, G.S. 160A-388(e) adds that "[a]ny petition for review by the superior court shall be filed with the clerk of superior court within 30 days after the decision of the board [of adjustment] is filed in such office as the ordinance specifies, or after a written copy thereof is delivered to every aggrieved party ... whichever is later." White Oak Properties, Inc. v. Town of Carrboro, 313 N.C. 306, 327 S.E.2d 882 (1985).

Former Chapter 160, Article 14, contained no provision for judicial review by certiorari or otherwise of the action of the legislative body of cities and towns with reference to the enactment, amendment or repeal of zoning regulations. In re Markham, 259 N.C. 566, 131 S.E.2d 329, cert. denied, 375 U.S. 931, 84 S. Ct. 332, 11 L. Ed. 2d 263 (1963).

Superior Court Sitting as Appellate Court. — In reviewing errors raised by plaintiff's petition for writ of certiorari pursuant to this section, the superior court was sitting as a court of appellate review. Batch v. Town of Chapel Hill, 326 N.C. 1, 387 S.E.2d 655, cert. denied, 496 U.S. 931, 110 S. Ct. 2631, 110 L. Ed. 2d 651 (1990).

When a superior court's jurisdiction is invoked under this section, the superior court judge sits as an appellate court, not a trial court. Estates, Inc. v. Town of Chapel Hill, 130 N.C. App. 664, 504 S.E.2d 296 (1998).

Remedies in Superior Court. — The superior court had no authority to grant an injunction where it was sitting as an appellate court in review of a quasi-judicial decision by the town council. Estates, Inc. v. Town of Chapel Hill, 130 N.C. App. 664, 504 S.E.2d 296 (1998).

Mandate of Superior Court is Judgment. — The term "judgment" as used in G.S. 1A-1-62(c) must include the mandate of a superior court when it sits as an appellate court to review the decision of a town council in granting or denying a special use permit. Estates, Inc. v. Town of Chapel Hill, 130 N.C. App. 664, 504 S.E.2d 296 (1998).

Consideration of Summary Judgment Motion on Writ of Certiorari Held Improper. — In case contesting town council's denial of plaintiff's subdivision plan, the trial court's decision to consider a summary judgment motion on a writ of certiorari was improper; however, it was proper for the motion for summary judgment to come before the trial court on the questions raised in plaintiff's complaint, which had been improperly joined with her petition for writ of certiorari. Batch v. Town of Chapel Hill, 326 N.C. 1, 387 S.E.2d 655, cert. denied, 496 U.S. 931, 110 S. Ct. 2631, 110 L. Ed. 2d 651 (1990).

§ 160A-382. Districts.

(a) For any or all these purposes, the city may divide its territorial jurisdiction into districts of any number, shape, and area that may be deemed best suited to carry out the purposes of this Part; and within those districts it may regulate and restrict the erection, construction, reconstruction, alteration, repair or use of buildings, structures, or land. Such districts may include, but shall not be limited to, general use districts, in which a variety of uses are permissible in accordance with general standards; overlay districts, in which additional requirements are imposed on certain properties within one or more underlying general or special use districts; and special use districts or conditional use districts, in which uses are permitted only upon the issuance of a special use permit or a conditional use permit and conditional zoning districts, in which site plans and individualized development conditions are imposed.

(b) Property may be placed in a special use district, conditional use district, or conditional district only in response to a petition by the owners of all the property to be included. Specific conditions applicable to these districts may be proposed by the petitioner or the city or its agencies, but only those conditions mutually approved by the city and the petitioner may be incorporated into the zoning regulations or permit requirements. Conditions and site-specific standards imposed in a conditional district shall be limited to those that address the conformance of the development and use of the site to city ordinances and an officially adopted comprehensive or other plan and those that address the impacts reasonably expected to be generated by the development or use of the site.

A statement analyzing the reasonableness of the proposed rezoning shall be prepared for each petition for a rezoning to a special or conditional use district, or a conditional district, or other small-scale rezoning.

(c) Except as authorized by the foregoing, all regulations shall be uniform for each class or kind of building throughout each district, but the regulations in one district may differ from those in other districts. (1923, c. 250, s. 2; C.S., s. 2776(s); 1931, c. 176, s. 1; 1933, c. 7; 1963, c. 1058, s. 1; 1971, c. 698, s. 1; 1973, c. 426, s. 60; 1985, c. 607, s. 1; 2005-426, s. 6(a).)

Legal Periodicals. — For comment, "Planned Unit Development and North Carolina Enabling Legislation," see 51 N.C.L. Rev. 1455 (1973).

For survey of 1979 property law, see 58 N.C.L. Rev. 1509 (1980).

For comment discussing contract zoning and conditional use zoning in North Carolina, see 68 N.C.L. Rev. 177 (1989).

CASE NOTES

Editor's Note. *— Some of the cases cited below were decided under former similar statutory provisions.*

Two of the essentials of a comprehensive zoning ordinance are: (1) it applies to all territory subject to the zoning jurisdiction of a city council, including the area beyond and surrounding the corporate limits of the city for a distance of one mile in all directions; and (2) with reference to property within a particular district or zone, all uses permissible in the zone are available as of right to the owner. Allred v. City of Raleigh, 277 N.C. 530, 178 S.E.2d 432 (1971).

The law does not require all areas of a defined class to be contiguous, but when a classification has been made, all areas in each class must be subject to the same restrictions. Decker v. Coleman, 6 N.C. App. 102, 169 S.E.2d 487 (1969).

Different areas in a municipality may be put in the same class. Decker v. Coleman, 6 N.C. App. 102, 169 S.E.2d 487 (1969).

It is not required that zoning district lines coincide with property lines, regardless of the area involved. Penny v. City of Durham, 249 N.C. 596, 107 S.E.2d 72 (1959).

To hold that zoning district lines must coincide with property lines, regardless of area involved, would be to render the act largely ineffective. Heaton v. City of Charlotte, 277 N.C. 506, 178 S.E.2d 352 (1971).

Restrictions on Use Must Be Uniform in All Areas in Same Class. — When a city adopts a zoning ordinance, restrictions on use must be uniform in all areas in a defined class or district. Decker v. Coleman, 6 N.C. App. 102, 169 S.E.2d 487 (1969).

When a classification of a zone has been made, all the areas in each class must be subject to the same restrictions. Allred v. City of Raleigh, 277 N.C. 530, 178 S.E.2d 432 (1971).

The regulations prescribed shall be uniform for each class or kind of building throughout each district, but the regulations of one district may differ from those of the others. Bizzell v. Board of Aldermen, 192 N.C. 364, 135 S.E. 58 (1926).

How Cases Determined. — In one part of a district a filling station may be noxious or offensive to the public within the purview of the ordinance and in another part it may not be; at one place it may menace the public safety and at another it may not. Conditions and probable results must be taken into account. Thus, while the board of adjustment passes on individual cases, each case is determined in the contemplation of the statute and the ordinance by a uniform rule. Harden v. City of Raleigh, 192 N.C. 395, 135 S.E. 151 (1926).

Property may not be rezoned in reliance upon representations of the applicant. Hall v. City of Durham, 88 N.C. App. 53, 362 S.E.2d 791 (1987), aff'd, 323 N.C. 293, 372 S.E.2d 564 (1988).

Rezoning may not be based on assurances that the applicant will make a specific use of the property. Hall v. City of Durham, 88 N.C. App. 53, 362 S.E.2d 791 (1987), aff'd, 323 N.C. 293, 372 S.E.2d 564 (1988).

Rezoning must take into account all permitted uses under the new classification. Hall v. City of Durham, 88 N.C. App. 53, 362 S.E.2d 791 (1987), aff'd, 323 N.C. 293, 372 S.E.2d 564 (1988).

Practice of conditional use zoning is an approved practice in North Carolina, so long as the action of the local zoning authority in accomplishing the zoning is reasonable, neither arbitrary nor unduly discriminatory, and in the public interest. Chrismon v. Guilford County, 322 N.C. 611, 370 S.E.2d 579 (1988).

Exceptions Or Decreased Standards. — There was no merit to an argument that G.S. 160A-382 did not permit exceptions or decreased standards. Rakestraw v. Town of Knightdale, 188 N.C. App. 129, 654 S.E.2d 825, 2008 N.C. App. LEXIS 69 (2008).

When Consent of Property Owners Required. — Conditional use zoning authorized by this section requires the consent of all the property owners within the area to be rezoned, and the only use which can be made of the land which is conditionally rezoned is that which is specified in the conditional use permit. Rezoning from one general use district with listed permitted uses to another general use district does not require the consent of such property owners and does not limit the future use of the property to a specific use, but allows changes from one permitted use to any other use permitted in the new zone. Hall v. City of Durham, 323 N.C. 293, 372 S.E.2d 564, cert. denied, 323 N.C. 629, 374 S.E.2d 586 (1988).

Principal differences between valid conditional use zoning and illegal contract zoning are related and are essentially two in number: First, valid conditional use zoning features merely a unilateral promise from the landowner to the local zoning authority as to the landowner's intended use of the land in question, while illegal contract zoning anticipates a bilateral contract in which the landowner and the zoning authority make reciprocal promises. Second, in the context of conditional use zoning, the local zoning authority maintains its independent decision-making authority, while in the contract zoning scenario, it abandons that authority by binding itself contractually with the landowner seeking a zoning amendment. Chrismon v. Guilford County, 322 N.C. 611, 370 S.E.2d 579 (1988).

It is not necessary that property rezoned to a conditional use district be available for all of the uses allowed under the corresponding general use district. Chrismon v. Guilford County, 322 N.C. 611, 370 S.E.2d 579 (1988).

Spot zoning is not invalid per se, but rather, it is beyond the authority of the municipality or county and therefore void only in the absence of a clear showing of a reasonable basis therefor. Chrismon v. Guilford County, 322 N.C. 611, 370 S.E.2d 579 (1988).

Spot Zoning Held Legal. — While the rezoning of two tracts from A-1 to CU-M-2, so as to allow the storage and sale of agricultural chemicals, constituted a form of spot zoning, this activity was not illegal spot zoning. Because of the substantial benefits created for the surrounding community by the rezoning and because of the close relationship between the likely uses of the rezoned property and the uses already present in the surrounding tracts, there was a clear showing of a reasonable basis for the spot zoning. Chrismon v. Guilford County, 322 N.C. 611, 370 S.E.2d 579 (1988).

Rezoning Held Invalid as Contract Zoning. — Where city council considered a proposed development plan, as well as collateral representations concerning adjacent property and deed restrictions controlling future use of the rezoned site, but did not determine the suitability of the land for other uses of the classification in question, the challenged rezoning constituted unlawful contract zoning. Hall v. City of Durham, 88 N.C. App. 53, 362 S.E.2d 791 (1987), aff'd, 323 N.C. 293, 372 S.E.2d 564 (1988).

No Zoning Power Over School's Parking Lot. — Rocky Mount Board of Adjustment had no authority to require a special use permit on the part of the Nash-Rocky Mount Board of Education with regard to its erection of a parking lot, because a parking lot was not a building or the use of a building as that term was provided for in the 2003 version of G.S. 160A-392 applicable to the matter; therefore, the Board of Adjustment had no zoning power and no special use permit was needed. Nash-Rocky Mount Bd. of Educ. v. Rocky Mount Bd. of Adjustment, 169 N.C. App. 587, 610 S.E.2d 255, 2005 N.C. App. LEXIS 679 (2005).

Applied in Allgood v. Town of Tarboro, 281 N.C. 430, 189 S.E.2d 255 (1972).

Cited in State v. Joyner, 286 N.C. 366, 211 S.E.2d 320 (1975); Harts Book Stores, Inc. v. City of Raleigh, 53 N.C. App. 753, 281 S.E.2d 761 (1981); Wenco Mgt. Co. v. Town of Carrboro, 53 N.C. App. 480, 281 S.E.2d 74 (1981); Rose v. Guilford County, 60 N.C. App. 170, 298 S.E.2d 200 (1982); Chrismon v. Guilford County, 85 N.C. App. 211, 354 S.E.2d 309 (1987); Northeast Concerned Citizens, Inc. v. City of Hickory, 143 N.C. App. 272, 545 S.E.2d 768, 2001 N.C. App. LEXIS 264 (2001); Massey v. City of Charlotte, 145 N.C. App. 345, 550 S.E.2d 838, 2001 N.C. App. LEXIS 637 (2001).

§ 160A-383. Purposes in view.

Zoning regulations shall be made in accordance with a comprehensive plan. When adopting or rejecting any zoning amendment, the governing board shall also approve a statement describing whether its action is consistent with an adopted comprehensive plan and any other officially adopted plan that is applicable, and briefly explaining why the board considers the action taken to be reasonable and in the public interest. That statement is not subject to judicial review.

The planning board shall advise and comment on whether the proposed amendment is consistent with any comprehensive plan that has been adopted and any other officially adopted plan that is applicable. The planning board shall provide a written recommendation to the governing board that addresses plan consistency and other matters as deemed appropriate by the planning board, but a comment by the planning board that a proposed amendment is inconsistent with the comprehensive plan shall not preclude consideration or approval of the proposed amendment by the governing board.

Zoning regulations shall be designed to promote the public health, safety, and general welfare. To that end, the regulations may address, among other things, the following public purposes: to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to lessen congestion in the streets; to secure safety from fire, panic, and dangers; and to facilitate the efficient and adequate provision of transportation, water, sewerage, schools, parks, and other public requirements. The regulations shall be made with reasonable consideration, among other things, as to the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such city. (1923, c. 250, s. 3; C.S., s. 2776(t); 1971, c. 698, s. 1; 2005-426, s. 7(a); 2006-259, s. 28.)

Legal Periodicals. — For comment, "Planned Unit Development and North Carolina Enabling Legislation," see 51 N.C.L. Rev. 1455 (1973).

For survey of 1979 property law, see 58 N.C.L. Rev. 1509 (1980).

For article, "Zoning for Direct Social Control," see 1982 Duke L.J. 761.

For article discussing a practical interpretation of North Carolina's comprehensive plan requirement for zoning regulations, see 7 Campbell L. Rev. 1 (1984).

CASE NOTES

Editor's Note. *— Some of the cases cited below were decided under former similar statutory provisions.*

The concept of zoning implies a restriction upon the owner's right to use a specific tract for a use profitable to him but detrimental to the value of other properties in the area, thus promoting the most appropriate use of land throughout the municipality, considered as a whole. Blades v. City of Raleigh, 280 N.C. 531, 187 S.E.2d 35 (1972); Graham Court Assocs. v. Town Council, 53 N.C. App. 543, 281 S.E.2d 418 (1981).

City Legislative Body May Not Disregard Fundamental Concepts of Zoning. — Notwithstanding that the motivation of the members of a city legislative body may be laudable, any action of that body that disregards the fundamental concepts of zoning as set forth in the enabling legislation may be arbitrary and capricious. Allred v. City of Raleigh, 277 N.C. 530, 178 S.E.2d 432 (1971).

Zoning ordinance deals basically with use, not ownership, of property. Graham Court Assocs. v. Town Council, 53 N.C. App. 543, 281 S.E.2d 418 (1981).

Zoning is the regulation by a municipality of the use of land within that municipality, and of the buildings and structures thereon, and is not regulation of the ownership of the land or structures. Graham Court Assocs. v. Town Council, 53 N.C. App. 543, 281 S.E.2d 418 (1981).

The matter of zoning is prospective because it in effect constitutes planning as to how a city or town will be developed in the future. Allred v. City of Raleigh, 7 N.C. App. 602, 173 S.E.2d 533 (1970), rev'd on other grounds, 277 N.C. 530, 178 S.E.2d 432 (1971).

A "comprehensive plan" is simply a plan which zones an entire town or city, as opposed to a limited portion thereof arbitrarily selected for zoning, in a manner which is calculated to achieve the purposes set forth by statute. Allred v. City of Raleigh, 7 N.C. App. 602, 173 S.E.2d 533 (1970), rev'd on other grounds, 277 N.C. 530, 178 S.E.2d 432 (1971).

All Permissible Uses Are Available Under Comprehensive Zoning. — One essential of a "comprehensive" zoning ordinance is that all uses permissible within a given classification are available as of right to the owner. Hall v. City of Durham, 88 N.C. App. 53, 362 S.E.2d 791 (1987), aff'd, 323 N.C. 293, 372 S.E.2d 564 (1988).

And a Means by Which a Community's Character Is Preserved. — A comprehensive zoning plan is a means by which the character of the community is to be preserved although devoting the land to its most appropriate uses. Allred v. City of Raleigh, 7 N.C. App. 602, 173 S.E.2d 533 (1970), rev'd on other grounds, 277 N.C. 530, 178 S.E.2d 432 (1971).

Ordinance itself may show that zoning is comprehensive in nature. Allred v. City of Raleigh, 7 N.C. App. 602, 173 S.E.2d 533 (1970), rev'd on other grounds, 277 N.C. 530, 178 S.E.2d 432 (1971).

As to necessity for an extrinsic written plan, see Allred v. City of Raleigh, 7 N.C. App. 602, 173 S.E.2d 533 (1970), rev'd on other grounds, 277 N.C. 530, 178 S.E.2d 432 (1971).

As to purposes for which a municipal corporation may adopt a comprehensive zoning ordinance, as set forth in former statute, see Schloss v. Jamison, 262 N.C. 108, 136 S.E.2d 691 (1964).

Spot Zoning Defined. — Spot zoning arises where a small area, usually a single lot or a few lots, surrounded by other property of a similar nature, is placed arbitrarily in a different use zone from that to which the surrounding property is made subject. Zopfi v. City of Wilmington, 273 N.C. 430, 160 S.E.2d 325 (1968); Allred v. City of Raleigh, 7 N.C. App. 602, 173 S.E.2d 533 (1970), rev'd on other grounds, 277 N.C. 530, 178 S.E.2d 432 (1971).

A zoning ordinance, or amendment, which singles out and reclassifies a relatively small tract owned by a single person and surrounded by a much larger area uniformly zoned, so as to impose upon the small tract greater restrictions than those imposed upon the larger area, or so as to relieve the small tract from restrictions to which the rest of the area is subjected, is called "spot zoning." Blades v. City of Raleigh, 280 N.C. 531, 187 S.E.2d 35 (1972).

Size of Area as Factor in Determining Existence of Spot Zoning. — While the size of an area is seldom solely determinative of the question of whether an ordinance constitutes spot zoning, it is a factor that few courts are prone to overlook. Allred v. City of Raleigh, 7 N.C. App. 602, 173 S.E.2d 533 (1970), rev'd on other grounds, 277 N.C. 530, 178 S.E.2d 432 (1971).

Spot zoning is beyond authority of municipality or county absent a clear showing that a reasonable basis exists for such distinction. Blades v. City of Raleigh, 280 N.C. 531, 187 S.E.2d 35 (1972); Lathan v. Union County Bd. of Comm'rs, 47 N.C. App. 357, 267 S.E.2d 30, cert. denied, 301 N.C. 92, 273 S.E.2d 298 (1980).

Abstention. — Even if the instant court was to assume that plaintiffs had a property interest in building an auto park on the property, issues of fact precluded the granting of summary judgment on plaintiffs' substantive due process claim; the district court did not abuse the court's discretion concluding that Burford abstention was appropriate because the case involved difficult issues of state land use policy. MLC Auto., LLC v. Town of S. Pines, 532 F.3d 269, 2008 U.S. App. LEXIS 14189 (4th Cir. 2008).

Subjection of Small Area to More Burdensome Restrictions. — When a small area is subjected, by spot zoning, to a more burdensome restriction than that applicable to surrounding property of like kind, the weight of authority is that the owner of the property so subjected to discriminatory regulation may successfully attack the validity of the ordinance. Zopfi v. City of Wilmington, 273 N.C. 430, 160 S.E.2d 325 (1968); Allred v. City of Raleigh, 7 N.C. App. 602, 173 S.E.2d 533 (1970), rev'd on other grounds, 277 N.C. 530, 178 S.E.2d 432 (1971).

Reclassification of Small Residential Area to Permit Commercial Use. — The rule denying the validity of spot zoning ordinances has been applied where a small area previously in a residential zone has been removed, by an amending ordinance, from such zone and reclassified to permit business or commercial use over the objection of adjoining owners of residential property. Zopfi v. City of Wilmington, 273 N.C. 430, 160 S.E.2d 325 (1968); Allred v. City of Raleigh, 7 N.C. App. 602, 173 S.E.2d 533 (1970), rev'd on other grounds, 277 N.C. 530, 178 S.E.2d 432 (1971).

An ordinance rezoning five acres of land from classification for single-family residences to a less restrictive classification constituted unlawful "spot zoning" where the rezoned property was surrounded by a very large area classified R-4 and extensively developed by the construction and occupancy of single-family residences, and the record disclosed no reasonable basis for granting the owner of the tract freedom from restrictions imposed upon the owners of other properties in the surrounding area. Blades v. City of Raleigh, 280 N.C. 531, 187 S.E.2d 35 (1972).

Owner Occupancy Ordinance. — Wilmington, N.C., Land Development Code § 18-285(g), to the extent it required owner-occupancy of a property, was unconstitutional. It regulated the lawful ownership of property, rather than the use of it, and G.S. 160A-381(a), while allowing cities the power to regulate property, only allowed regulation to the extent of promoting health, safety, and general welfare principles as set forth in G.S. 160A-383. City of Wilmington v. Hill, 189 N.C. App. 173, 657 S.E.2d 670, 2008 N.C. App. LEXIS 385 (2008).

Where Police Power Permits Restrictions upon Specific Tract. — The police power, upon which zoning ordinances must rest, permits restriction upon the right of the owner of a specific tract, when the legislative body has a reasonable basis to believe that it will promote the general welfare by conserving the values of other properties and encouraging the most appropriate use thereof. Blades v. City of Raleigh, 280 N.C. 531, 187 S.E.2d 35 (1972).

City's legislative body has authority to rezone property when reasonably necessary to do so in the interests of the public health, the public safety, the public morals or the public welfare. Ordinarily, the only limitation upon this legislative authority is that it may not be exercised arbitrarily or capriciously. Allred v. City of Raleigh, 277 N.C. 530, 178 S.E.2d 432 (1971).

Rezoning on Condition Disapproved. — The rezoning of residential property to a business use, on the condition that the land rezoned shall be devoted exclusively to the business use for which application to rezone was made or otherwise remain residential, constitutes zoning without regard to the public health, safety and welfare, concern for which is basic to that comprehensiveness contemplated in the enabling act. Allred v. City of Raleigh, 277 N.C. 530, 178 S.E.2d 432 (1971).

Property may not be rezoned in reliance upon representations of the applicant. Hall v. City of Durham, 88 N.C. App. 53, 362 S.E.2d 791 (1987), aff'd, 323 N.C. 293, 372 S.E.2d 564 (1988).

Rezoning may not be based on assurances that the applicant will make a specific use of the property. Hall v. City of Durham, 88 N.C. App. 53, 362 S.E.2d 791 (1987), aff'd, 323 N.C. 293, 372 S.E.2d 564 (1988).

Rezoning must take into account all permitted uses under the new classification. Hall v. City of Durham, 88 N.C. App. 53, 362 S.E.2d 791 (1987), aff'd, 323 N.C. 293, 372 S.E.2d 564 (1988).

Unlawful Contract Zoning. — A municipal ordinance rezoning a tract of land to a less restrictive R-6 classification constituted unlawful "contract zoning" where there was nothing in the record to indicate that the city council contemplated the opening of the tract to all uses permissible under the R-6 classification, and it was apparent that the city council's action was based on its approval of the applicant's plans to construct specifically described town houses on the property. Blades v. City of Raleigh, 280 N.C. 531, 187 S.E.2d 35 (1972).

Where city council considered a proposed development plan, as well as collateral representations concerning adjacent property and deed restrictions controlling future use of the rezoned site, but did not determine the suitability of the land for other uses of the classification in question, the challenged rezoning constituted unlawful contract zoning. Hall v. City of Durham, 88 N.C. App. 53, 362 S.E.2d 791 (1987), aff'd, 323 N.C. 293, 372 S.E.2d 564 (1988).

Zoning Need Not Assure Most Profitable Use of Each Tract. — This section does not contemplate that a zoning pattern must be, or should be, designed to permit each individual tract of land to be devoted to its own most profitable use, irrespective of the surrounding area. Blades v. City of Raleigh, 280 N.C. 531, 187 S.E.2d 35 (1972).

In designing zoning regulations to prevent and relieve traffic congestion it is important that streets and thoroughfares planned for an area be considered as well as those in existence. Allred v. City of Raleigh, 7 N.C. App. 602, 173 S.E.2d 533 (1970), rev'd on other grounds, 277 N.C. 530, 178 S.E.2d 432 (1971).

Rezoning Upheld. — City's decision to adopt ordinances rezoning two parcels of land was a single procedure, constituting legitimate conditional zoning, entirely consistent with act permitting city to engage in conditional zoning as a legislative act, where the zoning ordinances were adopted in accordance with a small area plan, with goals that included: creating a greater mixture of land uses; planning for future mass transit service; developing pedestrian improvements; and developing a public gathering space and a network of green spaces. Summers v. City of Charlotte, 149 N.C. App. 509, 562 S.E.2d 18, 2002 N.C. App. LEXIS 272 (2002), cert. denied, 355 N.C. 758, 566 S.E.2d 482 (2002).

Applied in Allgood v. Town of Tarboro, 281 N.C. 430, 189 S.E.2d 255 (1972); Graham v. City of Raleigh, 55 N.C. App. 107, 284 S.E.2d 742 (1981); Goforth Properties, Inc. v. Town of Chapel Hill, 71 N.C. App. 771, 323 S.E.2d 427 (1984).

Cited in Rose v. Guilford County, 60 N.C. App. 170, 298 S.E.2d 200 (1982); Sherrill v. Town of Wrightsville Beach, 76 N.C. App. 646, 334 S.E.2d 103 (1985); P.A.W. v. Town of Boone Bd. of Adjustment, 95 N.C. App. 110, 382 S.E.2d 443 (1989).

§ 160A-383.1. Zoning regulations for manufactured homes.

(a) The General Assembly finds and declares that manufactured housing offers affordable housing opportunities for low and moderate income residents of this State who could not otherwise afford to own their own home. The General Assembly further finds that some local governments have adopted zoning regulations which severely restrict the placement of manufactured homes. It is the intent of the General Assembly in enacting this section that cities reexamine their land use practices to assure compliance with applicable statutes and case law, and consider allocating more residential land area for manufactured homes based upon local housing needs.

(b) For purposes of this section, the term "manufactured home" is defined as provided in G.S. 143-145(7).

(c) A city may not adopt or enforce zoning regulations or other provisions which have the effect of excluding manufactured homes from the entire zoning jurisdiction.

(d) A city may adopt and enforce appearance and dimensional criteria for manufactured homes. Such criteria shall be designed to protect property values, to preserve the character and integrity of the community or individual neighborhoods within the community, and to promote the health, safety and welfare of area residents. The criteria shall be adopted by ordinance.

(e) In accordance with the city's comprehensive plan and based on local housing needs, a city may designate a manufactured home overlay district within a residential district. Such overlay district may not consist of an individual lot or scattered lots, but shall consist of a defined area within which additional requirements or standards are placed upon manufactured homes.

(f) Nothing in this section shall be construed to preempt or supersede valid restrictive covenants running with the land. The terms "mobile home" and "trailer" in any valid restrictive covenants running with the land shall include the term "manufactured home" as defined in this section. (1987, c. 805, s. 1.)

CASE NOTES

Federal Preemption Not Found. — A county ordinance requiring mobile homes to have siding and shingles of a type similar to standard residential construction was enacted to remove from the range of safe and satisfactorily performing materials only ones based on undesirable appearance, and left the regulation of safety and performance of roofing and siding materials to Congress and the Department of Housing and Urban Development, and thus was not preempted. CMH Mfg., Inc. v. Catawba County, 994 F. Supp. 697 (W.D.N.C. 1998).

Standing. — It was error for the trial court to dismiss plaintiff's claims based on mootness and lack of standing where property ownership was irrelevant and where the failure to rezone directly and adversely affected the plaintiff's pecuniary interest. Northfield Dev. Co. v. City of Burlington, 136 N.C. App. 272, 523 S.E.2d 743, 2000 N.C. App. LEXIS 2 (2000).

This section does not require a city to adopt Manufactured Home Overlay District. Northfield Dev. Co. v. City of Burlington, 136 N.C. App. 272, 523 S.E.2d 743, 2000 N.C. App. LEXIS 2 (2000).

Manufactured Homes Not Excluded from Entire Jurisdiction. — A city's refusal to rezone an area at plaintiff's request did not constitute a decision to preclude the use of manufactured homes in city's "entire zoning jurisdiction" in violation of subsection (c) of this section. Northfield Dev. Co. v. City of Burlington, 136 N.C. App. 272, 523 S.E.2d 743, 2000 N.C. App. LEXIS 2 (2000).

County Exceeded Statutory Authority With Regard to Zoning Regulations for Manufactured Homes. — County exceeded the power the general assembly conferred upon it with regard to zoning regulations for manufactured homes because an ordinance, as amended, did not employ appearance and dimensional criteria as intended in G.S. 153A-341.1 and G.S. 160A-383.1 when the intent of the ordinance was to increase the tax base by the elimination of housing that rapidly depreciated in value, and that wealth based criterion was neither an appearance nor dimensional criteria; G.S. 160A-383.1, as made applicable to counties by G.S. 153A-341.1, limits a county's power to enact zoning regulations for manufactured homes, and a county may not use its broad police powers as a guise to enact zoning regulations for manufactured homes inconsistent with G.S. 160A-383.1. Five C'S, Inc. v. County of Pasquotank, — N.C. App. —, 672 S.E.2d 737, 2009 N.C. App. LEXIS 152 (2009).

Cited in White v. Union County, 93 N.C. App. 148, 377 S.E.2d 93 (1989); Angel v. Truitt, 108 N.C. App. 679, 424 S.E.2d 660 (1993); Devaney v. City of Burlington, 143 N.C. App. 334, 545 S.E.2d 763, 2001 N.C. App. LEXIS 276 (2001).

§ 160A-383.2. Voluntary agricultural districts.

A city may amend the ordinances applicable within its planning jurisdiction to provide flexibility to farming operations that are located within a city or county voluntary agricultural district or enhanced voluntary agricultural district adopted under Article 61 of Chapter 106 of the General Statutes. Amendments to applicable ordinances may include provisions regarding on-farm sales, pick-your-own operations, road signs, agritourism, and other activities incident to farming. For purposes of this section, the term "farming" shall have the same meaning as set forth in G.S. 106-581.1. (2005-390, s. 7.)

§ 160A-383.3. Reasonable accommodation of amateur radio antennas.

A city ordinance based on health, safety, or aesthetic considerations that regulates the placement, screening, or height of the antennas or support structures of amateur radio operators must reasonably accommodate amateur radio communications and must represent the minimum practicable regulation necessary to accomplish the purpose of the city. A city may not restrict antennas or antenna support structures of amateur radio operators to heights of 90 feet or lower unless the restriction is necessary to achieve a clearly defined health, safety, or aesthetic objective of the city. (2007-147, s. 1.)

Editor's Note. — Session Laws 2007-147, s. 3, made this section effective October 1, 2007.

§ 160A-383.4. Local energy efficiency incentives.

(a) Land-Use Development Incentives. — Counties and municipalities, for the purpose of reducing the amount of energy consumption by new development, and thereby promoting the public health, safety, and welfare, may adopt ordinances to grant a density bonus, make adjustments to otherwise applicable development requirements, or provide other incentives to a developer or builder within the county or municipality and its extraterritorial planning jurisdiction if the developer or builder agrees to construct new development or reconstruct existing development in a manner that the county or municipality determines, based on generally recognized standards established for such purposes, makes a significant contribution to the reduction of energy consumption.

(b) Repealed by Session Laws 2009-95, s. 1, effective June 11, 2009. (2007-241, ss. 1, 2; 2008-22, s. 1; 2009-95, s. 1.)

Editor's Note. — Session Laws 2007-241, as amended by Session Laws 2008-22, ss. 1 and 2, effective June 30, 2008, now applies to 10 or more localities, and has been codified as this section at the direction of the Revisor of Statutes.

Effect of Amendments. — Session Laws 2009-95, s. 1, effective June 11, 2009, deleted subsection (b).

§ 160A-384. Method of procedure.

(a) The city council shall provide for the manner in which zoning regulations and restrictions and the boundaries of zoning districts shall be determined, established and enforced, and from time to time amended, supplemented or changed, in accordance with the provisions of this Article. The procedures adopted pursuant to this section shall provide that whenever there is a zoning map amendment, the owner of that parcel of land as shown on the county tax listing, and the owners of all parcels of land abutting that parcel of land as shown on the county tax listing, shall be mailed a notice of a public hearing on the proposed amendment by first class mail at the last addresses listed for such owners on the county tax abstracts. This notice must be deposited in the mail at least 10 but not more than 25 days prior to the date of the public hearing. Except for a city-initiated zoning map amendment, when an application is filed to request a zoning map amendment and that application is not made by the owner of the parcel of land to which the amendment would apply, the applicant shall certify to the city council that the owner of the parcel of land as shown on the county tax listing has received actual notice of the proposed amendment and a copy of the notice of public hearing. The person or persons required to provide notice shall certify to the city council that proper notice has been provided in fact, and such certificate shall be deemed conclusive in the absence of fraud.

(b) The first class mail notice required under subsection (a) of this section shall not be required if the zoning map amendment directly affects more than 50 properties, owned by a total of at least 50 different property owners, and the city elects to use the expanded published notice provided for in this subsection. In this instance, a city may elect to either make the mailed notice provided for in subsection (a) of this section or may as an alternative elect to publish notice of the hearing as required by G.S. 160A-364, but provided that each advertisement shall not be less than one-half of a newspaper page in size. The advertisement shall only be effective for property owners who reside in the area of general circulation of the newspaper which publishes the notice. Property owners who reside outside of the newspaper circulation area, according to the address listed on the most recent property tax listing for the affected property, shall be notified according to the provisions of subsection (a) of this section.

(b1) Actual notice of the proposed amendment and a copy of the notice of public hearing required under subsection (a) of this section shall be by any manner permitted under G.S. 1A-1, Rule 4(j). If notice cannot with due diligence be achieved by personal delivery, registered or certified mail, or by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2), notice may be given by publication consistent with G.S. 1A-1, Rule 4(j1). This subsection applies only to an application to request a zoning map amendment where the application is not made by the owner of the parcel of land to which the amendment would apply. This subsection does not apply to a city-initiated zoning map amendment.

(c) When a zoning map amendment is proposed, the city shall prominently post a notice of the public hearing on the site proposed for rezoning or on an adjacent public street or highway right-of-way. When multiple parcels are included within a proposed zoning map amendment, a posting on each individual parcel is not required, but the city shall post sufficient notices to provide reasonable notice to interested persons. (1923, c. 250, s. 4; C.S., s. 2776(u); 1927, c. 90; 1971, c. 698, s. 1; 1985, c. 595, s. 2; 1987, c. 807, s. 1; 1989 (Reg. Sess., 1990), c. 980, s. 1; 1993, c. 469, s. 1; 1995, c. 546, s. 1; 2005-418, s. 4(a); 2009-178, s. 2.)

Local Modification. — City of Asheboro: 1993 (Reg. Sess., 1994), c. 737, s. 1; city of Durham: 1989, c. 512, s. 1; town of Southern Pines: 1987, c. 594; town of Waynesville: 2003-3, s. 1(a) (expiring January 1, 2004).

Editor's Note. — Session Laws 1985, c. 595, which amended this section, provided that the amendment is applicable only when tax maps are available for the areas to be zoned.

Session Laws 1995, c. 546, which amended this section , in s. 2.1 provides: "Any local act in conflict with this act is repealed to the extent of the conflict."

Session Laws 2005-418, s. 14, provides: "The provisions of this act shall not be deemed to repeal or amend the validity or enforceability of any local act or charter provision previously enacted by the General Assembly."

Effect of Amendments. — Session Laws 2009-178, s. 2, effective June 26, 2009, and applicable to any application for a zoning map amendment made on or after that date, in subsection (a), added the fourth sentence, and in the fifth sentence, substituted "required to provide notice shall certify to the city council that proper notice has been provided in fact" for "mailing such notices shall certify to the City Council that fact"; and added subsection (b1).

Legal Periodicals. — For comment, "Planned Unit Development and North Carolina Enabling Legislation," see 51 N.C.L. Rev. 1455 (1973).

CASE NOTES

Editor's Note. *— Many of the cases cited below were decided under former similar statutory provisions.*

Ordinance Presumed Valid. — How a city or town shall be zoned or rezoned and how various properties shall be classified or reclassified rests with the municipal legislative body, and its judgment is presumed to be reasonable and valid and beyond judicial interference unless shown to be arbitrary, unreasonable or capricious. Allred v. City of Raleigh, 7 N.C. App. 602, 173 S.E.2d 533 (1970), rev'd on other grounds, 277 N.C. 530, 178 S.E.2d 432 (1971).

There is a presumption that the city council adopts a zoning ordinance in the proper exercise of the police power. Schloss v. Jamison, 262 N.C. 108, 136 S.E.2d 691 (1964).

A duly adopted rezoning ordinance is presumed to be valid. Allred v. City of Raleigh, 277 N.C. 530, 178 S.E.2d 432 (1971); State v. Joyner, 286 N.C. 366, 211 S.E.2d 320, appeal dismissed, 422 U.S. 1002, 95 S. Ct. 2618, 45 L. Ed. 2d 666 (1975).

Depreciation of Property Value Not Enough to Establish Invalidity. — There is a presumption that a zoning ordinance, adopted pursuant to the prescribed procedures, is valid, and the mere fact that it depreciates the value of the complainant's property is not enough to establish its invalidity. Zopfi v. City of Wilmington, 273 N.C. 430, 160 S.E.2d 325 (1968).

Burden of Establishing Invalidity. — When it is shown that a zoning ordinance has been adopted by the governing board of a municipality, there is a presumption in favor of the validity of the ordinance, and the burden is upon the complaining property owner to show its invalidity or inapplicability. Helms v. City of Charlotte, 255 N.C. 647, 122 S.E.2d 817 (1961).

A property owner who asserts the invalidity of a zoning ordinance adopted in the proper exercise of the police power has the burden of establishing its invalidity. Schloss v. Jamison, 262 N.C. 108, 136 S.E.2d 691 (1964).

A municipal zoning ordinance will be presumed to be valid, and the burden is on the complaining party to show it to be invalid. Heaton v. City of Charlotte, 277 N.C. 506, 178 S.E.2d 352 (1971).

Burden of establishing arbitrariness in zoning is on the party asserting it. Allred v. City of Raleigh, 7 N.C. App. 602, 173 S.E.2d 533 (1970), rev'd on other grounds, 277 N.C. 530, 178 S.E.2d 432 (1971).

The burden is on the complaining party to show that a duly adopted rezoning ordinance is invalid. State v. Joyner, 286 N.C. 366, 211 S.E.2d 320, appeal dismissed, 422 U.S. 1002, 95 S. Ct. 2618, 45 L. Ed. 2d 666 (1975).

Controversies in respect of facts pertinent to the validity of a rezoning ordinance present questions of fact for determination by the superior court judge. Allred v. City of Raleigh, 277 N.C. 530, 178 S.E.2d 432 (1971).

Courts Will Not Substitute Their Judgment for Legislative Body's. — When the most that can be said against a zoning ordinance is that whether it was an unreasonable, arbitrary or unequal exercise of power is fairly debatable, the courts will not interfere. In such circumstances the courts will not substitute their judgment for that of the legislative body. Helms v. City of Charlotte, 255 N.C. 647, 122 S.E.2d 817 (1961); Zopfi v. City of Wilmington, 273 N.C. 430, 160 S.E.2d 325 (1968).

The courts may not substitute their judgment for that of the legislative body concerning the wisdom of imposing restrictions upon the use of properties within that body's legislative jurisdiction. Blades v. City of Raleigh, 280 N.C. 531, 187 S.E.2d 35 (1972).

But Legislative Body May Not Disregard Fundamental Concepts of Zoning. — Notwithstanding the fact that the motivation of the members of a city legislative body may be laudable, any action of that body that disregards the fundamental concepts of zoning as set forth in the enabling legislation may be arbitrary and capricious. Allred v. City of Raleigh, 277 N.C. 530, 178 S.E.2d 432 (1971).

Courts May Inquire into Procedure and Reasonableness of Zoning. — The courts may inquire into procedures followed by a city legislative body at a hearing before it and determine whether a zoning ordinance was adopted in violation of required procedures, or is arbitrary and without reasonable basis in view of the established circumstances. Blades v. City of Raleigh, 280 N.C. 531, 187 S.E.2d 35 (1972).

City's legislative body has authority to rezone property when reasonably necessary to do so in the interests of the public health, the public safety, the public morals or the public welfare. Ordinarily, the only limitation upon this legislative authority is that it may not be exercised arbitrarily or capriciously. Allred v. City of Raleigh, 277 N.C. 530, 178 S.E.2d 432 (1971).

A city may, from time to time, amend its zoning ordinance so as to transfer an area from one use district into another, since the enactment of a zoning ordinance is not a contract by the city with property owners to maintain the zoning pattern thereby established. Blades v. City of Raleigh, 280 N.C. 531, 187 S.E.2d 35 (1972).

Notice and opportunity to be heard are

prerequisite to validity of modification of municipal zoning regulations. Walker v. Town of Elkin, 254 N.C. 85, 118 S.E.2d 1 (1961).

Notice Held Sufficient. — Notice published in a newspaper of general circulation in the municipality and county advising that changes in the zoning of described property and proposed changes in the zoning ordinance of the municipality would be discussed, inviting all persons interested in the proposed changes to be present, was sufficient to sustain a finding that notice of changes both in the zoning regulations and in zone lines had been given. Walker v. Town of Elkin, 254 N.C. 85, 118 S.E.2d 1 (1961).

The fact that complainants did not see a notice given by advertisement in a local newspaper could not affect validity of a zoning ordinance when everything required by the statute was done before its adoption. It is a matter of almost daily occurrence that rights are affected and the status of relationships is changed upon the giving of similar notice, but no one may successfully contend that acts predicated upon such notice are rendered invalid because persons affected did not see the notice in the newspaper. Helms v. City of Charlotte, 255 N.C. 647, 122 S.E.2d 817 (1961).

Notice given for public hearing was sufficient to fairly apprise those whose rights could be affected of the nature of the action, where the notice was published in the newspaper twice, and the notice stated the issues to be considered and the area to be affected. Bryan v. Raynor, 94 N.C. App. 91, 379 S.E.2d 880, cert. denied, 325 N.C. 707, 388 S.E.2d 448 (1989).

In a rezoning case, a sign stating, "Public Hearing Property Notice," and giving a telephone number for further information was sufficient under G.S. 160A-384(c); other notice methods are designed to give the public more specific information, while the posted sign is designed as part of the overall notice scheme to identify and locate the property that is the subject of the public hearing process. Rakestraw v. Town of Knightdale, 188 N.C. App. 129, 654 S.E.2d 825, 2008 N.C. App. LEXIS 69 (2008).

In the absence of fraud, under G.S. 160A-384(a), an affidavit by a town's zoning technician that she had mailed written notices was deemed conclusive that the town had complied with mail notification requirements. Rakestraw v. Town of Knightdale, 188 N.C. App. 129, 654 S.E.2d 825, 2008 N.C. App. LEXIS 69 (2008).

Safeguards against arbitrary action by zoning boards in granting or denying special use permits are not only to be found in specific guidelines for their action. Equally important are the requirements that in each instance the board (1) follow the procedures specified in the ordinance; (2) conduct its hearings in accordance with fair-trial standards; (3) base its findings of fact only upon competent, material, and substantial evidence; and (4) in allowing or denying the application, state the basic facts on which it relied with sufficient specificity to inform the parties, as well as the court, what induced its decision. Humble Oil & Ref. Co. v. Board of Aldermen, 284 N.C. 458, 202 S.E.2d 129 (1974).

Municipality Not Estopped from Enforcing Ordinance. — The fact that a municipal official issued a permit for a nonconforming use after the enactment of a zoning ordinance did not estop the municipality from enforcing the ordinance. Helms v. City of Charlotte, 255 N.C. 647, 122 S.E.2d 817 (1961).

Applied in Allgood v. Town of Tarboro, 281 N.C. 430, 189 S.E.2d 255 (1972); Sofran Corp. v. City of Greensboro, 327 N.C. 125, 393 S.E.2d 767 (1990).

Cited in George v. Town of Edenton, 294 N.C. 679, 242 S.E.2d 877 (1978); Rose v. Guilford County, 60 N.C. App. 170, 298 S.E.2d 200 (1982); Town of Kenansville v. Summerlin, 70 N.C. App. 601, 320 S.E.2d 428 (1984).

§ 160A-385. Changes.

(a) Qualified Protests.

(1) Zoning ordinances may from time to time be amended, supplemented, changed, modified or repealed. In case, however, of a qualified protest against a zoning map amendment, that amendment shall not become effective except by favorable vote of three-fourths of all the members of the city council. For the purposes of this subsection, vacant positions on the council and members who are excused from voting shall not be considered "members of the council" for calculation of the requisite supermajority.

(2) To qualify as a protest under this section, the petition must be signed by the owners of either (i) twenty percent (20%) or more of the area included in the proposed change or (ii) five percent (5%) of a 100-foot-wide buffer extending along the entire boundary of each discrete or separate area proposed to be rezoned. A street right-of-way shall not

be considered in computing the 100-foot buffer area as long as that street right-of-way is 100 feet wide or less. When less than an entire parcel of land is subject to the proposed zoning map amendment, the 100-foot buffer shall be measured from the property line of that parcel. In the absence of evidence to the contrary, the city may rely on the county tax listing to determine the "owners" of potentially qualifying areas.

(3) The foregoing provisions concerning protests shall not be applicable to any amendment which initially zones property added to the territorial coverage of the ordinance as a result of annexation or otherwise, or to an amendment to an adopted (i) special use district, (ii) conditional use district, or (iii) conditional district if the amendment does not change the types of uses that are permitted within the district or increase the approved density for residential development, or increase the total approved size of nonresidential development, or reduce the size of any buffers or screening approved for the special use district, conditional use district, or conditional district.

(b) Amendments in zoning ordinances shall not be applicable or enforceable without consent of the owner with regard to buildings and uses for which either (i) building permits have been issued pursuant to G.S. 160A-417 prior to the enactment of the ordinance making the change or changes so long as the permits remain valid and unexpired pursuant to G.S. 160A-418 and unrevoked pursuant to G.S. 160A-422 or (ii) a vested right has been established pursuant to G.S. 160A-385.1 and such vested right remains valid and unexpired pursuant to G.S. 160A-385.1. (1923, c. 250, s. 5; C.S., s. 2776(v); 1959, c. 434, s. 1; 1965, c. 864, s. 1; 1971, c. 698, s. 1; 1977, c. 912, s. 7; 1985, c. 540, s. 2; 1989 (Reg. Sess., 1990), c. 996, s. 1; 1991, c. 512, s. 4; 2005-418, s. 5.)

Local Modification. — City of Charlotte: 1983 (Reg. Sess., 1984), c. 955; city of Gastonia: 1983, c. 176; city of Rockingham: 2001-48.

Editor's Note. — Session Laws 2005-418, s. 14, provides: "The provisions of this act shall not be deemed to repeal or amend the validity or enforceability of any local act or charter provision previously enacted by the General Assembly."

Legal Periodicals. — For comment, "Planned Unit Development and North Carolina Enabling Legislation," see 51 N.C.L. Rev. 1455 (1973).

For article discussing North Carolina special exception and zoning amendment cases, see 53 N.C.L. Rev. 925 (1975).

For note on historic district zoning, see 16 Wake Forest L. Rev. 495 (1980).

For note, "Policing the Parlor and the First Amendment — City of Renton v. Playtime Theatres, Inc.," see 22 Wake Forest L. Rev. 673 (1987).

CASE NOTES

I. In General.
II. Protests.

I. IN GENERAL.

Editor's Note. — *Some of the cases cited below were decided under former similar statutory provisions.*

Applicability of 1985 Amendment. — The 1985 amendment to this section did not apply to case in which town issued its certificate to petitioner on June 3, 1982, and amendment to town's zoning ordinance was adopted June 14, 1982, more than three years before the effective date of the amendment. Issuance of Cama Minor Dev. Permit No. 82-0010 v. Town of Bath, 82 N.C. App. 32, 345 S.E.2d 699 (1986).

Rezoning is a legislative act, whereas a proceeding to grant a variance or special use permit is quasi-judicial in nature. Sherrill v. Town of Wrightsville Beach, 81 N.C. App. 369, 344 S.E.2d 357, cert. denied and appeal dismissed, 318 N.C. 417, 349 S.E.2d 600 (1986).

As to showing necessity to invalidate zoning ordinance on constitutional grounds, see Sherrill v. Town of Wrightsville Beach, 81 N.C. App. 369, 344 S.E.2d 357, cert. denied and appeal dismissed, 318 N.C. 417, 349 S.E.2d 600 (1986).

The enactment of a zoning ordinance is not a contract with the property owners of the city and confers upon them no vested right to have the ordinance remain forever in force or to demand that the boundaries of each zone or the uses to be made of property in each zone remain as declared in the original ordinance. Such legislation by the city may be repealed in its entirety, or amended as the city's legislative body determines from time to time to be in the best interests of the public, subject only to the limitations of the enabling statute and the limitations of the Constitution. Zopfi v. City of Wilmington, 273 N.C. 430, 160 S.E.2d 325 (1968).

A comprehensive zoning ordinance does not constitute a contract between a municipality and the property owners which precludes the municipality from changing the boundaries if at a later date it deems a change to be desirable, nor does it vest in any property owner the right that the restrictions imposed by it upon his property or the property of others should remain unaltered. Allgood v. Town of Tarboro, 281 N.C. 430, 189 S.E.2d 255 (1972).

A city may, from time to time, amend its zoning ordinance so as to transfer an area from one use district into another, since the enactment of a zoning ordinance is not a contract by the city with property owners to maintain the zoning pattern thereby established. Blades v. City of Raleigh, 280 N.C. 531, 187 S.E.2d 35 (1972).

A city's legislative body has authority to rezone property when it is reasonably necessary to do so in the interests of the public health, the public safety, the public morals or the public welfare. Ordinarily, the only limitation upon this legislative authority is that it may not be exercised arbitrarily or capriciously. Allred v. City of Raleigh, 277 N.C. 530, 178 S.E.2d 432 (1971).

Subject to Enabling Act and Constitutional Limitations. — Zoning regulations may be amended or changed when the action is authorized by the enabling statute and does not contravene constitutional limitations on the zoning power. Allgood v. Town of Tarboro, 281 N.C. 430, 189 S.E.2d 255 (1972).

A municipality's authority to enact and amend zoning ordinances is subject to the limitations imposed by the enabling statute and by the Constitution. These limitations forbid arbitrary and unduly discriminating interference with property rights in the exercise of such power. Thus, a zoning ordinance or an amendment thereto which is not adopted in accordance with the enabling statute is invalid and ineffective. Keiger v. Winston-Salem Bd. of Adjustment, 281 N.C. 715, 190 S.E.2d 175 (1972).

Ordinances enacted under this section must relate rationally to valid police power objective of promoting the health, safety, morals, or general welfare of the public. Wenco Mgt. Co. v. Town of Carrboro, 53 N.C. App. 480, 281 S.E.2d 74 (1981).

Arbitrary and Unduly Discriminatory Interference Not Permitted. — Zoning regulations may be amended or changed, but constitutional limitations forbid arbitrary and unduly discriminatory interference with property rights in the exercise of such power. Allgood v. Town of Tarboro, 281 N.C. 430, 189 S.E.2d 255 (1972).

Towns exercising authority pursuant to this section are subject to constitutional limitations against arbitrary and unduly discriminatory interference with the rights of property owners. Wenco Mgt. Co. v. Town of Carrboro, 53 N.C. App. 480, 281 S.E.2d 74 (1981).

Vested Rights Under Building Permit. — Issuance of a building permit creates no vested right to build contrary to the provisions of a subsequently enacted zoning ordinance, unless the permittee, acting in good faith, has made substantial expenditures in reliance upon the permit at a time when they did not violate declared public policy. Keiger v. Winston-Salem Bd. of Adjustment, 281 N.C. 715, 190 S.E.2d 175 (1972).

When, at the time a builder obtains a permit, he has knowledge of a pending ordinance which would make the authorized construction a nonconforming use and thereafter hurriedly makes expenditures in an attempt to acquire a vested right before the law can be changed, he does not act in good faith and acquires no rights under the permit. Keiger v. Winston-Salem Bd. of Adjustment, 281 N.C. 715, 190 S.E.2d 175 (1972).

Plaintiffs acquired vested rights under this section by virtue of the issuance of building permit by town, which the North Carolina General Assembly prohibited interference with by subsequent governmental action. Browning-Ferris Indus. of S. Atl., Inc. v. Wake County, 905 F. Supp. 312 (E.D.N.C. 1995).

Vested Rights Under Common Law. — Regardless of whether subsection (b) and G.S. 160A-385.1 were applicable, under North Carolina common law, plaintiffs' rights to develop tract of land had vested where plaintiffs incurred substantial expenditures in reliance on site plan approval and the issuance of building permit by town, and plaintiffs' efforts following the site plan approval were undertaken in good faith and under reasonable reliance on the validity of the approvals they had been granted. Browning-Ferris Indus. of S. Atl., Inc. v. Wake County, 905 F. Supp. 312 (E.D.N.C. 1995).

City Legislative Body May Not Disregard Fundamental Concepts of Zoning. — Notwithstanding that the motivation of the members of a city legislative body may be laudable, any action of that body that disregards the fundamental concepts of zoning as set forth in the enabling legislation may be arbitrary and capricious. Allred v. City of Raleigh, 277 N.C. 530, 178 S.E.2d 432 (1971).

Amendment Need Not Accomplish All Purposes Specified in Enabling Act. — It is not required that an amendment to a zoning ordinance accomplish or contribute specifically to the accomplishment of all of the purposes specified in the enabling act. It is sufficient that the legislative body of the city had reasonable ground upon which to conclude that one or more of those purposes would be accomplished or aided by the amending ordinance. Zopfi v. City of Wilmington, 273 N.C. 430, 160 S.E.2d 325 (1968).

But Tract Must Be Suitable for All Uses Permitted Under New Classification. — The zoning of a tract of land may be changed from a residential classification to a less restrictive residential classification only if and when its location and the surrounding circumstances are such that the property should be made available for all uses permitted in the less restrictive district. Allred v. City of Raleigh, 277 N.C. 530, 178 S.E.2d 432 (1971).

Rezoning must be effected by exercise of legislative power rather than special arrangements with the owner of a particular tract or parcel of land. Allred v. City of Raleigh, 277 N.C. 530, 178 S.E.2d 432 (1971).

Rezoning on consideration of assurances that a particular tract or parcel will be developed in accordance with restricted approved plans is not a permissible ground for placing the property in a zone where restrictions of the nature prescribed are not otherwise required or contemplated. Allred v. City of Raleigh, 277 N.C. 530, 178 S.E.2d 432 (1971).

The rezoning of residential property to a business use on condition that the land rezoned shall be devoted exclusively to the business use for which application to rezone was made, or otherwise remain residential, constitutes zoning without regard to the public health, safety and welfare, concern for which is basic to that comprehensiveness contemplated in the enabling act. Allred v. City of Raleigh, 277 N.C. 530, 178 S.E.2d 432 (1971).

Determining Validity of Amending Ordinance. — The basic rule to determine the validity of an amending ordinance is the same rule used to determine the validity of the original ordinance. The legislative body must act in good faith. It cannot act arbitrarily or capriciously. If the conditions existing at the time of the proposed change are such as would have originally justified the proposed action, the legislative body has the power to act. Allred v. City of Raleigh, 7 N.C. App. 602, 173 S.E.2d 533 (1970), rev'd on other grounds, 277 N.C. 530, 178 S.E.2d 432 (1971).

Inquiry Is Whether Amendment Is Beyond Legislative Power of City. — The relevant inquiry is always whether the amending ordinance is beyond the legislative power of the city. If it is not, the area rezoned becomes a legitimate part of the original comprehensive zoning plan of the city. Allred v. City of Raleigh, 7 N.C. App. 602, 173 S.E.2d 533 (1970), rev'd on other grounds, 277 N.C. 530, 178 S.E.2d 432 (1971).

Effect of Unlawful Amending Ordinance. — If the amending ordinance is beyond the legislative power of the city, whether for the reason that it constitutes spot zoning or on some other ground, its adoption does not remove the designated area from the effect of the comprehensive zoning ordinance previously enacted. In that event, the proposed use remains unlawful, and the right of owners of adjoining property to enjoin such use is not affected by the amending ordinance. Zopfi v. City of Wilmington, 273 N.C. 430, 160 S.E.2d 325 (1968).

Permit May Not Be Denied Under Invalid Amendment. — An applicant's right to a permit, denied under an existing valid ordinance which entitled him to it, may not be defeated by a purported amendment which was void ab initio because it was not adopted as required by the enabling statute. Keiger v. Winston-Salem Bd. of Adjustment, 281 N.C. 715, 190 S.E.2d 175 (1972).

Burden on Complaining Party to Show Invalidity. — An amendment to a municipal zoning ordinance is presumed to be valid and the burden is on the complaining party to show its invalidity. Allgood v. Town of Tarboro, 281 N.C. 430, 189 S.E.2d 255 (1972).

Controversies in respect of facts pertinent to the validity of a rezoning ordinance present questions of fact for determination by the superior court judge. Allred v. City of Raleigh, 277 N.C. 530, 178 S.E.2d 432 (1971).

As to controlling effect of former similar section over a municipal ordinance, see Eldridge v. Mangum, 216 N.C. 532, 5 S.E.2d 721 (1939).

Applied in Unruh v. City of Asheville, 97 N.C. App. 287, 388 S.E.2d 235 (1990); Sofran Corp. v. City of Greensboro, 327 N.C. 125, 393 S.E.2d 767 (1990).

Cited in Rose v. Guilford County, 60 N.C. App. 170, 298 S.E.2d 200 (1982); Hall v. City of Durham, 88 N.C. App. 53, 362 S.E.2d 791 (1987); Hall v. City of Durham, 323 N.C. 293, 372 S.E.2d 564 (1988); Molamphy v. Town of S. Pines, — F. Supp. 2d —, 2004 U.S. Dist. LEXIS 3594 (M.D.N.C. Mar. 3, 2004); Litvak v. Smith, 180 N.C. App. 202, 636 S.E.2d 327, 2006 N.C. App. LEXIS 2256 (2006); Sandy Mush Props. v. Rutherford County, 181 N.C. App. 224, 638 S.E.2d 557, 2007 N.C. App. LEXIS 87 (2007).

II. PROTESTS.

"Lot". — The context of this section indicates that the word "lot" has its common and ordinary meaning. Heaton v. City of Charlotte, 277 N.C. 506, 178 S.E.2d 352 (1971).

"Immediately Adjacent". — "Immediately adjacent" means "adjoining" or "abutting." This interpretation creates an area easily determinable, which lends itself to definite calculations of the percentage required to invoke the provisions of the statute. Heaton v. City of Charlotte, 277 N.C. 506, 178 S.E.2d 352 (1971).

"Directly Opposite". — "Directly opposite" means those tracts of land on opposite sides of the street with only the street intervening. Heaton v. City of Charlotte, 277 N.C. 506, 178 S.E.2d 352 (1971).

Property of Protestants Held Not "Directly Opposite". — Where a zoning ordinance, passed by a majority vote of the city council, rezoned applicant's property lying more than 150 feet from the street, but left the zoning regulations unchanged as to applicant's property abutting the street to a depth of 150 feet therefrom, and owners of more than 20 percent of the footage on the opposite side of the street from applicant's property had protested the change, the property of those protesting did not lie "directly opposite" the property rezoned within the purview of this section, and therefore it was not required that the zoning ordinance be passed by three fourths of the members of the city council. Penny v. City of Durham, 249 N.C. 596, 107 S.E.2d 72 (1959).

Persons Entitled to Invoke Protest Provisions. — In order for plaintiffs to invoke the protest provisions of this section, they must own 20 percent or more of the area extending 100 feet from the rezoned tract. Heaton v. City of Charlotte, 277 N.C. 506, 178 S.E.2d 352 (1971).

The protest provision of this section extends to the owners of 20 percent or more of each of the areas of the lots on either side of, and extending 100 feet from any area included in proposed changes or amendments of municipal zoning ordinances. Heaton v. City of Charlotte, 277 N.C. 506, 178 S.E.2d 352 (1971).

The owners of lots immediately outside of (within 100 feet) or adjoining the boundary line of the property to be altered are the parties most directly affected by the alteration and therefore, most logically are the owners "of the area of the lots" intended by the legislature to qualify as protestants. Heaton v. City of Charlotte, 277 N.C. 506, 178 S.E.2d 352 (1971).

Where city proposed to amend zoning ordinance to eliminate nonconforming outdoor signs, the group of lot owners included in the proposed change was limited to those owners who had existing, nonconforming signs at the time the ordinance was announced; because city failed to meet its duty under Unruh v. City of Ashville, 97 N.C. App. 287, 388 S.E.2d 235 (1990), to determine whether at least 20 percent of this group timely filed protest petitions, the amendment, enacted by a simple majority, was invalid. Morris Communs. Corp. v. City of Asheville, 356 N.C. 103, 565 S.E.2d 70, 2002 N.C. LEXIS 546 (2002).

Creation of Buffer Zone by Applicant to Avoid Necessity of Larger Than Majority Vote. — Where an applicant for a zoning change seeks to avoid the necessity of a larger than majority vote by creating a buffer zone of 100 feet between that portion of his property sought to be rezoned and the lands of adjacent property owners, such action is valid and avoids the requirement of such larger vote. Heaton v. City of Charlotte, 277 N.C. 506, 178 S.E.2d 352 (1971).

Notice and Public Hearing in Adoption or Amendment of Zoning Ordinances. — The general rule, as applied to former Article 14 of Chapter 160, was that there had to be compliance with the statutory requirements of notice and public hearing in order to adopt or amend zoning ordinances. Heaton v. City of Charlotte, 277 N.C. 506, 178 S.E.2d 352 (1971).

Further Hearing Not Required for Insubstantial Alterations in Initial Proposal. — No further notice or hearing is required after a properly advertised and properly conducted public hearing when the alteration of the initial proposal is insubstantial. Heaton v. City of Charlotte, 277 N.C. 506, 178 S.E.2d 352 (1971).

Or Where Notice and Hearing Were Broad Enough to Indicate Possibility of Changes. — Additional notice and public hearing ordinarily will not be required when the initial notice is broad enough to indicate the possibility of substantial change and substantial changes are made of the same fundamental character as contained in the notice, such changes resulting from objections, debate, and discussion at the properly noticed initial hearing. Heaton v. City of Charlotte, 277 N.C. 506, 178 S.E.2d 352 (1971).

Additional Notice and Hearing Required for Substantial Alterations. — If the ordinance or amendment as finally adopted contains alterations substantially different (amounting to a new proposal) from those originally advertised and heard, there must be additional notice and opportunity for additional hearing. Heaton v. City of Charlotte, 277 N.C. 506, 178 S.E.2d 352 (1971).

Alteration Favorable to Complainants Not Substantial. — Alteration of the initial proposal will not be deemed substantial when it results in changes favorable to the complaining parties. Heaton v. City of Charlotte, 277 N.C. 506, 178 S.E.2d 352 (1971).

Permit issued to respondent was not a building permit under subsection (b) although the zoning administrator stated that the permit that was issued to respondent was the equivalent of a building permit where the permit did not contain the compliance provision required by G.S. 160A-417 and in the notice sent to adjoining property owners, the zoning administrator referred to respondent's permit as a "zoning permit." Simpson v. City of Charlotte, 115 N.C. App. 51, 443 S.E.2d 772 (1994).

Town Lacked the Authority to Consider Untimely Protest Petitions. — In a request for rezoning and a special use permit, a town lacked the authority to consider protest petitions that were untimely under G.S. 160A-386; where the town was unable to determine which petitions were timely filed, a super-majority vote was not required, and since a simple majority of the town board voted for a rezoning, the property was rezoned. Coleman v. Town of Hillsborough, 173 N.C. App. 560, 619 S.E.2d 555, 2005 N.C. App. LEXIS 2117 (2005).

§ 160A-385.1. Vested rights.

(a) The General Assembly finds and declares that it is necessary and desirable, as a matter of public policy, to provide for the establishment of certain vested rights in order to ensure reasonable certainty, stability, and fairness in the land-use planning process, secure the reasonable expectations of landowners, and foster cooperation between the public and private sectors in the area of land-use planning. Furthermore, the General Assembly recognizes that city approval of land-use development typically follows significant landowner investment in site evaluation, planning, development costs, consultant fees, and related expenses.

The ability of a landowner to obtain a vested right after city approval of a site specific development plan or a phased development plan will preserve the prerogatives and authority of local elected officials with respect to land-use matters. There will be ample opportunities for public participation and the public interest will be served. These provisions will strike an appropriate balance between private expectations and the public interest, while scrupulously protecting the public health, safety, and welfare.

(b) Definitions.

(1) "Landowner" means any owner of a legal or equitable interest in real property, including the heirs, devisees, successors, assigns, and personal representative of such owner. The landowner may allow a person holding a valid option to purchase to act as his agent or representative for purposes of submitting a proposed site specific development plan or a phased development plan under this section, in the manner allowed by ordinance.

(2) "City" shall have the same meaning as set forth in G.S. 160A-1(2).

(3) "Phased development plan" means a plan which has been submitted to a city by a landowner for phased development which shows the type and intensity of use for a specific parcel or parcels with a lesser degree of certainty than the plan determined by the city to be a site specific development plan.

(4) "Property" means all real property subject to zoning regulations and restrictions and zone boundaries by a city.

(5) "Site specific development plan" means a plan which has been submitted to a city by a landowner describing with reasonable certainty the type and intensity of use for a specific parcel or parcels of property. Such plan may be in the form of, but not be limited to, any of the following plans or approvals: A planned unit development plan, a subdivision plat, a preliminary or general development plan, a conditional or special use permit, a conditional or special use district zoning plan, or any other land-use approval designation as may be utilized by a city. Unless otherwise expressly provided by the city, such a plan shall include the approximate boundaries of the site; significant topographical and other natural features effecting development of the site; the approximate location on the site of the proposed buildings, structures, and other improvements; the approximate dimensions,

including height, of the proposed buildings and other structures; and the approximate location of all existing and proposed infrastructure on the site, including water, sewer, roads, and pedestrian walkways. What constitutes a site specific development plan under this section that would trigger a vested right shall be finally determined by the city pursuant to an ordinance, and the document that triggers such vesting shall be so identified at the time of its approval. However, at a minimum, the ordinance to be adopted by the city shall designate a vesting point earlier than the issuance of a building permit. A variance shall not constitute a site specific development plan, and approval of a site specific development plan with the condition that a variance be obtained shall not confer a vested right unless and until the necessary variance is obtained. Neither a sketch plan nor any other document which fails to describe with reasonable certainty the type and intensity of use for a specified parcel or parcels of property may constitute a site specific development plan.

(6) "Vested right" means the right to undertake and complete the development and use of property under the terms and conditions of an approved site specific development plan or an approved phased development plan.

(c) Establishment of vested right.

A vested right shall be deemed established with respect to any property upon the valid approval, or conditional approval, of a site specific development plan or a phased development plan, following notice and public hearing by the city with jurisdiction over the property. Such vested right shall confer upon the landowner the right to undertake and complete the development and use of said property under the terms and conditions of the site specific development plan or the phased development plan including any amendments thereto. A city may approve a site specific development plan or a phased development plan upon such terms and conditions as may reasonably be necessary to protect the public health, safety, and welfare. Such conditional approval shall result in a vested right, although failure to abide by such terms and conditions will result in a forfeiture of vested rights. A city shall not require a landowner to waive his vested rights as a condition of developmental approval. A site specific development plan or a phase development plan shall be deemed approved upon the effective date of the city's action or ordinance relating thereto.

(d) Duration and termination of vested right.

(1) A right which has been vested as provided for in this section shall remain vested for a period of two years. This vesting shall not be extended by any amendments or modifications to a site specific development plan unless expressly provided by the city.

(2) Notwithstanding the provisions of subsection (d)(1), a city may provide that rights shall be vested for a period exceeding two years but not exceeding five years where warranted in light of all relevant circumstances, including, but not limited to, the size and phasing of development, the level of investment, the need for the development, economic cycles, and market conditions. These determinations shall be in the sound discretion of the city.

(3) Notwithstanding the provisions of (d)(1) and (d)(2), the city may provide by ordinance that approval by a city of a phased development plan shall vest the zoning classification or classifications so approved for a period not to exceed five years. The document that triggers such vesting shall be so identified at the time of its approval. The city still may require the landowner to submit a site specific development plan for approval by the city with respect to each phase or phases in order to obtain final approval to develop within the restrictions of the vested

zoning classification or classifications. Nothing in this section shall be construed to require a city to adopt an ordinance providing for vesting of rights upon approval of a phased development plan.

(4) Following approval or conditional approval of a site specific development plan or a phased development plan, nothing in this section shall exempt such a plan from subsequent reviews and approvals by the city to ensure compliance with the terms and conditions of the original approval, provided that such reviews and approvals are not inconsistent with said original approval. Nothing in this section shall prohibit the city from revoking the original approval for failure to comply with applicable terms and conditions of the approval or the zoning ordinance.

(5) Upon issuance of a building permit, the provisions of G.S. 160A-418 and G.S. 160A-422 shall apply, except that a permit shall not expire or be revoked because of the running of time while a vested right under this section is outstanding.

(6) A right which has been vested as provided in this section shall terminate at the end of the applicable vesting period with respect to buildings and uses for which no valid building permit applications have been filed.

(e) Subsequent changes prohibited; exceptions.

(1) A vested right, once established as provided for in this section, precludes any zoning action by a city which would change, alter, impair, prevent, diminish, or otherwise delay the development or use of the property as set forth in an approved site specific development plan or an approved phased development plan, except:

a. With the written consent of the affected landowner;

b. Upon findings, by ordinance after notice and a public hearing, that natural or man-made hazards on or in the immediate vicinity of the property, if uncorrected, would pose a serious threat to the public health, safety, and welfare if the project were to proceed as contemplated in the site specific development plan or the phased development plan;

c. To the extent that the affected landowner receives compensation for all costs, expenses, and other losses incurred by the landowner, including, but not limited to, all fees paid in consideration of financing, and all architectural, planning, marketing, legal, and other consultant's fees incurred after approval by the city, together with interest thereon at the legal rate until paid. Compensation shall not include any diminution in the value of the property which is caused by such action;

d. Upon findings, by ordinance after notice and a hearing, that the landowner or his representative intentionally supplied inaccurate information or made material misrepresentations which made a difference in the approval by the city of the site specific development plan or the phased development plan; or

e. Upon the enactment or promulgation of a State or federal law or regulation which precludes development as contemplated in the site specific development plan or the phased development plan, in which case the city may modify the affected provisions, upon a finding that the change in State or federal law has a fundamental effect on the plan, by ordinance after notice and a hearing.

(2) The establishment of a vested right shall not preclude the application of overlay zoning which imposes additional requirements but does not affect the allowable type or intensity of use, or ordinances or regulations which are general in nature and are applicable to all property

subject to land-use regulation by a city, including, but not limited to, building, fire, plumbing, electrical, and mechanical codes. Otherwise applicable new regulations shall become effective with respect to property which is subject to a site specific development plan or a phased development plan upon the expiration or termination of the vesting rights period provided for in this section.

(3) Notwithstanding any provision of this section, the establishment of a vested right shall not preclude, change or impair the authority of a city to adopt and enforce zoning ordinance provisions governing nonconforming situations or uses.

(f) Miscellaneous provisions.

(1) A vested right obtained under this section is not a personal right, but shall attach to and run with the applicable property. After approval of a site specific development plan or a phased development plan, all successors to the original landowner shall be entitled to exercise such rights.

(2) Nothing in this section shall preclude judicial determination, based on common law principles or other statutory provisions, that a vested right exists in a particular case or that a compensable taking has occurred. Except as expressly provided in this section, nothing in this section shall be construed to alter the existing common law.

(3) In the event a city fails to adopt an ordinance setting forth what constitutes a site specific development plan triggering a vested right, a landowner may establish a vested right with respect to property upon the approval of a zoning permit, or otherwise may seek appropriate relief from the Superior Court Division of the General Court of Justice. (1989 (Reg. Sess., 1990), c. 996, s. 2.)

Extension of Permits. — Session Laws 2009-406, ss. 1 through 5.1, as amended by Session Laws 2009-484, s. 5.1, 2009-550, s. 5.2, and 2009-572, s. 1-3, provides: "SECTION 1. This act shall be known and may be cited as the 'Permit Extension Act of 2009.'

"SECTION 2. The General Assembly makes the following findings:

"(1) There exists a state of economic emergency in the State of North Carolina and the nation, which has drastically affected various segments of the North Carolina economy, but none as severely as the State's banking, real estate, and construction sectors.

"(2) The real estate finance sector of the economy is in severe decline due to the creation, bundling, and widespread selling of leveraged securities, such as credit default swaps, and due to excessive defaults on sub-prime mortgages and the resultant foreclosures on a vast scale, thereby widening the mortgage finance crisis. The extreme tightening of lending standards for home buyers and other real estate borrowers has reduced access to the capital markets.

"(3) As a result of the crisis in the real estate finance sector of the economy, real estate developers and redevelopers, including home builders, and commercial, office, and industrial developers, have experienced an industry-wide decline, including reduced demand, cancelled orders, declining sales and rentals, price reductions, increased inventory, fewer buyers who qualify to purchase homes, layoffs, and scaled back growth plans.

"(4) The process of obtaining planning board and zoning board of adjustment approvals for subdivisions, site plans, and variances can be difficult, time consuming, and expensive, both for private applicants and government bodies.

"(5) The process of obtaining the myriad of other government approvals, such as wetlands permits, treatment works approvals, on-site wastewater disposal permits, stream encroachment permits, flood hazard area permits, highway access permits, and numerous waivers and variances, can be difficult and expensive; further, changes in the law can render these approvals, if expired or lapsed, difficult to renew or reobtain.

"(6) County and municipal governments, including local sewer and water authorities, obtain permits and approvals from State government agencies, particularly the Department of Environment and Natural Resources, which permits and approvals may expire or lapse due to the state of the economy and the inability of both the public sector and the private sector to proceed with projects authorized by the permit or approval.

"(7) County and municipal governments also obtain determinations of master plan consistency, conformance, or endorsement with State or regional plans, from State and regional government entities that may expire or lapse without implementation due to the state of the economy.

"(8) The current national recession has severely weakened the building industry, and many landowners and developers are seeing their life's work destroyed by the lack of credit and dearth of buyers and tenants due to the crisis in real estate financing and the building industry, uncertainty over the state of the economy, and increasing levels of unemployment in the construction industry.

"(9) The construction industry and related trades are sustaining severe economic losses, and the lapsing of government development approvals would exacerbate, if not addressed, those losses.

"(10) Financial institutions that lent money to property owners, builders, and developers are experiencing erosion of collateral and depreciation of their assets as permits and approvals expire, and the extension of these permits and approvals is necessary to maintain the value of the collateral and the solvency of financial institutions throughout the State.

"(11) Due to the current inability of builders and their purchasers to obtain financing under existing economic conditions, more and more once-approved permits are expiring or lapsing, and, as these approvals lapse, lenders must reappraise and thereafter substantially lower real estate valuations established in conjunction with approved projects, thereby requiring the reclassification of numerous loans, which, in turn, affects the stability of the banking system and reduces the funds available for future lending, thus creating more severe restrictions on credit and leading to a vicious cycle of default.

"(12) As a result of the continued downturn of the economy and the continued expiration of approvals that were granted by State and local governments, it is possible that thousands of government actions will be undone by the passage of time.

"(13) Obtaining an extension of an approval pursuant to existing statutory or regulatory provisions can be both costly in terms of time and financial resources and insufficient to cope with the extent of the present financial conditions; moreover, the costs imposed fall on the public as well as the private sector.

"(14) It is the purpose of this act to prevent the wholesale abandonment of already approved projects and activities due to the present unfavorable economic conditions by tolling the term of these approvals for a finite period of time as the economy improves, thereby preventing a waste of public and private resources.

"SECTION 3. Definitions. — As used in this act, the following definitions apply:

"(1) Development approval. — Any of the following approvals issued by the State, any agency or subdivision of the State, or any unit of local government, regardless of the form of the approval, that are for the development of land or for the provision of water or wastewater services by a government entity:

"a. Any detailed statement by a State agency under G.S. 113A-4.

"b. Any detailed statement submitted by a special purpose unit of government or a private developer of a major development project under G.S. 113A-8.

"c. Any finding of no significant impact prepared by a State agency under Article 1 of Chapter 113A of the General Statutes.

"d. Any approval of an erosion and sedimentation control plan granted by a local government or by the North Carolina Sedimentation Control Commission under Article 4 of Chapter 113A of the General Statutes.

"e. Any permit for major development or minor development, as defined in G.S. 113A-118, or any other permit issued under the Coastal Area Management Act (CAMA), Part 4 of Article 7 of Chapter 113A of the General Statutes.

"f. Any water or wastewater permit issued under Article 10 or Article 11 of Chapter 130A of the General Statutes.

"g. Any building permit issued under Article 9 of Chapter 143 of the General Statutes.

"h. Any nondischarge or extension permit issued under Part 1 of Article 21 of Chapter 143 of the General Statutes.

"i. Any stream origination certifications issued under Article 21 of Chapter 143 of the General Statutes.

"j. Any water quality certification under Article 21 of Chapter 143 of the General Statutes.

"k. Any air quality permit issued by the Environmental Management Commission under Article 21B of Chapter 143 of the General Statutes.

"*l*. Any approval by a county of sketch plans, preliminary plats, plats regarding a subdivision of land, a site specific development plan or a phased development plan, a development permit, a development agreement, or a building permit under Article 18 of Chapter 153A of the General Statutes.

"m. Any approval by a city of sketch plans, preliminary plats, plats regarding a subdivision of land, a site specific development plan or a phased development plan, a development permit, a development agreement, or a building permit under Article 19 of Chapter 160A of the General Statutes.

"n. Any certificate of appropriateness issued by a preservation commission of a city under Part 3C of Article 19 of Chapter 160A of the General Statutes.

"(2) Development. — The division of a parcel of land into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any building or other structure or facility, or any grading, soil removal or relocation, excavation or landfill, or any use or change in the use of any building or other structure or land or extension of the use of land.'

"SECTION 4. For any development approval that is current and valid at any point during the period beginning January 1, 2008, and ending December 31, 2010, the running of the period of the development approval and any associated vested right under G.S. 153A-344.1 or G.S. 160A-385.1 is suspended during the period beginning January 1, 2008, and ending December 31, 2010.

"SECTION 5. This act shall not be construed or implemented to:

"(1) Extend any permit or approval issued by the United States or any of its agencies or instrumentalities.

"(2) Extend any permit or approval for which the term or duration of the permit or approval is specified or determined pursuant to federal law.

"(3) Shorten the duration that any development approval would have had in the absence of this act.

"(4) Prohibit the granting of such additional extensions as are provided by law.

"(5) Affect any administrative consent order issued by the Department of Environment and Natural Resources in effect or issued at any time from the effective date of this act to December 31, 2010.

"(6) Affect the ability of a government entity to revoke or modify a development approval or to accept voluntary relinquishment of a development approval by the holder of the development approval pursuant to law.

"(7) Modify any requirement of law that is necessary to retain federal delegation by the State of the authority to implement a federal law or program.

"SECTION 5.1, as added by 2009-572, s. 2: (a) This act does not revive a vested right to the water or sewer allocation associated with a development approval that expired between January 1, 2008, and August 5, 2009, and is revived by the operation of this act if both of the following conditions are met:

"(1) The water or sewer capacity was reallocated to other development projects prior to August 5, 2009, based upon the expiration of the development approval.

"(2) There is sufficient supply or treatment capacity to accommodate the project that is the subject of the revived development approval.

"(b) A person whose development approval is revived under this act but whose water or sewer allocation is not revived under this section must be given first priority if additional supply or treatment capacity becomes available."

Session Laws 2009-572, s. 3, provided: "If House Bill 274, 2009 Regular Session, becomes law, Section 5.2 of of House Bill 274, 2009 Regular Session, is repealed." House Bill 274 was Session Laws 2009-550, which, in s. 5.2, added a new s. 5.1 to Session Laws 2009-406 that read as follows: "If developmental approvals that expired during the period beginning January 1, 2008 and the effective date of this act are revived by operation of this act, and (i) in reliance upon such expiration the water or sewer capacity was reallocated to other development projects prior to the effective date of this act, and (ii) there is no longer sufficient supply or treatment capacity to accommodate the project that is the subject of the revived development approval, the act shall not be construed to revive any vested right to the water or sewer allocation associated with the revived development approval, but the holder of the revived development approval may request new capacity and shall be given first priority if additional supply or treatment capacity becomes available."

Legal Periodicals. — For article, "Out of Focus: The Fuzzy Line Between Regulatory 'Takings' and Valid Zoning-Related 'Exactions' in North Carolina and Federal Jurisprudence," see 16 Campbell L. Rev. 333 (1994).

CASE NOTES

Vested Rights Under Building Permits. — Plaintiffs acquired vested rights under G.S. 160A-385 by virtue of the issuance of building permit by town, which the North Carolina General Assembly prohibited interference with by subsequent governmental action. Browning-Ferris Indus. of S. Atl., Inc. v. Wake County, 905 F. Supp. 312 (E.D.N.C. 1995).

Vested Rights Under Common Law. — Regardless of whether G.S. 160A-385(b) and this section were applicable, under North Carolina common law, plaintiffs' rights to develop tract of land had vested where plaintiffs incurred substantial expenditures in reliance on site plan approval and the issuance of building permit by town, and plaintiffs' efforts following the site plan approval were undertaken in good faith and under reasonable reliance on the validity of the approvals they had been granted. Browning-Ferris Indus. of S. Atl., Inc. v. Wake County, 905 F. Supp. 312 (E.D.N.C. 1995).

North Carolina recognizes two methods for a landowner to establish a vested right

in a zoning ordinance: (1) qualify with relevant statutes (G.S. 153A-344.1, 160A-385.1) or (2) qualify under the common law. Browning-Ferris Indus. of S. Atl., Inc. v. Guilford County Bd. of Adjustment, 126 N.C. App. 168, 484 S.E.2d 411 (1997).

Illustrative Cases. — Developer acquired a statutory vested right in a governmentally-approved land use plan because the public hearing notice on the adoption of that plan identified the classification of the developer's property and indicated the designation applied to it was used with a general zoning district to modify development conditions according to an approved conditional site plan. Michael Weinman Assocs. v. Town of Huntersville, 147 N.C. App. 231, 555 S.E.2d 342, 2001 N.C. App. LEXIS 1133 (2001).

Cited in Simpson v. City of Charlotte, 115 N.C. App. 51, 443 S.E.2d 772 (1994); Molamphy v. Town of S. Pines, — F. Supp. 2d —, 2004 U.S. Dist. LEXIS 3594 (M.D.N.C. Mar. 3, 2004).

§ 160A-386. Protest petition; form; requirements; time for filing.

No protest against any change in or amendment to a zoning ordinance or zoning map shall be valid or effective for the purposes of G.S. 160A-385 unless it be in the form of a written petition actually bearing the signatures of the requisite number of property owners and stating that the signers do protest the proposed change or amendment, and unless it shall have been received by the city clerk in sufficient time to allow the city at least two normal work days, excluding Saturdays, Sundays and legal holidays, before the date established for a public hearing on the proposed change or amendment to determine the sufficiency and accuracy of the petition. The city council may by ordinance require that all protest petitions be on a form prescribed and furnished by the city, and such form may prescribe any reasonable information deemed necessary to permit the city to determine the sufficiency and accuracy of the petition. A person who has signed a protest petition may withdraw his or her name from the petition at any time prior to the vote on the proposed zoning amendment. Only those protest petitions that meet the qualifying standards set forth in G.S. 160A-385 at the time of the vote on the zoning amendment shall trigger the supermajority voting requirement. (1963, c. 1058, s. 2; 1971, c. 698, s. 1; 2005-418, s. 6.)

Local Modification. — City of Durham: 1997-452, s. 8.

Editor's Note. — Session Laws 2005-418, s. 14, provides: "The provisions of this act shall not be deemed to repeal or amend the validity or enforceability of any local act or charter provision previously enacted by the General Assembly."

Legal Periodicals. — For comment, "Planned Unit Development and North Carolina Enabling Legislation," see 51 N.C.L. Rev. 1455 (1973).

CASE NOTES

Applicability. — Where outdoor advertisers sued city for declaratory judgment regarding the city's enactment of an ordinance regarding allowable outdoor signs, the provisions of G.S. 160A-385 and 160A-386 were found to apply to such ordinance, despite being more commonly applied to zoning map amendments. Morris Communications Corp. v. City of Asheville, 145 N.C. App. 597, 551 S.E.2d 508, 2001 N.C. App. LEXIS 732 (2001), cert. granted, 354 N.C. 364, 556 S.E.2d 574 (2001).

Unable to Determine Timeliness of Petitions. — In a request for rezoning and a special use permit, a town lacked the authority to consider protest petitions that were untimely under G.S. 160A-386; where the town was unable to determine which petitions were timely filed, a super-majority vote was not required, and since a simple majority of the town board voted for a rezoning, the property was rezoned. Coleman v. Town of Hillsborough, 173 N.C. App. 560, 619 S.E.2d 555, 2005 N.C. App. LEXIS 2117 (2005).

Cited in Rose v. Guilford County, 60 N.C. App. 170, 298 S.E.2d 200 (1982); Sofran Corp. v. City of Greensboro, 327 N.C. 125, 393 S.E.2d 767 (1990); Morris Communs. Corp. v. City of Asheville, 356 N.C. 103, 565 S.E.2d 70, 2002 N.C. LEXIS 546 (2002).

§ 160A-387. Planning board; zoning plan; certification to city council.

In order to initially exercise the powers conferred by this Part, a city council shall create or designate a planning board under the provisions of this Article or of a special act of the General Assembly. The planning board shall prepare or shall review and comment upon a proposed zoning ordinance, including both the full text of such ordinance and maps showing proposed district boundaries. The planning board may hold public hearings in the course of preparing the ordinance. Upon completion, the planning board shall make a written recommendation regarding adoption of the ordinance to the city council. The city council shall not hold its required public hearing or take action until it has received a recommendation regarding ordinance from the planning board. Following its required public hearing, the city council may refer the ordinance back to the planning board for any further recommendations that the board may wish to make prior to final action by the city council in adopting, modifying and adopting, or rejecting the ordinance.

Subsequent to initial adoption of a zoning ordinance, all proposed amendments to the zoning ordinance or zoning map shall be submitted to the planning board for review and comment. If no written report is received from the planning board within 30 days of referral of the amendment to that board, the governing board may proceed in its consideration of the amendment without the planning board report. The governing board is not bound by the recommendations, if any, of the planning board. (1923, c. 250, s. 6; C.S., s. 2776(w); 1967, c. 1208, s. 2; 1971, c. 698, s. 1; 1973, c. 426, s. 60; 1977, c. 912, s. 8; 2005-418, s. 7(a).)

Editor's Note. — Session Laws 2005-418, s. 14, provides: "The provisions of this act shall not be deemed to repeal or amend the validity or enforceability of any local act or charter provision previously enacted by the General Assembly."

Legal Periodicals. — For comment, "Planned Unit Development and North Carolina Enabling Legislation," see 51 N.C.L. Rev. 1455 (1973).

For note on historic district zoning, see 16 Wake Forest L. Rev. 495 (1980).

CASE NOTES

***Editor's Note.** — Some of the cases cited below were decided under former similar statutory provisions.*

The municipality must designate a planning agency to develop and certify a zoning ordinance. George v. Town of Edenton, 31 N.C. App. 648, 230 S.E.2d 695 (1976), rev'd on other grounds, 294 N.C. 679, 242 S.E.2d 877 (1978).

Planning Agency Has No Legislative, Judicial or Quasi-Judicial Power. — A municipal planning and zoning commission has no legislative, judicial or quasi-judicial power, and the city council acts in the exercise of its legislative function in determining whether the commission's recommendations in regard to the enactment of zoning ordinances should be followed. In re Markham, 259 N.C. 566, 131 S.E.2d 329, cert. denied, 375 U.S. 931, 84 S. Ct. 332, 11 L. Ed. 2d 263 (1963).

The planning board (zoning commission) has no legislative, judicial or quasi-judicial power. Its recommendations do not restrict or otherwise affect the legislative power of the city council. Allred v. City of Raleigh, 277 N.C. 530, 178 S.E.2d 432 (1971).

And Functions Only in an Advisory Capacity. — The planning agency is not a legislative body. In relation to the town council, it functions only in an advisory capacity, and its recommendations are in no way binding on the council. George v. Town of Edenton, 31 N.C. App. 648, 230 S.E.2d 695 (1976), rev'd on other grounds, 294 N.C. 679, 242 S.E.2d 877 (1978).

This section does not expressly restrict its application to a municipality's initial adoption of a comprehensive zoning ordinance. Such certification may also be required for subsequent comprehensive revisions of an ordinance, as distinguished from acts by which ordinances are amended, supplemented or changed. George v. Town of Edenton, 294 N.C. 679, 242 S.E.2d 877 (1978).

Applied in Nash-Rocky Mount Bd. of Educ.

v. Rocky Mount Bd. of Adjustment, 169 N.C. App. 587, 610 S.E.2d 255, 2005 N.C. App. LEXIS 679 (2005).

Cited in Johnson v. Town of Longview, 37 N.C. App. 61, 245 S.E.2d 516 (1978); Rose v. Guilford County, 60 N.C. App. 170, 298 S.E.2d 200 (1982); Issuance of Cama Minor Dev. Permit No. 82-0010 v. Town of Bath, 82 N.C. App. 32, 345 S.E.2d 699 (1986).

§ 160A-388. Board of adjustment.

(a) The city council may provide for the appointment and compensation of a board of adjustment consisting of five or more members, each to be appointed for three years. In appointing the original members of such board, or in the filling of vacancies caused by the expiration of the terms of existing members, the council may appoint certain members for less than three years to the end that thereafter the terms of all members shall not expire at the same time. The council may, in its discretion, appoint and provide compensation for alternate members to serve on the board in the absence or temporary disqualification of any regular member or to fill a vacancy pending appointment of a member. Alternate members shall be appointed for the same term, at the same time, and in the same manner as regular members. Each alternate member, while attending any regular or special meeting of the board and serving on behalf of any regular member, shall have and may exercise all the powers and duties of a regular member. A city may designate a planning board or governing board to perform any or all of the duties of a board of adjustment in addition to its other duties.

(b) A zoning ordinance or those provisions of a unified development ordinance adopted pursuant to the authority granted in this Part shall provide that the board of adjustment shall hear and decide appeals from and review any order, requirement, decision, or determination made by an administrative official charged with the enforcement of that ordinance. An appeal may be taken by any person aggrieved or by an officer, department, board, or bureau of the city. Appeals shall be taken within times prescribed by the board of adjustment by general rule, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal, specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken. An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board of adjustment, after notice of appeal has been filed with him, that because of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property or that because the violation charged is transitory in nature a stay would seriously interfere with enforcement of the ordinance. In that case proceedings shall not be stayed except by a restraining order, which may be granted by the board of adjustment or by a court of record on application, on notice to the officer from whom the appeal is taken and on due cause shown. The board of adjustment shall fix a reasonable time for the hearing of the appeal, give due notice thereof to the parties, and decide it within a reasonable time. The board of adjustment may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from, and shall make any order, requirement, decision, or determination that in its opinion ought to be made in the premises. To this end the board shall have all the powers of the officer from whom the appeal is taken.

(c) The zoning ordinance may provide that the board of adjustment may permit special exceptions to the zoning regulations in specified classes of cases or situations as provided in subsection (d) of this section, not including variances in permitted uses, and that the board may use special and conditional use permits, all to be in accordance with the principles, conditions, safeguards, and procedures specified in the ordinance. The ordinance may also authorize the board to interpret zoning maps and pass upon disputed questions of lot lines or district boundary lines and similar questions as they arise in the administration of the ordinance. The board shall hear and decide all matters referred to it or upon which it is required to pass under any zoning ordinance.

(d) When practical difficulties or unnecessary hardships would result from carrying out the strict letter of a zoning ordinance, the board of adjustment shall have the power to vary or modify any of the regulations or provisions of the ordinance so that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done. No change in permitted uses may be authorized by variance. Appropriate conditions, which must be reasonably related to the condition or circumstance that gives rise to the need for a variance, may be imposed on any approval issued by the board.

(e) The concurring vote of four-fifths of the members of the board shall be necessary to reverse any order, requirement, decision, or determination of any administrative official charged with the enforcement of an ordinance adopted pursuant to this Part, or to decide in favor of the applicant any matter upon which it is required to pass under any ordinance, or to grant a variance from the provisions of the ordinance. For the purposes of this subsection, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered "members of the board" for calculation of the requisite supermajority if there are no qualified alternates available to take the place of such members.

(e1) A member of the board or any other body exercising quasi-judicial functions pursuant to this Article shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible conflicts include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.

(e2) Every decision of the board shall be subject to review by the superior court by proceedings in the nature of certiorari. Any petition for review by the superior court shall be filed with the clerk of superior court within 30 days after the decision of the board is filed in such office as the ordinance specifies, or after a written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with the secretary or chairman of the board at the time of its hearing of the case, whichever is later. The decision of the board may be delivered to the aggrieved party either by personal service or by registered mail or certified mail return receipt requested.

(f) The chairman of the board of adjustment or any member temporarily acting as chairman, is authorized in his official capacity to administer oaths to witnesses in any matter coming before the board.

(g) The board of adjustment may subpoena witnesses and compel the production of evidence. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the board of adjustment may apply to the General Court of Justice for an order requiring that its order be obeyed, and the court shall have jurisdiction to issue these orders after notice to all proper parties. No testimony of any witness before the board of adjustment pursuant to a subpoena issued in exercise of the power conferred by this subsection may be used against the witness in the trial of any civil or criminal action other than a prosecution for false swearing committed on the examination. Any person who, while under oath during a proceeding before the board of adjustment, willfully swears falsely, is guilty of a Class 1 misdemeanor. (1923, c. 250, s. 7; C.S., s. 2776(x); 1929, c. 94, s. 1; 1947, c. 311; 1949, c. 979, ss. 1, 2; 1963, c. 1058, s. 3; 1965, c. 864, s. 2; 1967, c. 197, s. 1; 1971, c. 698, s. 1; 1977, c. 912, ss. 9-12; 1979, c. 50; 1979, 2nd Sess., c. 1247, s. 37; 1981, c. 891, s. 7; 1985, c. 397, s. 2; c. 689, s. 30; 1991, c. 512, s. 2; 1993, c. 539, s. 1088; 1994, Ex. Sess., c. 24, s. 14(c); 2005-418, s. 8(a); 2009-421, s. 5.)

Local Modification. — City of Charlotte: 2000-26, s. 1, as amended by 2007-255, s. 1; city of Hendersonville: 1983, c. 161; city of New Bern: 1993, c. 177, s. 1; city of Wilmington: 1981, c. 367; 1983, c. 366.

Editor's Note. — Session Laws 2005-418, s. 14, provides: "The provisions of this act shall not be deemed to repeal or amend the validity or enforceability of any local act or charter provision previously enacted by the General Assembly."

Effect of Amendments. — Session Laws 2009-421, s. 5, effective January 1, 2010, and applicable to quasi-judicial decisions rendered on or after that date, substituted "quasi-judicial functions pursuant to this Article" for "the functions of a board of adjustment" in the first sentence of subsection (e1).

Legal Periodicals. — For article on power of zoning board of adjustment to grant variances from zoning ordinance, see 29 N.C.L. Rev. 245 (1951).

For comment, "Planned Unit Development and North Carolina Enabling Legislation," see 51 N.C.L. Rev. 1455 (1973).

For article discussing North Carolina special exception and zoning amendment cases, see 53 N.C.L. Rev. 925 (1975).

For article, "A Powerless Judiciary? The North Carolina Courts' Perceptions of Review of Administrative Action," see 12 N.C. Cent. L.J. 21 (1980).

For note on historic district zoning, see 16 Wake Forest L. Rev. 495 (1980).

CASE NOTES

I. In General.
II. Judicial Review.

I. IN GENERAL.

Editor's Note. — *Some of the cases cited below were decided under former similar statutory provisions.*

Construction with Other Laws. — In the context of an appeal from the grant of a special use permit, G.S. 160A-388(e) is a substantially parallel statute to G.S. 153A-345(e). Sarda v. City/Durham Bd. of Adjustment, 156 N.C. App. 213, 575 S.E.2d 829, 2003 N.C. App. LEXIS 79 (2003).

Authority of Town's Board of Commissioners. — A town's board of commissioners authority to organize city government pursuant to G.S. 160A-146 includes the power to abolish a board of adjustment, appointed and created pursuant to this section, and to thereafter create a new board of adjustment and make appointments thereto. Board of Adjustment v. Town of Swansboro, 334 N.C. 421, 432 S.E.2d 310, rehearing denied, 335 N.C. 182, 436 S.E.2d 369 (1993).

Appellate Jurisdiction of Board. — Subsection (b) of this section clearly confers on the board only appellate jurisdiction, as distinguished from original jurisdiction, to decide whether a particular use is permitted under the zoning ordinance. Tate v. Board of Adjustment, 83 N.C. App. 512, 350 S.E.2d 873 (1986).

Absent any indication that city zoning enforcement officials had made a decision whether petitioners' use of pool on their property in conjunction with child care center was permitted or not, the board of adjustment lacked jurisdiction to decide such question. Tate v. Board of Adjustment, 83 N.C. App. 512, 350 S.E.2d 873 (1986).

Town board of adjustment did not have jurisdiction to review and reverse the decision of the town board of commissioners. Garrity v. Morrisville Zoning Bd. of Adjustment, 115 N.C. App. 273, 444 S.E.2d 653, cert. denied, 337 N.C. 692, 448 S.E.2d 523 (1994).

In reviewing the determination of an administrative enforcement officer that a sawmill on residential property violated a city ordinance, city's board of adjustment only had the authority to reverse, affirm, or modify the officer's determination that the owner's use of the sawmill violated the zoning ordinance, and the board did not have the authority to rule on the owner's constitutional challenges to the validity of the zoning ordinance itself. Dobo v. Zoning Bd. of Adjustment, 149 N.C. App. 338, 561 S.E.2d 298, 2002 N.C. App. LEXIS 311 (2002).

City zoning board of adjustment had jurisdiction to hear an appeal taken from the municipal tax collector's denial of a business privilege license application based upon his assessment that the business was in violation of local zoning laws. Fantasy World, Inc. v. Greensboro

Bd. of Adjustment, 162 N.C. App. 603, 592 S.E.2d 205, 2004 N.C. App. LEXIS 267 (2004), cert. denied, 358 N.C. 543, 599 S.E.2d 43 (2004).

If a zoning administrator denies a zoning certificate on the grounds that a project does not conform to zoning ordinance setback requirements, that decision can be appealed to the Board of Adjustment. Under G.S. 160A-388(b), the Board of Adjustment has the authority to issue a variance and allow a nonconforming project to continue. Meares v. Town of Beaufort, — N.C. App. —, 667 S.E.2d 244, 2008 N.C. App. LEXIS 1764 (2008).

Amelioration of General Zoning Regulations Intended. — The plain intent and purpose of former G.S. 160-178 was to permit, through the board of adjustment, the amelioration of the rigors of necessarily general zoning regulations by eliminating the necessity for a slavish adherence to the precise letter of the regulations where, in a given case, little or no good on the one side and undue hardship on the other would result from a literal enforcement. Lee v. Board of Adjustment, 226 N.C. 107, 37 S.E.2d 128 (1946).

Planning and zoning commission is separate and distinct from the board of adjustment. In re Markham, 259 N.C. 566, 131 S.E.2d 329, cert. denied, 375 U.S. 931, 84 S. Ct. 332, 11 L. Ed. 2d 263 (1963).

The board is not a law-making body and has no power to amend a zoning ordinance either to permit the construction of a building prohibited by ordinance or to prohibit the construction of one permitted by ordinance. In re Rea Constr. Co., 272 N.C. 715, 158 S.E.2d 887 (1968).

Former G.S. 160-172 and 160-178 did not grant board of adjustment legislative authority, and therefore, board was without power to amend an ordinance under which it functioned. Lee v. Board of Adjustment, 226 N.C. 107, 37 S.E.2d 128 (1946).

The legislative body may not delegate to the municipal board of adjustment the power to zone. Keiger v. Winston-Salem Bd. of Adjustment, 278 N.C. 17, 178 S.E.2d 616 (1971).

It would constitute an unlawful delegation of the legislative power vested by the General Assembly in a board of aldermen to allow the board of adjustment to deny a special permit on the ground that the board of adjustment did not consider a use specified in the ordinance as a conditional permissible use to be in accord with the "purpose and intent" of the ordinance. Keiger v. Winston-Salem Bd. of Adjustment, 278 N.C. 17, 178 S.E.2d 616 (1971).

In exercising discretion, board of adjustment must abide by the rules provided by the local ordinance enacted in accord with and by permission of the State zoning law. Jackson v. Guilford County Bd. of Adjustment, 2 N.C. App. 408, 163 S.E.2d 265 (1968), aff'd, 275 N.C. 155, 166 S.E.2d 78 (1969).

Rule which demands that a board of adjustment consistently follow its procedural rules is equally applicable to a case involving a variance; therefore, where the board of adjustment rules then applicable stated that an application for rehearing "shall be denied by the board if in its judgment there has been no substantial change in the facts, evidence or conditions in the case," the board violated its own procedural rules when it agreed to rehear application for a variance, since it was clear that there had been no change in the "facts, evidence or conditions in the case." Kirby v. Board of Adjustment, 95 N.C. App. 182, 381 S.E.2d 889, cert. denied, 325 N.C. 707, 388 S.E.2d 458 (1989).

Reduction of Terms. — If a board of adjustment is created, then it must consist of at least five appointees, each with three-year terms. Such terms may not be reduced by the city council as long as the board of adjustment is in existence. However, the prohibition against the reduction of the length of the terms of the members of an existing board of adjustment does not diminish the authority of the city council to abolish the board. Board of Adjustment v. Town of Swansboro, 108 N.C. App. 198, 423 S.E.2d 498 (1992), aff'd, 334 N.C. 421, 432 S.E.2d 310, reh'g denied, 335 N.C. 182, 436 S.E.2d 369 (1993).

Quasi-Judicial Capacity of Board. — A board of adjustment is an administrative agency which acts in a quasi-judicial capacity. In re Rea Constr. Co., 272 N.C. 715, 158 S.E.2d 887 (1968); Jackson v. Guilford County Bd. of Adjustment, 2 N.C. App. 408, 163 S.E.2d 265 (1968), aff'd, 275 N.C. 155, 166 S.E.2d 78 (1969).

The board of adjustment is clothed, if not with judicial, at least with quasi-judicial power; it being its duty to investigate facts and from its investigation to draw conclusions as a basis of official action, and to exercise discretion of a judicial nature. Harden v. City of Raleigh, 192 N.C. 395, 135 S.E. 151 (1926); In re Markham, 259 N.C. 566, 131 S.E.2d 329, cert. denied, 375 U.S. 931, 84 S. Ct. 332, 11 L. Ed. 2d 263 (1963); Jackson v. Guilford County Bd. of Adjustment, 2 N.C. App. 408, 163 S.E.2d 265 (1968), aff'd, 275 N.C. 155, 166 S.E.2d 78 (1969).

A board of adjustment has a quasi-judicial power under subsection (d) of this section to vary or modify zoning regulations only so long as the spirit of the ordinance continues to be observed. Sherrill v. Town of Wrightsville Beach, 76 N.C. App. 646, 334 S.E.2d 103 (1985).

Delegation of Authority to Determine Facts and Draw Conclusions. — The legislature may delegate to the board of adjustment, as a quasi-judicial body, the authority to determine facts and therefrom to draw conclusions as a basis of its official action. Jackson v. Guilford County Bd. of Adjustment, 2 N.C. App. 408, 163 S.E.2d 265 (1968), aff'd, 275 N.C. 155, 166 S.E.2d 78 (1969).

The principal function of a board of adjustment is to issue variance permits so as to prevent injustice by a strict application of the ordinance. In re Rea Constr. Co., 272 N.C. 715, 158 S.E.2d 887 (1968).

Board of adjustment cannot permit type of business or building prohibited by zoning ordinance, for to do so would be an amendment of law and not a variance of its regulations. Lee v. Board of Adjustment, 226 N.C. 107, 37 S.E.2d 128 (1946).

But Can Merely "Vary" Regulations. — The board of adjustment cannot disregard the provisions of the enabling act or regulations enacted in accordance with zoning law, but can merely "vary" them to prevent injustice when the strict letter of the provisions would work "unnecessary hardship." Lee v. Board of Adjustment, 226 N.C. 107, 37 S.E.2d 128 (1946); In re Markham, 259 N.C. 566, 131 S.E.2d 329, cert. denied, 375 U.S. 931, 84 S. Ct. 332, 11 L. Ed. 2d 263 (1963).

Issuance of Special Permit on Making of Specified Findings Not Unlawful Exercise of Power. — Where a municipal ordinance required the board of adjustment to issue a special use permit when it made certain affirmative findings specified in the ordinance, the board's determination of whether to issue a special use permit was not an unlawful exercise of legislative power. Kenan v. Board of Adjustment, 13 N.C. App. 688, 187 S.E.2d 496, cert. denied, 281 N.C. 314, 188 S.E.2d 897 (1972).

Standing to Challenge Zoning Ordinance. — A corporation which did not have any legal interest in property affected by a zoning ordinance did not have standing to challenge that zoning ordinance when only twelve of its 114 members the members/shareholders had standing as individuals to challenge the zoning ordinance. Northeast Concerned Citizens, Inc. v. City of Hickory, 143 N.C. App. 272, 545 S.E.2d 768, 2001 N.C. App. LEXIS 264 (2001).

Where an owner was granted a special use permit to operate a paintball playing field on the owner's property, the adjoining neighbors lacked standing to appeal the grant of the permit, as their mere averment that they owned land in the immediate vicinity of the subject property, absent an allegation of special damages distinct from the rest of the community, was insufficient to confer standing upon them. Sarda v. City/Durham Bd. of Adjustment, 156 N.C. App. 213, 575 S.E.2d 829, 2003 N.C. App. LEXIS 79 (2003).

Zoning ordinances may be challenged by individuals in an action for declaratory judgment or a writ of certiorari under G.S. 160A-388(e); individuals have standing under either if they have a specific legal interest that is directly and uniquely affected by the zoning ordinance (an aggrieved party under G.S. 160A-388(e)). State Employees Ass'n of N.C., Inc. v. State, 154 N.C. App. 207, 573 S.E.2d 525, 2002 N.C. App. LEXIS 1451 (2002).

"Unnecessary hardship" does not mean a pecuniary loss to a single owner in being denied a building permit for a nonconforming structure pursuant to zoning regulations binding upon all alike. Lee v. Board of Adjustment, 226 N.C. 107, 37 S.E.2d 128 (1946).

A "special exception" within the meaning of a zoning ordinance is one which is expressly permitted in a given zone upon proof that certain facts and conditions detailed in the ordinance exist. It is granted by the board of adjustment, after a public hearing, upon a finding that the specified conditions have been satisfied. Keiger v. Winston-Salem Bd. of Adjustment, 278 N.C. 17, 178 S.E.2d 616 (1971).

A special permit is not a legal right but is a concession in exceptional cases which the board, in the exercise of its discretion, may grant, subject to court review. Craver v. Zoning Bd. of Adjustment, 267 N.C. 40, 147 S.E.2d 599 (1966).

Nonconforming building or use that conflicts with general purpose or spirit of zoning ordinance can only be authorized by the board of aldermen acting in their legislative capacity to rezone, not under the guise of a variance permit. Sherrill v. Town of Wrightsville Beach, 76 N.C. App. 646, 334 S.E.2d 103 (1985).

No Authority to Permit Duplexes by Variance in R-1 Area. — As the purpose of an R-1 designation is to limit density, while the purpose and effect of a duplex is to increase density, variance requested by petitioners, who sought to build duplexes in R-1 areas, was directly contrary to the zoning ordinance; in these circumstances the board of adjustment had no legal authority under subsection (d) of this section to grant the requested variance, and thus there was no need for it to make findings on the merits of the request. Sherrill v. Town of Wrightsville Beach, 76 N.C. App. 646, 334 S.E.2d 103 (1985).

Safeguards against arbitrary action by zoning boards in granting or denying special use permits are not only to be found in specific guidelines for their action. Equally important are the requirements that in each instance the board (1) follow the procedures specified in the ordinance; (2) conduct its hearings in accordance with fair-trial standards; (3) base its findings of fact only upon competent, material, and substantial evidence; and (4) in allowing or denying the application, state the basic facts on which it relied with sufficient specificity to inform the parties, as well as the court, what induced its decision. Humble Oil & Ref. Co. v. Board of Aldermen, 284 N.C. 458, 202 S.E.2d 129 (1974).

Board's Findings May Not Be Based on Unsworn Statements. — Absent stipulations or waiver, a board of adjustment may not base critical findings of fact as to the existence or nonexistence of a nonconforming use on unsworn statements. Jarrell v. Board of Adjustment, 258 N.C. 476, 128 S.E.2d 879 (1963).

Where one asserts a legal right to a nonconforming use, whether he has such legal right depends upon factual findings, and in the determination of such factual findings unsworn statements may not be considered either competent or substantial. Jarrell v. Board of Adjustment, 258 N.C. 476, 128 S.E.2d 879 (1963).

Waiver of Right to Insist That Witnesses Be Under Oath. — By voluntary participation in a hearing, a party may waive the right to insist that the witnesses should be under oath. Craver v. Zoning Bd. of Adjustment, 267 N.C. 40, 147 S.E.2d 599 (1966).

Action of Board Held Not Res Judicata upon Second Application. — Approval by the board of adjustment of denial of a permit to erect a filling station on certain land did not constitute res judicata upon a second application made therefor three years after the first application, upon substantial change of the traffic conditions. In re Broughton's Estate, 210 N.C. 62, 185 S.E. 434 (1936).

The general administrative agencies review statutes are applicable to municipal agencies such as zoning boards. Humble Oil & Ref. Co. v. Board of Aldermen, 284 N.C. 458, 202 S.E.2d 129 (1974).

As to similarity of zoning provisions relating to municipalities and counties under former law, see Jackson v. Guilford County Bd. of Adjustment, 2 N.C. App. 408, 163 S.E.2d 265 (1968), aff'd, 275 N.C. 155, 166 S.E.2d 78 (1969).

As to invalidity of ordinances prescribing procedure for enforcement of zoning regulations in conflict with former statutory provisions, see Mitchell v. Barfield, 232 N.C. 325, 59 S.E.2d 810 (1950).

Where plaintiff was not the owner of any of the property that was the subject of an inspection decision such building inspector's decisions did not affect a property interest belonging to plaintiff as defined by state law and summary judgment against plaintiff was proper. Gentile v. Town of Kure Beach, 91 N.C. App. 236, 371 S.E.2d 302 (1988).

Petitioner Not Barred by Ordinance Time Requirements or Laches. — Petitioner was not barred by ordinance time requirements from challenging interpretation relating to kitchen, adult day-care, and offices, nor was he barred by laches. Laches will only work as a bar when the claimant knew of the existence of the grounds for the claim. There was no showing that petitioner knew of grounds for appeal before letter of August 10, 1989. Allen v. City of Burlington Bd. of Adjustment, 100 N.C. App. 615, 397 S.E.2d 657 (1990).

Constructive Notice Barred Challenge to Operation of Homeless Shelter. — Petitioner conceded that he had constructive notice of an interpretation allowing homeless shelter, since it has been in operation since 1986, and was barred from challenging the operation of the shelter as it currently stood. This time bar also applied to subsequent planned expansion of the shelter. Allen v. City of Burlington Bd. of Adjustment, 100 N.C. App. 615, 397 S.E.2d 657 (1990).

Issuance of Special Permit Upheld. — Application which a developer submitted, seeking a special use permit allowing construction of an apartment complex on land that was zoned for residential and agricultural use was not defective because it was signed by the developer, but not by people who owned the land, and the trial court found that the board's decision granting the special use permit was supported by the record. Cox v. Hancock, 160 N.C. App. 473, 586 S.E.2d 500, 2003 N.C. App. LEXIS 1829 (2003).

Applied in Quadrant Corp. v. City of Kinston, 22 N.C. App. 31, 205 S.E.2d 324 (1974); Martin Marietta Corp. v. Forsyth County Zoning Bd. of Adjustment, 65 N.C. App. 316, 309 S.E.2d 523 (1983); In re Dunn, 73 N.C. App. 243, 326 S.E.2d 309 (1985); Farr v. Board of Adjustment, 73 N.C. App. 228, 326 S.E.2d 382 (1985); Donnelly v. Board of Adjustment, 99 N.C. App. 702, 394 S.E.2d 246 (1990); Appalachian Outdoor Adv. Co. v. Town of Boone, 103 N.C. App. 504, 406 S.E.2d 297 (1991); Shoney's of Enka, Inc. v. Board of Adjustment ex rel. City of Asheville, 119 N.C. App. 420, 458 S.E.2d 510 (1995); Fantasy World, Inc. v. Greensboro Bd. of Adjustment, 128 N.C. App. 703, 496 S.E.2d 825 (1998); Raleigh Rescue Mission, Inc. v. Bd. of Adjustment, 153 N.C. App. 737, 571 S.E.2d 588, 2002 N.C. App. LEXIS 1260 (2002).

Cited in Dockside Discotheque, Inc. v. Board of Adjustment, 115 N.C. App. 303, 444 S.E.2d 451; Washington Park Neighborhood Ass'n v. Winston-Salem Zoning Bd. of Adjustment, 35 N.C. App. 449, 241 S.E.2d 872 (1978); Woodhouse v. Board of Comm'rs, 41 N.C. App. 473, 255 S.E.2d 249 (1979); Woodhouse v. Board of Comm'rs, 299 N.C. 211, 261 S.E.2d 882 (1980); Robinhood Trails Neighbors v. Winston-Salem Zoning Bd. of Adjustment, 44 N.C. App. 539, 261 S.E.2d 520 (1980); Rose v. Guilford County, 60 N.C. App. 170, 298 S.E.2d 200 (1982); Town of Kenansville v. Summerlin, 70 N.C. App. 601, 320 S.E.2d 428 (1984); Godfrey v. Zoning Bd. of Adjustment, 317 N.C. 51, 344 S.E.2d 272 (1986); Little v. City of Locust, 83 N.C. App. 224, 349 S.E.2d 627 (1986);

Flowerree v. City of Concord, 93 N.C. App. 483, 378 S.E.2d 188 (1989); Capricorn Equity Corp. v. Town of Chapel Hill Bd. of Adjustment, 334 N.C. 132, 431 S.E.2d 183 (1993); County of Lancaster v. Mecklenburg County, 334 N.C. 496, 434 S.E.2d 604 (1993); Ayers v. Board of Adjustment ex rel. Roberson, 113 N.C. App. 528, 439 S.E.2d 199 (1994); Taylor Home of Charlotte Inc. v. City of Charlotte, 116 N.C. App. 188, 447 S.E.2d 438 (1994); Budd v. Davie County, 116 N.C. App. 168, 447 S.E.2d 449 (1994); Mom N Pops, Inc. v. City of Charlotte, 979 F. Supp. 372 (W.D.N.C. 1997); Steakhouse, Inc. v. City of Raleigh, 166 F.3d 634 (4th Cir. 1999); Village Creek Property Owners Ass'n v. Town of Edenton, 135 N.C. App. 482, 520 S.E.2d 793, 1999 N.C. App. LEXIS 1159 (1999); Brown v. City of Greensboro, 137 N.C. App. 164, 528 S.E.2d 588, 2000 N.C. App. LEXIS 271 (2000); Stephenson v. Town of Garner, 136 N.C. App. 444, 524 S.E.2d 608, 2000 N.C. App. LEXIS 54 (2000); Kirkpatrick v. Village Council, 138 N.C. App. 79, 530 S.E.2d 338, 2000 N.C. App. LEXIS 553 (2000); Tucker v. Mecklenburg County Zoning Bd. of Adjustment, 148 N.C. App. 52, 557 S.E.2d 631, 2001 N.C. App. LEXIS 1273 (2001); Durham Video & News, Inc. v. Durham Bd. of Adjustment, 144 N.C. App. 236, 550 S.E.2d 212, 2001 N.C. App. LEXIS 426 (2001); Hemphill-Nolan v. Town of Weddington, 153 N.C. App. 144, 568 S.E.2d 887, 2002 N.C. App. LEXIS 1075 (2002); In re Cent. Tel. Co., 167 N.C. App. 14, 604 S.E.2d 680, 2004 N.C. App. LEXIS 2058 (2004); Hyatt v. Town of Lake Lure, 314 F. Supp. 2d 562, 2003 U.S. Dist. LEXIS 25564 (W.D.N.C. 2003); MMR Holdings, LLC v. City of Charlotte, 174 N.C. App. 540, 621 S.E.2d 210, 2005 N.C. App. LEXIS 2471 (2005); Cook v. Union County Zoning Bd. of Adjustment, 185 N.C. App. 582, 649 S.E.2d 458, 2007 N.C. App. LEXIS 1949 (2007).

II. JUDICIAL REVIEW.

Constitutional Sufficiency of Review. — City tax collector's zoning decision to deny a business privilege license application was immediately appealable to the city zoning board of adjustment, and the board's decision could be reviewed in superior court upon the filing of a petition for certiorari; the judicial relief provided in G.S. 160A-388 was constitutionally sufficient because the license applicant was afforded the possibility of sufficiently prompt judicial review. Fantasy World, Inc. v. Greensboro Bd. of Adjustment, 162 N.C. App. 603, 592 S.E.2d 205, 2004 N.C. App. LEXIS 267 (2004), cert. denied, 358 N.C. 543, 599 S.E.2d 43 (2004).

Time for Petition for Certiorari. — Subsection (e) of this section clearly gives petitioners 30 days after the letter of delivery of the board's decision to petitioners or the filing of the decision with the office specified in the ordinance within which to petition for certiorari. Ad/Mor v. Town of Southern Pines, 88 N.C. App. 400, 363 S.E.2d 220 (1988).

Decisions of the board of adjustment are final, subject to the right of the courts to review errors in law and to give relief against orders which are arbitrary, oppressive, or attended with manifest abuse of authority. Lee v. Board of Adjustment, 226 N.C. 107, 37 S.E.2d 128 (1946); County of Durham v. Addison, 262 N.C. 280, 136 S.E.2d 600 (1964).

Quasi-judicial functions, when exercised, not arbitrarily, but in subordination to a uniform rule prescribed by statute, ordinarily are not subject to judicial control. It is only in extreme cases, those which are arbitrary, oppressive, or attended with manifest abuse, that the courts will interfere. Harden v. City of Raleigh, 192 N.C. 395, 135 S.E. 151 (1926). See also, Rosenthal v. City of Goldsboro, 149 N.C. 128, 62 S.E. 905 (1908).

When the decision was filed in the appropriate office is a question of fact, the resolution of which is essential to determine whether petitioners are entitled to judicial review. Ad/Mor v. Town of Southern Pines, 88 N.C. App. 400, 363 S.E.2d 220 (1988).

Scope of Judicial Review. — The task of a court reviewing a decision made by a town board sitting as a quasi-judicial body on an application for a conditional use permit includes: (1) reviewing the record for errors in law; (2) insuring that procedures specified by law in both statute and ordinance are followed; (3) insuring that appropriate due process rights of a petitioner are protected, including the right to offer evidence, to cross-examine witnesses, and to inspect documents; (4) insuring that the decision of the town board is supported by competent, material and substantial evidence in the whole record; and (5) insuring that the decision is not arbitrary and capricious. Both the superior court and the appellate courts are bound by all the standards of review noted above. Coastal Ready-Mix Concrete Co. v. Board of Comm'rs, 299 N.C. 620, 265 S.E.2d 379, rehearing denied, 300 N.C. 562, 270 S.E.2d 106 (1980).

On review of zoning board decision, it was incumbent on the trial court to insure that the board's decision was not contrary to State law and was authorized by local ordinance; and if the ABC Commission had rendered a statutorily authorized decision contrary to the board's decision to deny petitioner's special exception permit request, then it was necessary for the trial court to consider the question of whether the board's decision was contrary to State law. Melkonian v. Board of Adjustment, 85 N.C. App. 351, 355 S.E.2d 503, cert. denied and appeal dismissed, 320 N.C. 631, 360 S.E.2d 91 (1987).

As to the scope of review under former statutory provisions, see Jarrell v. Board of Adjustment, 258 N.C. 476, 128 S.E.2d 879 (1963); In re Coleman, 11 N.C. App. 124, 180 S.E.2d 439 (1971).

The superior court, pursuant to a writ of certiorari under subsection (e), only has the power to review the issue of whether a permit was properly granted or denied. Simpson v. City of Charlotte, 115 N.C. App. 51, 443 S.E.2d 772 (1994).

In reviewing the city board of adjustment's affirmance of an administrative enforcement officer decision that a sawmill on residential property violated a city ordinance, the superior court had the statutory power to review only the issue of whether the officer's determination was properly affirmed, and did not have the statutory authority to address the owner's constitutional challenges to the validity of the zoning ordinance. Dobo v. Zoning Bd. of Adjustment, 149 N.C. App. 338, 561 S.E.2d 298, 2002 N.C. App. LEXIS 311 (2002).

When a superior court reviews the decision of a board of adjustment on certiorari, the court sits as an appellate court. CG & T Corp. v. Board of Adjustment, 105 N.C. App. 32, 411 S.E.2d 655 (1992).

Superior Court Not the Trier of Fact. — On review of the sufficiency and competency of the evidence at the appellate level, the question is not whether the evidence before the superior court supported that court's order, but whether the evidence before the town board was supportive of its action. In proceedings of this nature, the superior court is not the trier of fact. Such is the function of the town board. Coastal Ready-Mix Concrete Co. v. Board of Comm'rs, 299 N.C. 620, 265 S.E.2d 379, rehearing denied, 300 N.C. 562, 270 S.E.2d 106 (1980).

Findings of Fact Necessary. — Findings of fact are an important safeguard against arbitrary and capricious action by the board of adjustment because they establish a sufficient record upon which the appellate court can review the board's decision. Crist v. City of Jacksonville, 131 N.C. App. 404, 507 S.E.2d 899 (1998).

Review of Questions of Fact. — The writ of certiorari is a writ to bring the matter before the court, upon the evidence presented by the record itself, for review of alleged errors of law. It does not lie to review questions of fact to be determined by evidence outside the record. In re Pine Hill Cemeteries, 219 N.C. 735, 15 S.E.2d 1 (1941). See Lee v. Board of Adjustment, 226 N.C. 107, 37 S.E.2d 128 (1946); Jarrell v. Board of Adjustment, 258 N.C. 476, 128 S.E.2d 879 (1963).

Determination of questions of fact by the board of adjustment will not be disturbed when its findings are supported by evidence and are made in good faith. In re Hasting, 252 N.C. 327, 113 S.E.2d 433 (1960).

Rezoning Petition Cannot Be Used to Circumvent Appeals Process. — The plaintiff-store owner who failed to file an appeal with the City's Board of Adjustment contesting the zoning officer's determination that the sale of beer in his store would constitute an unlawful expansion of a non-conforming use pursuant to the requirements of this section, and who instead filed a rezoning petition requesting that his property be rezoned from I-2 to B-3, failed to avail himself of the only judicial review authorized by statute and could not collaterally attack the determination of the zoning officer by appeal to the court. Potter v. City of Hamlet, 141 N.C. App. 714, 541 S.E.2d 233, 2001 N.C. App. LEXIS 18 (2001), cert. denied, 355 N.C. 379, 547 S.E.2d 814 (2001).

Judicial review of town's decisions to grant or deny conditional use permits is provided for in subsection (e) of this section. Coastal Ready-Mix Concrete Co. v. Board of Comm'rs, 299 N.C. 620, 265 S.E.2d 379, rehearing denied, 300 N.C. 562, 270 S.E.2d 106 (1980).

Jurisdiction to Review Interpretation of Variance. — The Superior Court clearly had jurisdiction under subsection (e) of this section to review Board of Adjustment's April 15, 1985, interpretation of a Nov. 26, 1984, variance granted to petitioner, where petitioner was aggrieved by the latter order, under its writ of certiorari, and the Court of Appeals had jurisdiction to review the court's decision. Brummer v. Board of Adjustment, 81 N.C. App. 307, 343 S.E.2d 603, cert. denied, 318 N.C. 413, 349 S.E.2d 590 (1986).

Review Limited to Whether Variance Properly Denied Absent Challenge to Validity of Ordinance. — Upon denial of a variance by the board of aldermen, sitting in their quasi-judicial capacity as the board of adjustment, the superior court, and hence the Court of Appeals through its derivative appellate jurisdiction, had the statutory power to review only the issue of whether the variance was properly denied. The constitutionality of the zoning ordinance was a separate issue not properly a part of these proceedings, since the denial of the variance request never addressed the validity of the zoning ordinance, and since the superior court sat in the posture of an appellate court, so that it was not in a position to address constitutional issues that were not before the board. Sherrill v. Town of Wrightsville Beach, 76 N.C. App. 646, 334 S.E.2d 103 (1985).

Who May Appeal from Order. — Any owner whose property is affected has the right to apply to the courts for review of an order of a municipal board of adjustment. Lee v. Board of

Adjustment, 226 N.C. 107, 37 S.E.2d 128 (1946).

Any aggrieved party may appeal from a ruling of the city building inspector to the board of adjustment, and such an aggrieved party may then appeal from the board to superior court by way of certiorari. Pigford v. Board of Adjustment, 49 N.C. App. 181, 270 S.E.2d 535 (1980), cert. denied and appeal dismissed, 301 N.C. 722, 274 S.E.2d 230 (1981).

An order of a board of adjustment which exceeds its authority under the zoning ordinance may be appealed by nearby landowners who will sustain special damage from the proposed use. Heery v. Town of Highlands Zoning Bd. of Adjustment, 61 N.C. App. 612, 300 S.E.2d 869 (1983).

In order to seek review of board of adjustment decisions made under zoning ordinances, petitioners must be aggrieved persons within the meaning of this section. This means only that the appealing party must have some interest in the property affected. However, the "property affected" is not limited to the property subject to the special use permit. Heery v. Town of Highlands Zoning Bd. of Adjustment, 61 N.C. App. 612, 300 S.E.2d 869 (1983).

Allegations and evidence presented by the neighbors in regards to the increased traffic, increased water runoff, parking, and safety concerns, as well as the secondary adverse effects on the neighbors' businesses, were sufficient special damages to give standing to the neighbors to challenge, pursuant to G.S. 160A-388(e2), the issuance of a special use permit for the opening of an adult establishment. Mangum v. Raleigh Bd. of Adjustment, 362 N.C. 640, 669 S.E.2d 279, 2008 N.C. LEXIS 983 (2008).

Only persons "aggrieved" within the meaning of this section possess standing to seek judicial review. Lloyd v. Town of Chapel Hill, 127 N.C. App. 347, 489 S.E.2d 898 (1997).

An adjoining property owner was an aggrieved party, even though she failed to allege such, and the trial court had jurisdiction to allow her to amend her petition for certiorari, where she sought certiorari for judicial review of the zoning board's grant of a setback variance. Darnell v. Town of Franklin, 131 N.C. App. 846, 508 S.E.2d 841 (1998).

Adverse Decision of Board of Aldermen. — Section 160A-381, and not subsection (e) of this section, grants applicants the right to petition the superior court for writ of certiorari from adverse decisions of boards of aldermen. White Oak Properties, Inc. v. Town of Carrboro, 71 N.C. App. 360, 322 S.E.2d 400 (1984), rev'd on other grounds, 313 N.C. 306, 327 S.E.2d 882 (1985).

The same procedures should be followed when seeking review of adverse decisions on application for conditional use permits, whether delivered by a board of aldermen or a board of adjustment. In the absence of a specified time for applying for certiorari from a board of aldermen which is different from that allowed for appeal from a board of adjustment, the reasonable conclusion is that the time limit is the same for both. White Oak Properties, Inc. v. Town of Carrboro, 71 N.C. App. 360, 322 S.E.2d 400 (1984), rev'd on other grounds, 313 N.C. 306, 327 S.E.2d 882 (1985).

An aggrieved person in a zoning proceeding must own the affected property or have some interest in it. Wil-Hol Corp. v. Marshall, 71 N.C. App. 611, 322 S.E.2d 655 (1984).

Petitioner Held Not "Aggrieved Party." — Where it did not appear in the record that petitioner was the owner of property affected by a ruling of defendant board of adjustment, petitioner was not an aggrieved party entitled to judicial review, and proceedings in the superior court were therefore nullities. Pigford v. Board of Adjustment, 49 N.C. App. 181, 270 S.E.2d 535 (1980), cert. denied and appeal dismissed, 301 N.C. 722, 274 S.E.2d 230 (1981).

Since optionee had no present right to erect a building on the land, the withholding of a building permit from him could not in law impose an "undue and unnecessary hardship" upon him as a predicate for relief from an order of a municipal board of adjustment. Lee v. Board of Adjustment, 226 N.C. 107, 37 S.E.2d 128 (1946).

Plaintiffs, an unincorporated association of owners of business, who challenged the issuance of a permit to allow renovation of a structure to be used as a shelter for the homeless, lacked standing to seek review of the zoning board's decision, where they failed to allege, and the superior court failed to find, that plaintiffs would be subject to special damages distinct from the rest of the community and alleged nothing more than that they were nearby or adjacent property owners. Concerned Citizens v. Board of Adjustment, 94 N.C. App. 364, 380 S.E.2d 130 (1989).

Where a county zoning officer granted a building permit to a church, an adjacent property owner lacked standing to appeal from the zoning officer to the zoning board under G.S. 153A-345(b) or 1947 N.C. Sess. Laws, ch. 677, § 33, because the property owner did not allege or show the requisite special damages to assert standing as a person aggrieved since the application did not allege that the zoning decisions had decreased the value of the property owner's property or would do so in the future. Smith v. Forsyth County Bd. of Adjustment, 186 N.C. App. 651, 652 S.E.2d 355, 2007 N.C. App. LEXIS 2272 (2007).

As to necessity for prosecution of a legal proceeding by a legal person, see In re

Coleman, 11 N.C. App. 124, 180 S.E.2d 439 (1971).

Applicability of principles of § 150B-51. — While the specific review provision of the North Carolina Administrative Procedure Act, G.S. 150B-51, is not directly applicable to reviews of town board zoning decisions, the principles that provision embodies are highly pertinent. Coastal Ready-Mix Concrete Co. v. Board of Comm'rs, 299 N.C. 620, 265 S.E.2d 379, rehearing denied, 300 N.C. 562, 270 S.E.2d 106 (1980).

This section contains no requirement that a complete record be submitted to the superior court for review. Burton v. New Hanover County Zoning Bd. of Adjustment, 49 N.C. App. 439, 271 S.E.2d 550 (1980), cert. denied, 302 N.C. 217, 276 S.E.2d 914 (1981).

Collateral Attack Held Not Available. — Where defendants failed to exercise the remedies available to them under a zoning ordinance by seeking judicial review of a denial of their request for a variance from the planting strip provision of the ordinance, they could not collaterally attack the validity of the planting strip provision in plaintiff city's action for an injunction requiring them to comply with the ordinance. City of Elizabeth City v. LFM Enterprises, Inc., 48 N.C. App. 408, 269 S.E.2d 260 (1980).

A zoning ordinance could not be collaterally attacked by a party who failed to avail herself of the judicial review that the ordinance and statutes authorized. Wil-Hol Corp. v. Marshall, 71 N.C. App. 611, 322 S.E.2d 655 (1984).

In action by plaintiff seeking civil penalties and injunctive relief against defendant for displaying portable signs, where defendant failed to file any notice of appeal with the zoning administrator or the board of adjustment within the required 30 days after he received the notice of the zoning administrator's determination, he waived any right to raise in superior court defenses he might have had to the assessment. Having failed to exercise his administrative remedies, defendant could not collaterally attack the determination of the zoning administrator. Grandfather Village v. Worsley, 111 N.C. App. 686, 433 S.E.2d 13 (1993).

Mandamus but Not Appeal Held Available. — Plaintiff could not attack special use permits where she failed to first appeal to the board of zoning adjustment. However, plaintiff stated a proper claim against town for mandamus by alleging that zoning administrators failed to enforce ordinance. Midgette v. Pate, 94 N.C. App. 498, 380 S.E.2d 572 (1989).

Entry of Consent Order Did Not Render Appeal Moot. — Appeal by proposed intervenors in an appeal under G.S. 160A-388(e) of the decision of a town board of adjustment denying a conditional use permit for a residential development was not rendered moot by the entry of a consent decree between the developer and the board requiring the board to issue the permit; the intervenors, who were nearby landowners opposed to the development, sought not only to prevent the issuance of the permit but also alleged that the trial court's action in approving the consent decree was unlawful and that there were sufficient special damages to entitle them to intervention as a matter of right. Councill v. Town of Boone, 146 N.C. App. 103, 551 S.E.2d 907, 2001 N.C. App. LEXIS 795 (2001), cert. denied, 354 N.C. 360, 560 S.E.2d 130 (2001).

Use of Property as Improper Challenge to Expansion. — Board of Adjustment properly held that petitioner could not challenge the expansion of the homeless shelter on the grounds of the use of the property. Allen v. City of Burlington Bd. of Adjustment, 100 N.C. App. 615, 397 S.E.2d 657 (1990).

Grant of Variance Affirmed. — Town of Surf City board of adjustment's decision to grant a variance of approximately 7.2 inches to property owners was based upon competent evidence and was not arbitrary or capricious because: (1) there was sufficient evidence to support the board's finding that literal enforcement of the Surf City, N.C., Zoning Ordinance would result in an unnecessary hardship for the owners; (2) the variance would allow the owners to continue their construction project that was started only after obtaining a legitimate construction permit; (3) there was no indication that granting the variance would harm neighboring properties or structures, and would not give any special privileges to the owners; (4) the board followed the procedures for granting a variance as outlined in the ordinance; and (5) the owners followed the necessary procedures to obtain a building permit before they began construction on their property and the hardship that they faced was not one of their own making. Turik v. Town of Surf City, 182 N.C. App. 427, 642 S.E.2d 251, 2007 N.C. App. LEXIS 686 (2007).

Review of Denial of Subdivision Application. — Denial of a property owner's subdivision application was properly reversed because the property owner complied with the general and technical requirements of the town's subdivision ordinance since substantial evidence did not support findings regarding overcrowding of schools, increased traffic, and incompatibility with the existing neighborhood; also, remand for clarification of subjective criteria in the ordinance was reasonable. Blue Ridge Co., L.L.C. v. Town of Pineville, 188 N.C. App. 466, 655 S.E.2d 843, 2008 N.C. App. LEXIS 227 (2008).

Appeal rights do not resurface simply because a use which has been found to be permissible on the property is being expanded. Any challenge to this expansion would have to be based on factors other than use. Allen v. City of Burlington Bd. of Adjustment, 100 N.C. App. 615, 397 S.E.2d 657 (1990).

Proper Review at Appellate Level Considers Whether Evidence Before Town Board Was Supportive of Its Action. — In reviewing sufficiency and competency of the evidence at the appellate level, the question is not whether the evidence before the superior court supported that court's order, but whether the evidence before, the town board was supportive of its action. Coulter v. City of Newton, 100 N.C. App. 523, 397 S.E.2d 244 (1990).

Insufficient Pleadings. — In action to contest decision of town board of adjustment issuing special exception permit for expansion of present nonconforming building, allegation that landowner was the "owner of adjoining property" did not satisfy the pleading requirement, in that there was no allegation relating to whether and in what respect landowner's land would be adversely affected by the board's issuance of the special exception permit. Kentallen, Inc. v. Town of Hillsborough, 110 N.C. App. 767, 431 S.E.2d 231 (1993).

Time for Appeal. — The fact that the town planner failed to inform the landowner of its right to appeal a zoning decision did not preclude enforcement of the town's 30-day limitation period for filing an appeal, where the planner's letter was silent, but the landowner was presumed to know the law governing such appeals. Water Tower Office Assocs. v. Town of Cary Bd. of Adjustment, 131 N.C. App. 696, 507 S.E.2d 589 (1998).

Appeal Held Timely. — The trial court erred by affirming the Board of Adjustment's determination that petitioner was time-barred from bringing appeal, relying on local ordinance and laches. Burlington Zoning Ordinance G.S. 32.15(H) provided that appeals were to be taken within a "reasonable time." Reasonable was not defined. In making a determination of what is reasonable, the time begins to run when a party has actual or constructive notice of the zoning decision. There is no evidence that petitioner had actual notice of the building inspector's decision until letter of August 10, 1989. Petitioner appealed this decision on September 8, 1989, within a reasonable period. Allen v. City of Burlington Bd. of Adjustment, 100 N.C. App. 615, 397 S.E.2d 657 (1990).

Remand, Not Granting Variance, Was Proper. — Although denial of an owner's request for a variance was improper, the proper course was for the trial court to remand the case to the board, not to grant the variance. Stealth Props., LLC v. Town of Pinebluff Bd. of Adjustment, 183 N.C. App. 461, 645 S.E.2d 144, 2007 N.C. App. LEXIS 1123 (2007).

"Aggrieved Party" Defined. — An aggrieved party is one who can either show an interest in the property affected, or if the party is a nearby property owner, some special damage, distinct from the rest of the community, amounting to a reduction in the value of his property. Allen v. City of Burlington Bd. of Adjustment, 100 N.C. App. 615, 397 S.E.2d 657 (1990).

An aggrieved party is one who either shows a legal interest in the property affected or, in the case of a nearby property owner, shows some special damage, distinct from the rest of the community, amounting to a reduction in value of the owner's property. Lloyd v. Town of Chapel Hill, 127 N.C. App. 347, 489 S.E.2d 898 (1997).

Petitioner Held to Be "Aggrieved Party". — Board of Adjustment's determination that petitioner was not an aggrieved person was not supported by evidence in the record where: the record revealed competent evidence of such special damages through petitioner's own testimony; respondents' expert testified in general terms about the neighborhood and his opinion as to the appropriateness of the proposed uses in the area; and nothing in his testimony could reasonably be concluded to negative petitioner's testimony about his property. Allen v. City of Burlington Bd. of Adjustment, 100 N.C. App. 615, 397 S.E.2d 657 (1990).

Standing of Aggrieved Party to Appeal. — Appeals may be taken to the Board of Adjustment from a building inspector's decision only by a "person aggrieved" by that decision. Allen v. City of Burlington Bd. of Adjustment, 100 N.C. App. 615, 397 S.E.2d 657 (1990).

Appeal by Intervenors Dismissed. — Appeal by intervenors was dismissed where there was no evidence of a diminishment of property values or an assertion of special damages distinct from the rest of the community. Lloyd v. Town of Chapel Hill, 127 N.C. App. 347, 489 S.E.2d 898 (1997).

De Novo Review. — A zoning board of adjustment's determination of nonconforming use is subject to a review de novo. Welter v. Rowan County Bd. of Comm'rs, 160 N.C. App. 358, 585 S.E.2d 472, 2003 N.C. App. LEXIS 1802 (2003).

Superior court properly exercised its scope of review in affirming a decision by a city zoning board of adjustment to affirm the denial of a business privilege license by a city tax collector for a sexually oriented business that sought to operate in violation of a city ordinance because competent, material, and substantial evidence existed in the record to support the decision. Fantasy World, Inc. v. Greensboro Bd. of Adjustment, 162 N.C. App. 603, 592 S.E.2d 205, 2004 N.C. App. LEXIS 267 (2004), cert. denied, 358 N.C. 543, 599 S.E.2d 43 (2004).

Appealable Controversy. — Pursuant to G.S. 160A-388(b), the controversy surrounding a town historic preservation commission's denial of a developer's design application remained after the application was denied because the issuance of a certificate of appropriateness by the commission was not dependent upon the issuance of a zoning certificate. Meares v. Town of Beaufort, — N.C. App. —, 667 S.E.2d 239, 2008 N.C. App. LEXIS 1746 (2008).

§ 160A-389. Remedies.

If a building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained, or any building, structure or land is used in violation of this Part or of any ordinance or other regulation made under authority conferred thereby, the city, in addition to other remedies, may institute any appropriate action or proceedings to prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use, to restrain, correct or abate the violation, to prevent occupancy of the building, structure or land, or to prevent any illegal act, conduct, business or use in or about the premises. (1923, c. 250, s. 8; C.S., s. 2776(y); 1971, c. 698, s. 1.)

CASE NOTES

Editor's Note. *— Some of the cases cited below were decided under former similar statutory provisions.*

City cannot be estopped from enforcing a zoning ordinance by the conduct of a zoning official in encouraging or permitting the violation. City of Winston-Salem v. Hoots Concrete Co., 47 N.C. App. 405, 267 S.E.2d 569, cert. denied, 283 S.E.2d 131 (1980).

A municipal corporation was not estopped from enforcing a valid zoning regulation by obtaining an injunction merely on account of the conduct of its officials in permitting or even encouraging its violation by issuing a permit for a permissive use with knowledge that the owner intended to use same for a prohibited purpose or by acquiescing in such unlawful use over a period of years. City of Raleigh v. Fisher, 232 N.C. 629, 61 S.E.2d 897 (1950).

In enacting and enforcing zoning regulations, a municipality acts as a governmental agency and exercises the police power of the State. Town of Hillsborough v. Smith, 10 N.C. App. 70, 178 S.E.2d 18 (1970), cert. denied, 277 N.C. 727, 178 S.E.2d 831 (1971).

Municipality did not waive immunity merely by instituting a civil action under former G.S. 160-179 to restrain a violation of its zoning ordinance. Town of Hillsborough v. Smith, 10 N.C. App. 70, 178 S.E.2d 18 (1970), cert. denied, 277 N.C. 727, 178 S.E.2d 831 (1971).

Enforcement Provisions. — The broad enforcement provisions of this section, a zoning statute, could not serve as the statutory basis for denying a building permit to one whose lot violated the subdivision requirements of Chapter 17 of the Nags Head Code of Ordinances. However, insofar as the Town of Nags Head rested its denial of a building permit upon the violation of zoning laws, the broader enforcement license of G.S. 160A-381 would apply and would sustain such a remedy. Town of Nags Head v. Tillett, 314 N.C. 627, 336 S.E.2d 394 (1985).

The specific penal and equitable relief set out in G.S. 160A-375 is intended to deter those who violate subdivision ordinances; this section permits broader, appropriate action and proceedings to prevent or correct the violation of a zoning ordinance. Town of Nags Head v. Tillett, 314 N.C. 627, 336 S.E.2d 394 (1985).

Town was entitled to seek an injunction against real estate developers, pursuant to G.S. 160A-375 and G.S. 160A-389, requiring the developers to comply with a zoning ordinance for the establishment of a minipark and an open space in a real estate subdivision as the developers did not point to any inequities resulting from the injunction itself. Town of Pinebluff v. Marts, — N.C. App. —, 673 S.E.2d 740, 2009 N.C. App. LEXIS 261 (2009).

As to use of injunction under former § 160-179, see City of Fayetteville v. Spur Distrib. Co., 216 N.C. 596, 5 S.E.2d 838 (1939), commented on in 18 N.C.L. Rev. 255 (1940); Town of Clinton v. Ross, 226 N.C. 682, 40 S.E.2d 593 (1946); City of Raleigh v. Morand, 247 N.C. 363, 100 S.E.2d 870 (1957), appeal dismissed, 357 U.S. 343, 78 S. Ct. 1369, 2 L. Ed. 2d 1367 (1958); City of New Bern v. Walker, 255 N.C. 355, 121 S.E.2d 544 (1961).

Whether specific use of property conforms to zoning ordinance is a question of law, and as such, the determination is made by the local zoning board and is reviewable by the courts as a matter of law. City of Winston-Salem v. Hoots Concrete Co., 47 N.C. App. 405, 267 S.E.2d 569 (1980).

No Zoning Power Over School's Parking Lot. — Rocky Mount Board of Adjustment had no authority to require a special use permit on the part of the Nash-Rocky Mount Board of Education with regard to its erection of a parking lot, because a parking lot was not a building or the use of a building as that term was provided for in the 2003 version of G.S. 160A-392 applicable to the matter and, therefore, the Board of Adjustment had no zoning power and no special use permit was needed. Nash-Rocky Mount Bd. of Educ. v. Rocky Mount Bd. of Adjustment, 169 N.C. App. 587, 610 S.E.2d 255, 2005 N.C. App. LEXIS 679 (2005).

Cited in City of Hickory v. Catawba Valley Mach. Co., 39 N.C. App. 236, 249 S.E.2d 851 (1978); Rose v. Guilford County, 60 N.C. App. 170, 298 S.E.2d 200 (1982); Town of Nags Head v. Tillett, 68 N.C. App. 554, 315 S.E.2d 740 (1984).

§ 160A-390. Conflict with other laws.

When regulations made under authority of this Part require a greater width or size of yards or courts, or require a lower height of a building or fewer number of stories, or require a greater percentage of a lot to be left unoccupied, or impose other higher standards than are required in any other statute or local ordinance or regulation, regulations made under authority of this Part shall govern. When the provisions of any other statute or local ordinance or regulation require a greater width or size of yards or courts, or require a lower height of a building or a fewer number of stories, or require a greater percentage of a lot to be left unoccupied, or impose other higher standards than are required by the regulations made under authority of this Part, the provisions of that statute or local ordinance or regulation shall govern. (1923, c. 250, s. 9; C.S., s. 2776(z); 1971, c. 698, s. 1.)

CASE NOTES

Applied in Redevelopment Comm'n v. Ford, 67 N.C. App. 470, 313 S.E.2d 211 (1984); Grassy Creek Neighborhood Alliance v. City of Winston-Salem, 142 N.C. App. 290, 542 S.E.2d 296, 2001 N.C. App. LEXIS 84 (2001).

Cited in Rose v. Guilford County, 60 N.C. App. 170, 298 S.E.2d 200 (1982).

§ 160A-391. Other statutes not repealed.

This Part shall not repeal any zoning act or city planning act, local or general, now in force, except those that are repugnant to or inconsistent herewith. This Part shall be construed to be an enlargement of the duties, powers, and authority contained in other laws authorizing the appointment and proper functioning of city planning commissions or zoning commissions by any city or town in the State of North Carolina. (1923, c. 250, s. 11; C.S., s. 2776(aa); 1971, c. 698, s. 1.)

CASE NOTES

Cited in Rose v. Guilford County, 60 N.C. App. 170, 298 S.E.2d 200 (1982).

§ 160A-392. Part applicable to buildings constructed by State and its subdivisions; exception.

All of the provisions of this Part are hereby made applicable to the erection, construction, and use of buildings by the State of North Carolina and its political subdivisions.

Notwithstanding the provisions of any general or local law or ordinance, no land owned by the State of North Carolina may be included within an overlay district or a special use or conditional use district without approval of the

Council of State. (1951, c. 1203, s. 1; 1971, c. 698, s. 1; 1985, c. 607, s. 2; 2004-199, s. 41(e); 2005-280, s. 1.)

Local Modification. — Town of Southport: 2005-305, s. 11.

Legal Periodicals. — For comment on exclusionary zoning of community facilities, see 12 N.C. Cent. L.J. 167 (1980).

CASE NOTES

"Building." — Plain meaning of the word "building" in G.S. 160A-392 does not encompass a parking lot. Nash-Rocky Mount Bd. of Educ. v. Rocky Mount Bd. of Adjustment, 169 N.C. App. 587, 610 S.E.2d 255, 2005 N.C. App. LEXIS 679 (2005).

County Ordinances Inapplicable to Municipal Sewage Facility. — City which owned a sewage treatment facility located in a county and outside the city's boundaries was not required to comply with county's zoning ordinances in upgrading the facility and providing sewage service to newly annexed areas of city with that facility. Davidson County v. City of High Point, 85 N.C. App. 26, 354 S.E.2d 280, modified and aff'd, 321 N.C. 252, 362 S.E.2d 553 (1987).

No Zoning Power Over School's Parking Lot. — Rocky Mount Board of Adjustment had no authority to require a special use permit on the part of the Nash-Rocky Mount Board of Education with regard to its erection of a parking lot, because a parking lot was not a building or the use of a building as that term was provided for in the 2003 version of G.S. 160A-392 applicable to the matter and, therefore, the Board of Adjustment had no zoning power and no special use permit was needed. Nash-Rocky Mount Bd. of Educ. v. Rocky Mount Bd. of Adjustment, 169 N.C. App. 587, 610 S.E.2d 255, 2005 N.C. App. LEXIS 679 (2005).

Cited in Rose v. Guilford County, 60 N.C. App. 170, 298 S.E.2d 200 (1982).

§ 160A-393. Appeals in the nature of certiorari.

(a) Applicability. — This section applies to appeals of quasi-judicial decisions of decision-making boards when that appeal is to superior court and in the nature of certiorari as required by this Article.

(b) For purposes of this section, the following terms mean:

(1) Decision-making board. — A city council, planning board, board of adjustment, or other board making quasi-judicial decisions appointed by the city council under this Article or under comparable provisions of any local act or any interlocal agreement authorized by law.

(2) Person. — Any legal entity authorized to bring suit in the legal entity's name.

(3) Quasi-judicial decision. — A decision involving the finding of facts regarding a specific application of an ordinance and the exercise of discretion when applying the standards of the ordinance. Quasi-judicial decisions include decisions involving variances, special and conditional use permits, and appeals of administrative determinations. Decisions on the approval of site plans are quasi-judicial in nature if the ordinance authorizes a decision-making board to approve or deny the site plan based not only upon whether the application complies with the specific requirements set forth in the ordinance, but also on whether the application complies with one or more generally stated standards requiring a discretionary decision on the findings of fact to be made by the decision-making board.

(c) Filing the Petition. — An appeal in the nature of certiorari shall be initiated by filing with the superior court a petition for writ of certiorari. The petition shall:

(1) State the facts that demonstrate that the petitioner has standing to seek review.

(2) Set forth the grounds upon which the petitioner contends that an error was made.

(3) Set forth with particularity the allegations and facts, if any, in support of allegations that, as the result of impermissible conflict as described in G.S. 160A-388(e1), or locally adopted conflict rules, the decision-making body was not sufficiently impartial to comply with due process principles.

(4) Set forth the relief the petitioner seeks.

(d) Standing. — A petition may be filed under this section only by a petitioner who has standing to challenge the decision being appealed. The following persons shall have standing to file a petition under this section:

(1) Any person meeting any of the following criteria:
  a. Has an ownership interest in the property that is the subject of the decision being appealed, a leasehold interest in the property that is the subject of the decision being appealed, or an interest created by easement, restriction, or covenant in the property that is the subject of the decision being appealed.
  b. Has an option or contract to purchase the property that is the subject of the decision being appealed.
  c. Was an applicant before the decision-making board whose decision is being appealed.

(2) Any other person who will suffer special damages as the result of the decision being appealed.

(3) An incorporated or unincorporated association to which owners or lessees of property in a designated area belong by virtue of their owning or leasing property in that area, or an association otherwise organized to protect and foster the interest of the particular neighborhood or local area, so long as at least one of the members of the association would have standing as an individual to challenge the decision being appealed, and the association was not created in response to the particular development or issue that is the subject of the appeal.

(4) A city whose decision-making board has made a decision that the council believes improperly grants a variance from or is otherwise inconsistent with the proper interpretation of an ordinance adopted by that council.

(e) Respondent. — The respondent named in the petition shall be the city whose decision-making board made the decision that is being appealed, except that if the petitioner is a city that has filed a petition pursuant to subdivision (4) of subsection (d) of this section, then the respondent shall be the decision-making board. If the petitioner is not the applicant before the decision-making board whose decision is being appealed, the petitioner shall also name that applicant as a respondent. Any petitioner may name as a respondent any person with an ownership or leasehold interest in the property that is the subject of the decision being appealed who participated in the hearing, or was an applicant, before the decision-making board.

(f) Writ of Certiorari. — Upon filing the petition, the petitioner shall present the petition and a proposed writ of certiorari to the clerk of superior court of the county in which the matter arose. The writ shall direct the respondent city, or the respondent decision-making board if the petitioner is a city that has filed a petition pursuant to subdivision (4) of subsection (d) of this section, to prepare and certify to the court the record of proceedings below within a specified date. The writ shall also direct that the petitioner shall serve the petition and the writ upon each respondent named therein in the manner provided for service of a complaint under Rule 4(j) of the Rules of Civil Procedure, except that, if the respondent is a decision-making board, the petition and the writ shall be served upon the chair of that decision-making board. Rule 4(j)(5)d. of the Rules of Civil Procedure shall apply in the event the chair of a decision-making board cannot be found. No summons shall be issued. The clerk shall issue the writ without notice to the respondent or respondents if the petition has been properly filed and the writ is in proper form. A copy of the executed writ shall be filed with the court.

(g) Answer to the Petition. — The respondent may, but need not, file an answer to the petition, except that, if the respondent contends that any petitioner lacks standing to bring the appeal, that contention must be set forth in an answer served on all petitioners at least 30 days prior to the hearing on the petition.

(h) Intervention. — Rule 24 of the Rules of Civil Procedure shall govern motions to intervene as a petitioner or respondent in an action initiated under this section with the following exceptions:

(1) Any person described in subdivision (1) of subsection (d) of this section shall have standing to intervene and shall be allowed to intervene as a matter of right.

(2) Any person, other than one described in subdivision (1) of subsection (d) of this section, who seeks to intervene as a petitioner must demonstrate that the person would have had standing to challenge the decision being appealed in accordance with subdivisions (2) through (4) of subsection (d) of this section.

(3) Any person, other than one described in subdivision (d)(1) of this section, who seeks to intervene as a respondent must demonstrate that the person would have had standing to file a petition in accordance with subdivisions (2) through (4) of subsection (d) of this section if the decision-making board had made a decision that is consistent with the relief sought by the petitioner.

(i) The Record. — The record shall consist of all documents and exhibits submitted to the decision-making board whose decision is being appealed, together with the minutes of the meeting or meetings at which the decision being appealed was considered. Upon request of any party, the record shall also contain an audio or videotape of the meeting or meetings at which the decision being appealed was considered if such a recording was made. Any party may also include in the record a transcript of the proceedings, which shall be prepared at the cost of the party choosing to include it. The parties may agree, or the court may direct, that matters unnecessary to the court's decision be deleted from the record or that matters other than those specified herein be included. The record shall be bound and paginated or otherwise organized for the convenience of the parties and the court. A copy of the record shall be served by the municipal respondent, or the respondent decision-making board, upon all petitioners within three days after it is filed with the court.

(j) Hearing on the Record. — The court shall hear and decide all issues raised by the petition by reviewing the record submitted in accordance with subsection (h) of this section. Except that the court may, in its discretion, allow the record to be supplemented with affidavits, testimony of witnesses, or documentary or other evidence if, and to the extent that, the record is not adequate to allow an appropriate determination of the following issues:

(1) Whether a petitioner or intervenor has standing.

(2) Whether, as a result of impermissible conflict as described in G.S. 160A-388(e1), or locally adopted conflict rules, the decision-making body was not sufficiently impartial to comply with due process principles.

(3) Whether the decision-making body erred for the reasons set forth in sub-subdivisions a. and b. of subdivision (1) of subsection (k) of this section.

(k) Scope of Review.

(1) When reviewing the decision of a decision-making board under the provisions of this section, the court shall ensure that the rights of

petitioners have not been prejudiced because the decision-making body's findings, inferences, conclusions, or decisions were:

a. In violation of constitutional provisions, including those protecting procedural due process rights.
b. In excess of the statutory authority conferred upon the city or the authority conferred upon the decision-making board by ordinance.
c. Inconsistent with applicable procedures specified by statute or ordinance.
d. Affected by other error of law.
e. Unsupported by substantial competent evidence in view of the entire record.
f. Arbitrary or capricious.

(2) When the issue before the court is whether the decision-making board erred in interpreting an ordinance, the court shall review that issue de novo. The court shall consider the interpretation of the decision-making board, but is not bound by that interpretation, and may freely substitute its judgment as appropriate.

(3) The term "competent evidence," as used in this subsection, shall not preclude reliance by the decision-making board on evidence that would not be admissible under the rules of evidence as applied in the trial division of the General Court of Justice if (i) the evidence was admitted without objection or (ii) the evidence appears to be sufficiently trustworthy and was admitted under such circumstances that it was reasonable for the decision-making board to rely upon it. The term "competent evidence," as used in this subsection, shall not be deemed to include the opinion testimony of lay witnesses as to any of the following:

a. The use of property in a particular way would affect the value of other property.
b. The increase in vehicular traffic resulting from a proposed development would pose a danger to the public safety.
c. Matters about which only expert testimony would generally be admissible under the rules of evidence.

(*l*) Decision of the Court. — Following its review of the decision-making board in accordance with subsection (k) of this section, the court may affirm the decision, reverse the decision and remand the case with appropriate instructions, or remand the case for further proceedings. If the court does not affirm the decision below in its entirety, then the court shall be guided by the following in determining what relief should be granted to the petitioners:

(1) If the court concludes that the error committed by the decision-making board is procedural only, the court may remand the case for further proceedings to correct the procedural error.

(2) If the court concludes that the decision-making board has erred by failing to make findings of fact such that the court cannot properly perform its function, then the court may remand the case with appropriate instructions so long as the record contains substantial competent evidence that could support the decision below with appropriate findings of fact. However, findings of fact are not necessary when the record sufficiently reveals the basis for the decision below or when the material facts are undisputed and the case presents only an issue of law.

(3) If the court concludes that the decision by the decision-making board is not supported by substantial competent evidence in the record or is based upon an error of law, then the court may remand the case with an order that directs the decision-making board to take whatever

action should have been taken had the error not been committed or to take such other action as is necessary to correct the error. Specifically:

a. If the court concludes that a permit was wrongfully denied because the denial was not based on substantial competent evidence or was otherwise based on an error of law, the court may remand with instructions that the permit be issued, subject to reasonable and appropriate conditions.

b. If the court concludes that a permit was wrongfully issued because the issuance was not based on substantial competent evidence or was otherwise based on an error of law, the court may remand with instructions that the permit be revoked.

(m) Ancillary Injunctive Relief. — Upon motion of a party to a proceeding under this section, and under appropriate circumstances, the court may issue an injunctive order requiring any other party to that proceeding to take certain action or refrain from taking action that is consistent with the court's decision on the merits of the appeal. (2009-421, s. 1(a).)

Editor's Note. — Session Laws 2009-421, s. 7, made this section effective January 1, 2010 and applicable to quasi-judicial decisions rendered on or after that date.

§ 160A-394: Reserved for future codification purposes.

Part 3A. Historic Districts.

§§ 160A-395 through 160A-399: Repealed by Session Laws 1989, c. 706.

Part 3B. Historic Properties Commissions.

§§ 160A-399.1 through 160A-400: Repealed by Session Laws 1989, c. 706.

Part 3C. Historic Districts and Landmarks.

§ 160A-400.1. Legislative findings.

The historical heritage of our State is one of our most valued and important assets. The conservation and preservation of historic districts and landmarks stabilize and increase property values in their areas and strengthen the overall economy of the State. This Part authorizes cities and counties of the State within their respective zoning jurisdictions and by means of listing, regulation, and acquisition:

(1) To safeguard the heritage of the city or county by preserving any district or landmark therein that embodies important elements of its culture, history, architectural history, or prehistory; and

(2) To promote the use and conservation of such district or landmark for the education, pleasure and enrichment of the residents of the city or county and the State as a whole. (1989, c. 706, s. 2.)

Extension of Permits. — For provisions pertaining to extension of permits during state of economic emergency in the real estate sector, pursuant to Session Laws 2009-406, ss. 1

through 5.1, as amended by Session Laws 2009-484, s. 5.1, 2009-550, s. 5.2, and 2009-572, ss. 1-3, see the Editor's note at G.S. 160A-385.1.

§ 160A-400.2. Exercise of powers by counties as well as cities.

The term "municipality" or "municipal" as used in G.S. 160A-400.1 through 160A-400.14 shall be deemed to include the governing board or legislative board of a county, to the end that counties may exercise the same powers as cities with respect to the establishment of historic districts and designation of landmarks. (1989, c. 706, s. 2; 1989 (Reg. Sess., 1990), c. 1024, s. 40.)

CASE NOTES

Editor's Note. *— The case cited below was decided under former similar statutory provisions.*

Discretion of Municipal Governing Body. — The statutory authorization of historic district ordinances is a mixture of delegated legislative and administrative power. A municipal governing body has unlimited discretion to determine whether or not to establish a historic district or districts. Once it chooses to do so, however, its discretion, insofar as the method and the standard by which a historic district ordinance is to be administered, is extremely limited. A-S-P Assocs. v. City of Raleigh, 298 N.C. 207, 258 S.E.2d 444 (1979).

A historic district ordinance is to be administered by a historic district commission, the composition of which is specified by the General Assembly, in accordance with the standard of "incongruity" set directly by the General Assembly in former G.S. 160A-397. A-S-P Assocs. v. City of Raleigh, 298 N.C. 207, 258 S.E.2d 444 (1979).

§ 160A-400.3. Character of historic district defined.

Historic districts established pursuant to this Part shall consist of areas which are deemed to be of special significance in terms of their history, prehistory, architecture, and/or culture, and to possess integrity of design, setting, materials, feeling, and association. (1989, c. 706, s. 2.)

Legal Periodicals. — For article, "Reaffirmation of Local Initiative: North Carolina's 1979 Historic Preservation Legislation," see 11 N.C. Cent. L.J. 243 (1980).

For note on historic district zoning, see 16 Wake Forest L. Rev. 495 (1980).

§ 160A-400.4. Designation of historic districts.

(a) Any municipal governing board may, as part of a zoning or other ordinance enacted or amended pursuant to this Article, designate and from time to time amend one or more historic districts within the area subject to the ordinance. Such ordinance may treat historic districts either as a separate use district classification or as districts which overlay other zoning districts. Where historic districts are designated as separate use districts, the zoning ordinance may include as uses by right or as conditional uses those uses found by the Preservation Commission to have existed during the period sought to be restored or preserved, or to be compatible with the restoration or preservation of the district.

(b) No historic district or districts shall be designated under subsection (a) of this section until:

(1) An investigation and report describing the significance of the buildings, structures, features, sites or surroundings included in any such proposed district, and a description of the boundaries of such district has been prepared, and

(2) The Department of Cultural Resources, acting through the State Historic Preservation Officer or his or her designee, shall have made an analysis of and recommendations concerning such report and description of proposed boundaries. Failure of the department to submit its written analysis and recommendations to the municipal governing board within 30 calendar days after a written request for such analysis has been received by the Department of Cultural Resources shall relieve the municipality of any responsibility for awaiting such analysis, and said board may at any time thereafter take any necessary action to adopt or amend its zoning ordinance.

(c) The municipal governing board may also, in its discretion, refer the report and proposed boundaries under subsection (b) of this section to any local preservation commission or other interested body for its recommendations prior to taking action to amend the zoning ordinance. With respect to any changes in the boundaries of such district subsequent to its initial establishment, or the creation of additional districts within the jurisdiction, the investigative studies and reports required by subdivision (1) of subsection (b) of this section shall be prepared by the preservation commission, and shall be referred to the local planning agency for its review and comment according to procedures set forth in the zoning ordinance. Changes in the boundaries of an initial district or proposal for additional districts shall also be submitted to the Department of Cultural Resources in accordance with the provisions of subdivision (2) of subsection (b) of this section.

On receipt of these reports and recommendations, the municipality may proceed in the same manner as would otherwise be required for the adoption or amendment of any appropriate zoning ordinance provisions.

(d) The provisions of G.S. 160A-201 apply to zoning or other ordinances pertaining to historic districts, and the authority under G.S. 160A-201(b) for the ordinance to regulate the location or screening of solar collectors may encompass requiring the use of plantings or other measures to ensure that the use of solar collectors is not incongruous with the special character of the district. (1989, c. 706, s. 2; 2009-553, s. 4.)

Effect of Amendments. — Session Laws 2009-553, s. 4, effective December 1, 2009, inserted the subsection (a), (b) and (c) designations; inserted "under subsection (a) of this section" in the present introductory language of subsection (b); in the first paragraph of subsection (c), inserted "under subsection (b) of this section" in the first sentence and inserted "of subsection (b)" in the second and third sentences; and added subsection (d).

§ 160A-400.5. Designation of landmarks; adoption of an ordinance; criteria for designation.

Upon complying with G.S. 160A-400.6, the governing board may adopt and from time to time amend or repeal an ordinance designating one or more historic landmarks. No property shall be recommended for designation as a historic landmark unless it is deemed and found by the preservation commission to be of special significance in terms of its historical, prehistorical, architectural, or cultural importance, and to possess integrity of design, setting, workmanship, materials, feeling and/or association.

The ordinance shall describe each property designated in the ordinance, the name or names of the owner or owners of the property, those elements of the property that are integral to its historical, architectural, or prehistorical value, including the land area of the property so designated, and any other information the governing board deems necessary. For each building, structure, site, area, or object so designated as a historic landmark, the ordinance shall require that the waiting period set forth in this Part be observed prior to its demolition. For each designated landmark, the ordinance may also provide for a suitable sign on the property indicating that the property has been so designated. If the owner consents, the sign shall be placed upon the property. If the owner objects, the sign shall be placed on a nearby public right-of-way. (1989, c. 706, s. 2.)

§ 160A-400.6. Required landmark designation procedures.

As a guide for the identification and evaluation of landmarks, the commission shall undertake, at the earliest possible time and consistent with the resources available to it, an inventory of properties of historical, architectural, prehistorical, and cultural significance within its jurisdiction. Such inventories and any additions or revisions thereof shall be submitted as expeditiously as possible to the Office of Archives and History. No ordinance designating a historic building, structure, site, area or object as a landmark nor any amendment thereto may be adopted, nor may any property be accepted or acquired by a preservation commission or the governing board of a municipality, until all of the following procedural steps have been taken:

(1) The preservation commission shall (i) prepare and adopt rules of procedure, and (ii) prepare and adopt principles and guidelines, not inconsistent with this Part, for altering, restoring, moving, or demolishing properties designated as landmarks.

(2) The preservation commission shall make or cause to be made an investigation and report on the historic, architectural, prehistorical, educational or cultural significance of each building, structure, site, area or object proposed for designation or acquisition. Such investigation or report shall be forwarded to the Office of Archives and History, North Carolina Department of Cultural Resources.

(3) The Department of Cultural Resources, acting through the State Historic Preservation Officer shall either upon request of the department or at the initiative of the preservation commission be given an opportunity to review and comment upon the substance and effect of the designation of any landmark pursuant to this Part. Any comments shall be provided in writing. If the Department does not submit its comments or recommendation in connection with any designation within 30 days following receipt by the Department of the investigation and report of the commission, the commission and any city or county governing board shall be relieved of any responsibility to consider such comments.

(4) The preservation commission and the governing board shall hold a joint public hearing or separate public hearings on the proposed ordinance. Reasonable notice of the time and place thereof shall be given. All meetings of the commission shall be open to the public, in accordance with the North Carolina Open Meetings Law, Chapter 143, Article 33C.

(5) Following the joint public hearing or separate public hearings, the governing board may adopt the ordinance as proposed, adopt the ordinance with any amendments it deems necessary, or reject the proposed ordinance.

(6) Upon adoption of the ordinance, the owners and occupants of each designated landmark shall be given written notification of such designation insofar as reasonable diligence permits. One copy of the ordinance and all amendments thereto shall be filed by the preservation commission in the office of the register of deeds of the county in which the landmark or landmarks are located. Each designated landmark shall be indexed according to the name of the owner of the

property in the grantee and grantor indexes in the register of deeds office, and the preservation commission shall pay a reasonable fee for filing and indexing. In the case of any landmark property lying within the zoning jurisdiction of a city, a second copy of the ordinance and all amendments thereto shall be kept on file in the office of the city or town clerk and be made available for public inspection at any reasonable time. A third copy of the ordinance and all amendments thereto shall be given to the city or county building inspector. The fact that a building, structure, site, area or object has been designated a landmark shall be clearly indicated on all tax maps maintained by the county or city for such period as the designation remains in effect.

(7) Upon the adoption of the landmarks ordinance or any amendment thereto, it shall be the duty of the preservation commission to give notice thereof to the tax supervisor of the county in which the property is located. The designation and any recorded restrictions upon the property limiting its use for preservation purposes shall be considered by the tax supervisor in appraising it for tax purposes. (1989, c. 706, s. 2; 2002-159, s. 35(m).)

§ 160A-400.7. Historic Preservation Commission.

Before it may designate one or more landmarks or historic districts, a municipality shall establish or designate a historic preservation commission. The municipal governing board shall determine the number of the members of the commission, which shall be at least three, and the length of their terms, which shall be no greater than four years. A majority of the members of such a commission shall have demonstrated special interest, experience, or education in history, architecture, archaeology, or related fields. All the members shall reside within the territorial jurisdiction of the municipality as established pursuant to G.S. 160A-360. The commission may appoint advisory bodies and committees as appropriate.

In lieu of establishing a historic preservation commission, a municipality may designate as its historic preservation commission, (i) a separate historic districts commission or a separate historic landmarks commission established pursuant to this Part to deal only with historic districts or landmarks respectively, (ii) a planning board established pursuant to this Article, or (iii) a community appearance commission established pursuant to Part 7 of this Article. In order for a commission or board other than the preservation commission to be designated, at least three of its members shall have demonstrated special interest, experience, or education in history, architecture, or related fields. At the discretion of the municipality the ordinance may also provide that the preservation commission may exercise within a historic district any or all of the powers of a planning board or a community appearance commission.

A county and one or more cities in the county may establish or designate a joint preservation commission. If a joint commission is established or designated, the county and cities involved shall determine the residence requirements of members of the joint preservation commission. (1989, c. 706, s. 2; 2005-418, s. 12.)

Local Modification. — Wake: 2004-11; Town of Nags Head: 2003-46, s. 1.

Editor's Note. — Session Laws 2005-418, s. 14, provides: "The provisions of this act shall not be deemed to repeal or amend the validity or enforceability of any local act or charter provision previously enacted by the General Assembly."

§ 160A-400.8. Powers of the Historic Preservation Commission.

A preservation commission established pursuant to this Part may, within the zoning jurisdiction of the municipality:

(1) Undertake an inventory of properties of historical, prehistorical, architectural, and/or cultural significance;

(2) Recommend to the municipal governing board areas to be designated by ordinance as "Historic Districts"; and individual structures, buildings, sites, areas, or objects to be designated by ordinance as "Landmarks";

(3) Acquire by any lawful means the fee or any lesser included interest, including options to purchase, to properties within established districts or to any such properties designated as landmarks, to hold, manage, preserve, restore and improve the same, and to exchange or dispose of the property by public or private sale, lease or otherwise, subject to covenants or other legally binding restrictions which will secure appropriate rights of public access and promote the preservation of the property;

(4) Restore, preserve and operate historic properties;

(5) Recommend to the governing board that designation of any area as a historic district or part thereof, or designation of any building, structure, site, area, or object as a landmark, be revoked or removed for cause;

(6) Conduct an educational program with respect to historic properties and districts within its jurisdiction;

(7) Cooperate with the State, federal, and local governments in pursuance of the purposes of this Part. The governing board or the commission when authorized by the governing board may contract with the State, or the United States of America, or any agency of either, or with any other organization provided the terms are not inconsistent with State or federal law;

(8) Enter, solely in performance of its official duties and only at reasonable times, upon private lands for examination or survey thereof. However, no member, employee or agent of the commission may enter any private building or structure without the express consent of the owner or occupant thereof;

(9) Prepare and recommend the official adoption of a preservation element as part of the municipality's comprehensive plan;

(10) Review and act upon proposals for alterations, demolitions, or new construction within historic districts, or for the alteration or demolition of designated landmarks, pursuant to this Part; and

(11) Negotiate at any time with the owner of a building, structure, site, area, or object for its acquisition or its preservation, when such action is reasonably necessary or appropriate. (1989, c. 706, s. 2.)

CASE NOTES

Cited in Suhre v. Haywood County, 55 F. Supp. 2d 384 (W.D.N.C. 1999).

§ 160A-400.9. Certificate of appropriateness required.

(a) From and after the designation of a landmark or a historic district, no exterior portion of any building or other structure (including masonry walls, fences, light fixtures, steps and pavement, or other appurtenant features), nor above-ground utility structure nor any type of outdoor advertising sign shall be erected, altered, restored, moved, or demolished on such landmark or within such district until after an application for a certificate of appropriateness as to exterior features has been submitted to and approved by the preservation commission. The municipality shall require such a certificate to be issued by the commission prior to the issuance of a building permit or other permit granted for the purposes of constructing, altering, moving, or demolishing structures, which certificate may be issued subject to reasonable conditions necessary to carry out the purposes of this Part. A certificate of appropriateness shall be required whether or not a building or other permit is required.

For purposes of this Part, "exterior features" shall include the architectural style, general design, and general arrangement of the exterior of a building or other structure, including the kind and texture of the building material, the size and scale of the building, and the type and style of all windows, doors, light fixtures, signs, and other appurtenant fixtures. In the case of outdoor advertising signs, "exterior features" shall be construed to mean the style, material, size, and location of all such signs. Such "exterior features" may, in the discretion of the local governing board, include historic signs, color, and significant landscape, archaeological, and natural features of the area.

Except as provided in (b) below, the commission shall have no jurisdiction over interior arrangement and shall take no action under this section except to prevent the construction, reconstruction, alteration, restoration, moving, or demolition of buildings, structures, appurtenant fixtures, outdoor advertising signs, or other significant features in the district which would be incongruous with the special character of the landmark or district.

(b) Notwithstanding subsection (a) of this section, jurisdiction of the commission over interior spaces shall be limited to specific interior features of architectural, artistic or historical significance in publicly owned landmarks; and of privately owned historic landmarks for which consent for interior review has been given by the owner. Said consent of an owner for interior review shall bind future owners and/or successors in title, provided such consent has been filed in the office of the register of deeds of the county in which the property is located and indexed according to the name of the owner of the property in the grantee and grantor indexes. The landmark designation shall specify the interior features to be reviewed and the specific nature of the commission's jurisdiction over the interior.

(c) Prior to any action to enforce a landmark or historic district ordinance, the commission shall (i) prepare and adopt rules of procedure, and (ii) prepare and adopt principles and guidelines not inconsistent with this Part for new construction, alterations, additions, moving and demolition. The ordinance may provide, subject to prior adoption by the preservation commission of detailed standards, for the review and approval by an administrative official of applications for a certificate of appropriateness or of minor works as defined by ordinance; provided, however, that no application for a certificate of appropriateness may be denied without formal action by the preservation commission.

Prior to issuance or denial of a certificate of appropriateness the commission shall take such steps as may be reasonably required in the ordinance and/or rules of procedure to inform the owners of any property likely to be materially affected by the application, and shall give the applicant and such owners an opportunity to be heard. In cases where the commission deems it necessary, it may hold a public hearing concerning the application. All meetings of the commission shall be open to the public, in accordance with the North Carolina Open Meetings Law, Chapter 143, Article 33C.

(d) All applications for certificates of appropriateness shall be reviewed and acted upon within a reasonable time, not to exceed 180 days from the date the application for a certificate of appropriateness is filed, as defined by the ordinance or the commission's rules of procedure. As part of its review procedure, the commission may view the premises and seek the advice of the Division of Archives and History or such other expert advice as it may deem necessary under the circumstances.

(e) An appeal may be taken to the Board of Adjustment from the commission's action in granting or denying any certificate, which appeals (i) may be taken by any aggrieved party, (ii) shall be taken within times prescribed by the preservation commission by general rule, and (iii) shall be in the nature of certiorari. Any appeal from the Board of Adjustment's decision in any such case shall be heard by the superior court of the county in which the municipality is located.

(f) All of the provisions of this Part are hereby made applicable to construction, alteration, moving and demolition by the State of North Carolina, its political subdivisions, agencies and instrumentalities, provided however they shall not apply to interiors of buildings or structures owned by the State of North Carolina. The State and its agencies shall have a right of appeal to the North Carolina Historical Commission or any successor agency assuming its responsibilities under G.S. 121-12(a) from any decision of a local preservation commission. The commission shall render its decision within 30 days from the date that the notice of appeal by the State is received by it. The current edition of the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings shall be the sole principles and guidelines used in reviewing applications of the State for certificates of appropriateness. The decision of the commission shall be final and binding upon both the State and the preservation commission. (1989, c. 706, s. 2.)

Local Modification. — City of Raleigh: 1993, c. 168, s. 1.

CASE NOTES

Compliance is Ministerial Duty. — Acknowledging the undisputed expiration of the G.S. 160A-400.9(d) sixty-day window for Historic Preservation Commission discretionary review without action, and pursuant to the Beaufort Zoning Ordinance and Beaufort HPC Rules of Procedure, the approval of an owner's second Certificate of Appropriateness (COA) application and the issuance of the COA was a ministerial duty appropriately compelled by the trial court's writ of mandamus. Meares v. Town of Beaufort, — N.C. App. —, 667 S.E.2d 244, 2008 N.C. App. LEXIS 1764 (2008).

Historic District Design Guideline Stricken as Too Restrictive. — Guideline in a town's historic district design guidelines was more restrictive than was allowed pursuant to the authority delegated by the North Carolina General Assembly under G.S. 160A-400.9(a) because the guideline imposed the requirement that new structures not be incongruent with a historically significant structure which existed on the site of a proposed structure, rather than a landmark or district as stated in G.S. 160A-400.9(a). Meares v. Town of Beaufort, — N.C. App. —, 667 S.E.2d 239, 2008 N.C. App. LEXIS 1746 (2008).

§ 160A-400.10. Conflict with other laws.

Whenever any ordinance adopted pursuant to this Part requires a longer waiting period or imposes other higher standards with respect to a designated historic landmark or district than are established under any other statute, charter provision, or regulation, this Part shall govern. Whenever the provisions of any other statute, charter provision, ordinance or regulation require a longer waiting period or impose other higher standards than are established under this Part, such other statute, charter provision, ordinance or regulation shall govern. (1989, c. 706, s. 2.)

§ 160A-400.11. Remedies.

In case any building, structure, site, area or object designated as a historic landmark or located within a historic district designated pursuant to this Part is about to be demolished whether as the result of deliberate neglect or otherwise, materially altered, remodeled, removed or destroyed, except in compliance with the ordinance or other provisions of this Part, the city or county, the historic preservation commission, or other party aggrieved by such action may institute any appropriate action or proceedings to prevent such unlawful demolition, destruction, material alteration, remodeling or removal, to restrain, correct or abate such violation, or to prevent any illegal act or conduct with respect to such building, structure, site, area or object. Such remedies shall be in addition to any others authorized by this Chapter for violation of a municipal ordinance. (1989, c. 706, s. 2.)

CASE NOTES

Cited in Suhre v. Haywood County, 55 F. Supp. 2d 384 (W.D.N.C. 1999).

§ 160A-400.12. Appropriations.

A city or county governing board is authorized to make appropriations to a historic preservation commission established pursuant to this Part in any amount that it may determine necessary for the expenses of the operation of the commission, and may make available any additional amounts necessary for the acquisition, restoration, preservation, operation, and management of historic buildings, structures, sites, areas or objects designated as historic landmarks or within designated historic districts, or of land on which such buildings or structures are located, or to which they may be removed. (1989, c. 706, s. 2.)

§ 160A-400.13. Certain changes not prohibited.

Nothing in this Part shall be construed to prevent the ordinary maintenance or repair of any exterior architectural feature in a historic district or of a landmark which does not involve a change in design, material or appearance thereof, nor to prevent the construction, reconstruction, alteration, restoration, moving or demolition of any such feature which the building inspector or similar official shall certify is required by the public safety because of an unsafe or dangerous condition. Nothing in this Part shall be construed to prevent a property owner from making any use of his property that is not prohibited by other law. Nothing in this Part shall be construed to prevent a) the maintenance, or b) in the event of an emergency the immediate restoration, of any existing above-ground utility structure without approval by the preservation commission. (1989, c. 706, s. 2.)

§ 160A-400.14. Delay in demolition of landmarks and buildings within historic district.

(a) An application for a certificate of appropriateness authorizing the relocation, demolition or destruction of a designated landmark or a building, structure or site within the district may not be denied except as provided in subsection (c). However, the effective date of such a certificate may be delayed for a period of up to 365 days from the date of approval. The maximum period of delay authorized by this section shall be reduced by the commission where it finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use of or return from such property by virtue of the delay. During such period the preservation commission shall negotiate with the owner and with any other parties in an effort to find a means of preserving the building or site. If the preservation commission finds that a building or site within a district has no special significance or value toward maintaining the character of the district, it shall waive all or part of such period and authorize earlier demolition, or removal.

If the commission or planning board has voted to recommend designation of a property as a landmark or designation of an area as a district, and final designation has not been made by the local governing board, the demolition or destruction of any building, site, or structure located on the property of the proposed landmark or in the proposed district may be delayed by the commission or planning board for a period of up to 180 days or until the local governing board takes final action on the designation, whichever occurs first.

(b) The governing board of any municipality may enact an ordinance to prevent the demolition by neglect of any designated landmark or any building or structure within an established historic district. Such ordinance shall provide appropriate safeguards to protect property owners from undue economic hardship.

(c) An application for a certificate of appropriateness authorizing the demolition or destruction of a building, site, or structure determined by the State Historic Preservation Officer as having statewide significance as defined in the criteria of the National Register of Historic Places may be denied except where the commission finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use or return by virtue of the denial. (1989, c. 706, s. 2; 1991, c. 514, s. 1; 2005-418, s. 13.)

Local Modification. — City of New Bern: 2007-32, ss. 1(a) and (b); city of Salisbury: 2007-102, s. 1; city of Statesville: 2005-143, s. 1.

Editor's Note. — Session Laws 2005-418, s. 14, provides: "The provisions of this act shall not be deemed to repeal or amend the validity or enforceability of any local act or charter provision previously enacted by the General Assembly."

§§ 160A-400.15 through 160A-400.19: Reserved for future codification purposes.

Part 3D. Development Agreements.

§ 160A-400.20. Authorization for development agreements.

(a) The General Assembly finds:

(1) Large-scale development projects often occur in multiple phases extending over a period of years, requiring a long-term commitment of both public and private resources.

(2) Such large-scale developments often create potential community impacts and potential opportunities that are difficult or impossible to accommodate within traditional zoning processes.

(3) Because of their scale and duration, such large-scale projects often require careful integration between public capital facilities planning, financing, and construction schedules and the phasing of the private development.

(4) Because of their scale and duration, such large-scale projects involve substantial commitments of private capital by developers, which

developers are usually unwilling to risk without sufficient assurances that development standards will remain stable through the extended period of the development.

(5) Because of their size and duration, such developments often permit communities and developers to experiment with different or nontraditional types of development concepts and standards, while still managing impacts on the surrounding areas.

(6) To better structure and manage development approvals for such large-scale developments and ensure their proper integration into local capital facilities programs, local governments need the flexibility in negotiating such developments.

(b) Local governments and agencies may enter into development agreements with developers, subject to the procedures and requirements of this Part. In entering into such agreements, a local government may not exercise any authority or make any commitment not authorized by general or local act and may not impose any tax or fee not authorized by otherwise applicable law.

(c) This Part is supplemental to the powers conferred upon local governments and does not preclude or supersede rights and obligations established pursuant to other law regarding building permits, site-specific development plans, phased development plans, or other provisions of law. (2005-426, s. 9(a).)

Editor's Note. — Session Laws 2005-426, s. 11, made this Part effective January 1, 2006.

§ 160A-400.21. Definitions.

The following definitions apply in this Part:

(1) Comprehensive plan. — The comprehensive plan, land-use plan, small area plans, neighborhood plans, transportation plan, capital improvement plan, official map, and any other plans regarding land use and development that have been officially adopted by the governing board.

(2) Developer. — A person, including a governmental agency or redevelopment authority, who intends to undertake any development and who has a legal or equitable interest in the property to be developed.

(3) Development. — The planning for or carrying out of a building activity, the making of a material change in the use or appearance of any structure or property, or the dividing of land into two or more parcels. "Development", as designated in a law or development permit, includes the planning for and all other activity customarily associated with it unless otherwise specified. When appropriate to the context, "development" refers to the planning for or the act of developing or to the result of development. Reference to a specific operation is not intended to mean that the operation or activity, when part of other operations or activities, is not development. Reference to particular operations is not intended to limit the generality of this item.

(4) Development permit. — A building permit, zoning permit, subdivision approval, special or conditional use permit, variance, or any other official action of local government having the effect of permitting the development of property.

(5) Governing body. — The city council of a municipality.

(6) Land development regulations. — Ordinances and regulations enacted by the appropriate governing body for the regulation of any aspect of development and includes zoning, subdivision, or any other land development ordinances.

(7) Laws. — All ordinances, resolutions, regulations, comprehensive plans, land development regulations, policies, and rules adopted by a

local government affecting the development of property, and includes laws governing permitted uses of the property, density, design, and improvements.

(8) Local government. — Any municipality that exercises regulatory authority over and grants development permits for land development or which provides public facilities.

(9) Local planning board. — Any planning board established pursuant to G.S. 160A-361.

(10) Person. — An individual, corporation, business or land trust, estate, trust, partnership, association, two or more persons having a joint or common interest, State agency, or any legal entity.

(11) Property. — All real property subject to land-use regulation by a local government and includes any improvements or structures customarily regarded as a part of real property.

(12) Public facilities. — Major capital improvements, including, but not limited to, transportation, sanitary sewer, solid waste, drainage, potable water, educational, parks and recreational, and health systems and facilities. (2005-426, s. 9(a).)

Editor's Note. — The definitions in this section were placed in alphabetical order at the direction of the Revisor of Statutes.

§ 160A-400.22. Local governments authorized to enter into development agreements; approval of governing body required.

A local government may establish procedures and requirements, as provided in this Part, to consider and enter into development agreements with developers. A development agreement must be approved by the governing body of a local government by ordinance. (2005-426, s. 9(a).)

§ 160A-400.23. Developed property must contain certain number of acres; permissible durations of agreements.

A local government may enter into a development agreement with a developer for the development of property as provided in this Part, provided the property contains 25 acres or more of developable property (exclusive of wetlands, mandatory buffers, unbuildable slopes, and other portions of the property which may be precluded from development at the time of application). Development agreements shall be of a term specified in the agreement, provided they may not be for a term exceeding 20 years. (2005-426, s. 9(a).)

§ 160A-400.24. Public hearing.

Before entering into a development agreement, a local government shall conduct a public hearing on the proposed agreement following the procedures set forth in G.S. 160A-364 regarding zoning ordinance adoption or amendment. The notice for the public hearing must specify the location of the property subject to the development agreement, the development uses proposed on the property, and must specify a place where a copy of the proposed development agreement can be obtained. In the event that the development agreement provides that the local government shall provide certain public facilities, the development agreement shall provide that the delivery date of such public facilities will be tied to successful performance by the developer in implementing the proposed development (such as meeting defined completion percentages or other performance standards). (2005-426, s. 9(a).)

§ 160A-400.25. What development agreement must provide; what it may provide; major modification requires public notice and hearing.

(a) A development agreement shall at a minimum include all of the following:

(1) A legal description of the property subject to the agreement and the names of its legal and equitable property owners.

(2) The duration of the agreement. However, the parties are not precluded from entering into subsequent development agreements that may extend the original duration period.

(3) The development uses permitted on the property, including population densities and building types, intensities, placement on the site, and design.

(4) A description of public facilities that will service the development, including who provides the facilities, the date any new public facilities, if needed, will be constructed, and a schedule to assure public facilities are available concurrent with the impacts of the development.

(5) A description, where appropriate, of any reservation or dedication of land for public purposes and any provisions to protect environmentally sensitive property.

(6) A description of all local development permits approved or needed to be approved for the development of the property together with a statement indicating that the failure of the agreement to address a particular permit, condition, term, or restriction does not relieve the developer of the necessity of complying with the law governing their permitting requirements, conditions, terms, or restrictions.

(7) A description of any conditions, terms, restrictions, or other requirements determined to be necessary by the local government for the public health, safety, or welfare of its citizens.

(8) A description, where appropriate, of any provisions for the preservation and restoration of historic structures.

(b) A development agreement may provide that the entire development or any phase of it be commenced or completed within a specified period of time. The development agreement must provide a development schedule, including commencement dates and interim completion dates at no greater than five-year intervals; provided, however, the failure to meet a commencement or completion date shall not, in and of itself, constitute a material breach of the development agreement pursuant to G.S. 160A-400.27 but must be judged based upon the totality of the circumstances. The development agreement may include other defined performance standards to be met by the developer. The developer may request a modification in the dates as set forth in the agreement. Consideration of a proposed major modification of the agreement shall follow the same procedures as required for initial approval of a development agreement.

(c) If more than one local government is made party to an agreement, the agreement must specify which local government is responsible for the overall administration of the development agreement.

(d) The development agreement also may cover any other matter not inconsistent with this Part. (2005-426, s. 9(a).)

§ 160A-400.26. Law in effect at time of agreement governs development; exceptions.

(a) Unless the development agreement specifically provides for the application of subsequently enacted laws, the laws applicable to development of the property subject to a development agreement are those in force at the time of execution of the agreement.

(b) Except for grounds specified in G.S. 160A-385.1(e), a local government may not apply subsequently adopted ordinances or development policies to a development that is subject to a development agreement.

(c) In the event State or federal law is changed after a development agreement has been entered into and the change prevents or precludes compliance with one or more provisions of the development agreement, the local government may modify the affected provisions, upon a finding that the change in State or federal law has a fundamental effect on the development agreement, by ordinance after notice and a hearing.

(d) This section does not abrogate any rights preserved by G.S. 160A-385 or G.S. 160A-385.1, or that may vest pursuant to common law or otherwise in the absence of a development agreement. (2005-426, s. 9(a).)

§ 160A-400.27. Periodic review to assess compliance with agreement; material breach by developer; notice of breach; cure of breach or modification or termination of agreement.

(a) Procedures established pursuant to G.S. 160A-400.22 must include a provision for requiring periodic review by the zoning administrator or other appropriate officer of the local government at least every 12 months, at which time the developer must be required to demonstrate good faith compliance with the terms of the development agreement.

(b) If, as a result of a periodic review, the local government finds and determines that the developer has committed a material breach of the terms or conditions of the agreement, the local government shall serve notice in writing, within a reasonable time after the periodic review, upon the developer setting forth with reasonable particularity the nature of the breach and the evidence supporting the finding and determination, and providing the developer a reasonable time in which to cure the material breach.

(c) If the developer fails to cure the material breach within the time given, then the local government unilaterally may terminate or modify the development agreement; provided, the notice of termination or modification may be appealed to the board of adjustment in the manner provided by G.S. 160A-388(b). (2005-426, s. 9(a).)

§ 160A-400.28. Amendment or cancellation of development agreement by mutual consent of parties or successors in interest.

A development agreement may be amended or canceled by mutual consent of the parties to the agreement or by their successors in interest. (2005-426, s. 9(a).)

§ 160A-400.29. Validity and duration of agreement entered into prior to change of jurisdiction; subsequent modification or suspension.

(a) Except as otherwise provided by this Part, any development agreement entered into by a local government before the effective date of a change of jurisdiction shall be valid for the duration of the agreement, or eight years from the effective date of the change in jurisdiction, whichever is earlier. The parties to the development agreement and the local government assuming jurisdiction have the same rights and obligations with respect to each other regarding matters addressed in the development agreement as if the property had remained in the previous jurisdiction.

(b) A local government assuming jurisdiction may modify or suspend the provisions of the development agreement if the local government determines that the failure of the local government to do so would place the residents of the territory subject to the development agreement, or the residents of the local government, or both, in a condition dangerous to their health or safety, or both. (2005-426, s. 9(a).)

§ 160A-400.30. Developer to record agreement within 14 days; burdens and benefits inure to successors in interest.

Within 14 days after a local government enters into a development agreement, the developer shall record the agreement with the register of deeds in the county where the property is located. The burdens of the development agreement are binding upon, and the benefits of the agreement shall inure to, all successors in interest to the parties to the agreement. (2005-426, s. 9(a).)

§ 160A-400.31. Applicability to local government of constitutional and statutory procedures for approval of debt.

In the event that any of the obligations of the local government in the development agreement constitute debt, the local government shall comply, at the time of the obligation to incur the debt and before the debt becomes enforceable against the local government, with any applicable constitutional and statutory procedures for the approval of this debt. (2005-426, s. 9(a).)

§ 160A-400.32. Relationship of agreement to building or housing code.

A development agreement adopted pursuant to this Chapter shall not exempt the property owner or developer from compliance with the State Building Code or State or local housing codes that are not part of the local government's planning, zoning, or subdivision regulations. (2005-426, s. 9(a).)

Part 3E. Wireless Telecommunications Facilities.

§ 160A-400.50. Purpose and compliance with federal law.

(a) The purpose of this section is to ensure the safe and efficient integration of facilities necessary for the provision of advanced wireless telecommunications services throughout the community and to ensure the ready availability of reliable wireless service to the public, government agencies, and first responders, with the intention of furthering the public safety and general welfare. The following standards shall apply to a city's actions, as a regulatory body, in the regulation of the placement, construction, or modification of a wireless communications facility.

(b) The placement, construction, or modification of wireless communications facilities shall be in conformity with the Federal Communications Act, 47

U.S.C. § 332 as amended, and in accordance with the rules promulgated by the Federal Communications Commission. (2007-526, s. 1.)

Cross References. — As to similar provisions relating to wireless telecommunication facilities in counties, see. G.S. 153A-349.50.

Editor's Note. — Session Laws 2007-526, s. 4, makes this part effective December 1, 2007.

Session Laws 2007-526, s. 3, is a severability clause.

§ 160A-400.51. Definitions.

The following definitions apply in this Part.

(1) Antenna. — Communications equipment that transmits and receives electromagnetic radio signals used in the provision of all types of wireless communications services.

(2) Application. — A formal request submitted to the city to construct or modify a wireless support structure or a wireless facility.

(3) Building permit. — An official administrative authorization issued by the city prior to beginning construction consistent with the provisions of G.S. 160A-417.

(4) Collocation. — The installation of new wireless facilities on previously-approved structures, including towers, buildings, utility poles, and water tanks.

(5) Equipment enclosure. — An enclosed structure, cabinet, or shelter used to contain radio or other equipment necessary for the transmission or reception of wireless communication signals.

(5a) Fall zone. — The area in which a wireless support structure may be expected to fall in the event of a structural failure, as measured by engineering standards.

(6) Land development regulation. — Any ordinance enacted pursuant to this Part.

(7) Search ring. — The area within which a wireless facility must be located in order to meet service objectives of the wireless service provider using the wireless facility or wireless support structure.

(8) Utility pole. — A structure that is designed for and used to carry lines, cables, or wires for telephone, cable television, or electricity, or to provide lighting.

(9) Wireless facility. — The set of equipment and network components, exclusive of the underlying support structure or tower, including antennas, transmitters, receivers base stations, power supplies, cabling, and associated equipment necessary to provide wireless data and telecommunications services to a discrete geographic area.

(10) Wireless support structure. — A new or existing structure, such as a monopole, lattice tower, or guyed tower that is designed to support or capable of supporting wireless facilities. A utility pole is not a wireless support structure. (2007-526, s. 1.)

§ 160A-400.52. Construction of wireless facilities and wireless support structures.

(a) A city may plan for and regulate the siting or modification of wireless support structures and wireless facilities in accordance with land development regulations and in conformity with this Part. Except as expressly stated, nothing in this Part shall limit a city from regulating applications to construct, modify, or maintain wireless support structures, or construct, modify, maintain, or collocate wireless facilities on a wireless support structure based on consideration of land use, public safety, and zoning considerations, including aesthetics, landscaping, structural design, setbacks, and fall zones, or State and local building code requirements, consistent with the provisions of federal law provided in G.S. 160A-400.50. For purposes of this Part, public safety shall not include requirements relating to radio frequency emissions of wireless facilities.

(b) Any person that proposes to construct or modify a wireless support structure or wireless facility within the planning and land-use jurisdiction of a city must do both of the following:

(1) Submit a completed application with the necessary copies and attachments to the appropriate planning authority.

(2) Comply with any local ordinances concerning land use and any applicable permitting processes.

(c) A city's review of an application for the placement, construction, or modification of a wireless facility or wireless support structure shall only address public safety, land development, or zoning issues. In reviewing an application, the city may not require information on or evaluate an applicant's business decisions about its designed service, customer demand for its service, or quality of its service to or from a particular area or site. In reviewing an application, the city may review the following:

(1) Applicable public safety, land use, or zoning issues addressed in its adopted regulations, including aesthetics, landscaping, land-use based location priorities, structural design, setbacks, and fall zones.

(2) Information or materials directly related to an identified public safety, land development, or zoning issue including evidence that no existing or previously approved structure can reasonably be used for the antenna placement instead of the construction of a new tower, that residential, historic, and designated scenic areas cannot be served from outside the area, or that the proposed height of a new tower or initial antenna placement or a proposed height increase of a modified tower, replacement tower, or collocation is necessary to provide the applicant's designed service.

(3) A city may require applicants for new wireless facilities to evaluate the reasonable feasibility of collocating new antennas and equipment on an existing structure or structures within the applicant's search ring. Collocation on an existing structure is not reasonably feasible if collocation is technically or commercially impractical or the owner of the tower is unwilling to enter into a contract for such use at fair market value. Cities may require information necessary to determine whether collocation on existing structures is reasonably feasible.

(d) A collocation application entitled to streamlined processing under G.S. 160A-400.53 shall be deemed complete unless the city provides notice in writing to the applicant within 45 days of submission or within some other mutually agreed upon timeframe. The notice shall identify the deficiencies in the application which, if cured, would make the application complete. The application shall be deemed complete on resubmission if the additional materials cure the deficiencies identified.

(e) The city shall issue a written decision approving or denying an application within 45 days in the case of collocation applications entitled to streamlined processing under G.S. 160A-400.53 and within a reasonable period of time consistent with the issuance of other land-use permits in the case of other applications, each as measured from the time the application is deemed complete.

(f) A city may fix and charge an application fee, consulting fee, or other fee associated with the submission, review, processing, and approval of an application to site or modify wireless support structures or wireless facilities that is based on the costs of the services provided and does not exceed what is usual and customary for such services. Any charges or fees assessed by a city on account of an outside consultant shall be fixed in advance and incorporated into a permit or application fee and shall be based on the reasonable costs to be incurred by the city in connection with the regulatory review authorized under this section. The foregoing does not prohibit a city from imposing additional reasonable and cost based fees for costs incurred should an applicant amend its application. On request, the amount of the consultant charges incorporated into the permit or application fee shall be separately identified and disclosed to the applicant.

(g) The city may condition approval of an application for a new wireless support structure on the provision of documentation prior to the issuance of a building permit establishing the existence of one or more parties, including the owner of the wireless support structure, who intend to locate wireless facilities on the wireless support structure. A city shall not deny an initial land-use or zoning permit based on such documentation. A city may condition a permit on a requirement to construct facilities within a reasonable period of time, which shall be no less than 24 months.

(h) The city may not require the placement of wireless support structures or wireless facilities on city owned or leased property, but may develop a process to encourage the placement of wireless support structures or facilities on city owned or leased property, including an expedited approval process.

(i) This section shall not be construed to limit the provisions or requirements of any historic district or landmark regulation adopted pursuant to Part 3C of this Article. (2007-526, s. 1.)

§ 160A-400.53. Collocation of wireless facilities.

(a) Applications for collocation entitled to streamlined processing under this section shall be reviewed for conformance with applicable site plan and building permit requirements but shall not otherwise be subject to zoning requirements, including design or placement requirements, or public hearing review.

(b) Applications for collocation of wireless facilities are entitled to streamlined processing if the addition of the additional wireless facility does not exceed the number of wireless facilities previously approved for the wireless support structure on which the collocation is proposed and meets all the requirements and conditions of the original approval. This provision applies to wireless support structures which are approved on or after December 1, 2007.

(c) The streamlined process set forth in subsection (a) of this section shall apply to all collocations, in addition to collocations qualified for streamlined processing under subsection (b) of this section, that meet the following requirements:

(1) The collocation does not increase the overall height and width of the tower or wireless support structure to which the wireless facilities are to be attached.
(2) The collocation does not increase the ground space area approved in the site plan for equipment enclosures and ancillary facilities.
(3) The wireless facilities in the proposed collocation comply with applicable regulations, restrictions, or conditions, if any, applied to the initial wireless facilities placed on the tower or other wireless support structure.
(4) The additional wireless facilities comply with all federal, State and local safety requirements.
(5) The collocation does not exceed the applicable weight limits for the wireless support structure. (2007-526, s. 1.)

§§ 160A-400.54 through 160A-400.58: Reserved for future codification purposes.

Part 4. Acquisition of Open Space.

§ 160A-401. Legislative intent.

It is the intent of the General Assembly in enacting this Part to provide a means whereby any county or city may acquire, by purchase, gift, grant, bequest, devise, lease, or otherwise, and through the expenditure of public funds, the fee or any lesser interest or right in real property in order to preserve, through limitation of their future use, open spaces and areas for public use and enjoyment. (1963, c. 1129, s. 1; 1971, c. 698, s. 1.)

Local Modification. — Guilford and cities of Greensboro and High Point: 1987, c. 669, s. 1.

Legal Periodicals. — For comment, "Urban Planning and Land Use Regulation: The Need for Consistency," see 14 Wake Forest L. Rev. 81 (1978).

CASE NOTES

Cited in Hyatt v. Town of Lake Lure, 225 F. Supp. 2d 647, 2002 U.S. Dist. LEXIS 16862 (W.D.N.C. 2002).

§ 160A-402. Finding of necessity.

The General Assembly finds that the rapid growth and spread of urban development in the State is encroaching upon, or eliminating, many open areas and spaces of varied size and character, including many having significant scenic or esthetic values, which areas and spaces if preserved and maintained in their present open state would constitute important physical, social, esthetic, or economic assets to existing and impending urban development. The General Assembly declares that it is necessary for sound and proper urban development and in the public interest of the people of this State for any county or city to expend or advance public funds for, or to accept by purchase, gift, grant, bequest, devise, lease, or otherwise, the fee or any lesser interest or right in real property so as to acquire, maintain, improve, protect, limit the future use of, or otherwise conserve open spaces and areas within their respective jurisdictions as defined by this Article.

The General Assembly declares that the acquisition of interests or rights in real property for the preservation of open spaces and areas constitutes a public purpose for which public funds may be expended or advanced. (1963, c. 1129, s. 2; 1971, c. 698, s. 1.)

CASE NOTES

Park and Open Space Zoning Ordinance Not a Taking. — Town's enactment of a zoning ordinance requiring that real estate developers reserve open space and install a mini-park in subdivisions was not an unconstitutional taking. Town of Pinebluff v. Marts, — N.C. App. —, 673 S.E.2d 740, 2009 N.C. App. LEXIS 261 (2009).

Cited in River Birch Assocs. v. City of Raleigh, 326 N.C. 100, 388 S.E.2d 538 (1990).

§ 160A-403. Counties or cities authorized to acquire and reconvey real property.

Any county or city in the State may acquire by purchase, gift, grant, bequest, devise, lease, or otherwise, the fee or any lesser interest, development right, easement, covenant, or other contractual right of or to real property within its respective jurisdiction, when it finds that the acquisition is necessary to achieve the purposes of this Part. Any county or city may also acquire the fee to any property for the purpose of conveying or leasing the property back to its original owner or other person under covenants or other contractual arrangements that will limit the future use of the property in accordance with the purposes of this Part, but when this is done, the property may be conveyed back to its original owner but to no other person by private sale. (1963, c. 1129, s. 3; 1971, c. 698, s. 1.)

Local Modification. — Guilford: 1987, c. 669, s. 2; cities of Greensboro and High Point: 1987, c. 669, s. 2; town of Chapel Hill: 2004-119.

Legal Periodicals. — For article, "A Decade of Preservation and Preservation Law," see 11 N.C. Cent. L.J. 214 (1980).

§ 160A-404. Joint action by governing bodies.

Any county or city may enter into any agreement with any other county or city for the purpose of jointly exercising the authority granted by this Part. (1963, c. 1129, s. 4; 1971, c. 698, s. 1.)

§ 160A-405. Powers of governing bodies.

Any county or city, in order to exercise the authority granted by this Part, may:

(1) Enter into and carry out contracts with the State or federal government or any agencies thereof under which grants or other assistance are made to the county or city;
(2) Accept any assistance or funds that may be granted by the State or federal government with or without a contract;
(3) Agree to and comply with any reasonable conditions imposed upon grants;
(4) Make expenditures from any funds so granted. (1963, c. 1129, s. 5; 1971, c. 698, s. 1.)

Legal Periodicals. — For article, "A Decade of Preservation and Preservation Law," see 11 N.C. Cent. L.J. 214 (1980).

§ 160A-406. Appropriations authorized.

For the purposes set forth in this Part, a county or city may appropriate funds not otherwise limited as to use by law. (1963, c. 1129, s. 6; 1971, c. 698, s. 1; 1973, c. 426, s. 60; 1975, c. 664, s. 14.)

§ 160A-407. Definitions.

(a) For the purpose of this Part an "open space" or "open area" is any space or area (i) characterized by great natural scenic beauty or (ii) whose existing openness, natural condition, or present state of use, if retained, would enhance the present or potential value of abutting or surrounding urban development, or would maintain or enhance the conservation of natural or scenic resources.

(b) For the purposes of this Part "open space" or "open area" and the "public use and enjoyment" of interests or rights in real property shall also include open space land and open space uses. The term "open space land" means any undeveloped or predominantly undeveloped land in an urban area that has value for one or more of the following purposes: (i) park and recreational purposes, (ii) conservation of land and other natural resources, or (iii) historic or scenic purposes. The term "open space uses" means any use of open space land for (i) park and recreational purposes, (ii) conservation of land and other natural resources, or (iii) historic or scenic purposes. (1963, c. 1129, s. 7; 1969, c. 35, s. 1; 1971, c. 698, s. 1.)

Local Modification. — Guilford: 1987, c. 669, s. 5; Orange: 1991, c. 246, s. 4; cities of Greensboro and High Point: 1987, c. 669, s. 5.

§§ 160A-408 through 160A-410: Reserved for future codification purposes.

Part 5. Building Inspection.

§ 160A-411. Inspection department.

Every city in the State is hereby authorized to create an inspection department, and may appoint one or more inspectors who may be given the titles of building inspector, electrical inspector, plumbing inspector, housing inspector, zoning inspector, heating and air-conditioning inspector, fire prevention inspector, or deputy or assistant inspector, or such other titles as may be generally descriptive of the duties assigned. The department may be headed by a superintendent or director of inspections. Every city shall perform the duties and responsibilities set forth in G.S. 160A-412 either by: (i) creating its own inspection department; (ii) creating a joint inspection department in cooperation with one or more other units of local government, pursuant to G.S. 160A-413 or Part 1 of Article 20 of this Chapter; (iii) contracting with another unit of local government for the provision of inspection services pursuant to Part 1 of Article 20 of this Chapter; or (iv) arranging for the county in which it is located to perform inspection services within the city's jurisdiction as authorized by G.S. 160A-413 and G.S. 160A-360. Such action shall be taken no later than the applicable date in the schedule below, according to the city's population as published in the 1970 United States Census:

Cities over 75,000 population — July 1, 1979
Cities between 50,001 and 75,000 — July 1, 1981
Cities between 25,001 and 50,000 — July 1, 1983
Cities 25,000 and under — July 1, 1985.

In the event that any city shall fail to provide inspection services by the date specified above or shall cease to provide such services at any time thereafter, the Commissioner of Insurance shall arrange for the provision of such services, either through personnel employed by his department or through an arrangement with other units of government. In either event, the Commissioner shall have and may exercise within the city's jurisdiction all powers made available to the city council with respect to building inspection under Part 5 of Article 19, and Part 1 of Article 20 of this Chapter. Whenever the Commissioner has intervened in this manner, the city may assume provision of inspection services only after giving the Commissioner two years' written notice of its intention to do so; provided, however, that the Commissioner may waive this requirement or permit assumption at an earlier date if he finds that such earlier assumption will not unduly interfere with arrangements he has made for the provision of those services. (1969, c. 1065, s. 1; 1971, c. 698, s. 1; 1977, c. 531, s. 5.)

Local Modification. — (As to Part 5) City of Durham: 1993, c. 283, s. 1.

Legal Periodicals. — For comment, "Urban Planning and Land Use Regulation: The Need for Consistency," see 14 Wake Forest L. Rev. 81 (1978).

For note, "Municipal Liability for Negligent Inspections in Sinning v. Clark — A 'Hollow'

Victory for the Public Duty Doctrine," see 18 Campbell L. Rev. 241 (1996).

CASE NOTES

Purpose. — One of the specific purposes of G.S. 160A-411 to 160A-425 is to promote the safety of the general public. Lynn v. Overlook Dev., 328 N.C. 689, 403 S.E.2d 469 (1991).

Local Laws Providing for Performance of Inspections Unconstitutional. — Inspections pursuant to the State Building Code affect health and sanitation, thus acts that altered the legislative directive of this section that the city shall determine who will perform the inspections under the Code were local legislation that shifted responsibility for enforcement of laws affecting the health of the public and were barred under Art. II, § 24 of the Constitution. City of New Bern v. New Bern-Craven County Bd. of Educ., 338 N.C. 430, 450 S.E.2d 735 (1994).

Acts Shifting Responsibility for Inspections Created Unreasonable Classification. — No rational basis justified the separation of New Bern from all other cities in North Carolina for special legislative attention regarding the designation of an appropriate inspection department, and acts which shifted the responsibility for enforcing the building code from New Bern to Craven County created an unreasonable classification and were therefore local acts. City of New Bern v. New Bern-Craven County Bd. of Educ., 338 N.C. 430, 450 S.E.2d 735 (1994).

Failure of City and County to Agree on Provision of Inspection Services. — This section does not mandate that the city and the county must agree regarding the provision of inspection services; rather, it provides the options available to the city in determining who shall perform the inspections, one of which is arranging for the county to perform them, and if the city fails to provide inspection services via any of the four options, the statute dictates that the Commissioner of Insurance shall arrange for the provision of the services. The legislature does not need to intervene in the process should the county and the city fail to agree; instead, the legislature has provided that the Commissioner of Insurance shall do so should the city fail to follow the requirements of the statute. City of New Bern v. New Bern-Craven County Bd. of Educ., 338 N.C. 430, 450 S.E.2d 735 (1994).

Liability of Building Inspector. — The chief building inspector of the city of Wilmington was a "public official" of the city, who was engaged in the performance of governmental duties involving the exercise of judgment and discretion in determining whether plaintiffs' greenhouses were constructed in compliance with the applicable law; therefore, he could not be liable to plaintiffs in an action based on his inspection of plaintiffs' greenhouses where there was neither sufficient allegation nor forecast of evidence that he acted maliciously or corruptly or outside of and beyond the scope of his duties, and summary judgment dismissing the action as to him was proper. Pigott v. City of Wilmington, 50 N.C. App. 401, 273 S.E.2d 752, cert. denied, 303 N.C. 181, 280 S.E.2d 453 (1981).

While this Part and N.C. Building Code G.S. 105 imposed a duty on the part of the city and its building inspectors to properly carry out enumerated enforcement powers, such powers fell within the city's statutory police powers, and consequently, the duty owed was not to the plaintiffs, individually, but to the general public; there being no duty owed to plaintiffs, their allegations charging city building inspector with negligence clearly did not state a claim upon which relief could be granted. Lynn v. Overlook Dev., 98 N.C. App. 75, 389 S.E.2d 609 (1990).

The trial court did not err in dismissing plaintiffs' complaint in that, as a matter of law, the acts or omissions of a city building inspector did not cause the damages of which plaintiffs complained, that is, their purchase of a house that was unfit for habitation. Lynn v. Overlook Dev., 328 N.C. 689, 403 S.E.2d 469 (1991).

Building inspector who was not the chief building inspector was a public official. His position was created by statute, in that position he exercised a portion of the sovereign power delegated to him, through the county, by statute, and work in his official capacity required that he exercise discretion. McCoy v. Coker, 174 N.C. App. 311, 620 S.E.2d 691, 2005 N.C. App. LEXIS 2357 (2005).

Special Duty Exception. — To bring themselves within the special duty exception to the public duty doctrine, plaintiffs must show that an actual promise was made to create the special duty, the promise was reasonably relied upon by plaintiffs, and that the plaintiffs' injury was causally related to such reliance. Sinning v. Clark, 119 N.C. App. 515, 459 S.E.2d 71 (1995), overruled as stated in Multiple Claimants v. N.C. HHS, Div. of Facility Detention Srvs., 176 N.C. App. 278, 626 S.E.2d 666 (2006) (as to the application of the Public Duty doctrine to negligent inspection claims not involving law enforcement departments.

The provisions of G.S. 160A-411 et seq. and the North Carolina State Building Code did not create a special duty owed by defendants to plaintiffs over and above the duty owed to the general public; thus, the allegations of plaintiffs' complaint were insufficient to state a claim for relief for negligence. Sinning v. Clark, 119 N.C. App. 515, 459 S.E.2d 71 (1995), overruled as stated in Multiple Claimants v. N.C. HHS, Div. of Facility Detention Srvs., 176 N.C. App. 278, 626 S.E.2d 666 (2006) (as to the application of the Public Duty doctrine to negligent inspection claims not involving law enforcement departments.

Exception Not Shown. — Dismissal of plaintiffs' negligence action against building inspector and county was proper where plaintiff homeowners did not fall within either exception to the public duty doctrine as they did not show a special relationship or special duty between themselves and the defendants. Moseley v. L & L Constr., Inc., 123 N.C. App. 79, 472 S.E.2d 172 (1996).

Cited in First Am. Fed. Sav. & Loan Ass'n v. Royall, 77 N.C. App. 131, 334 S.E.2d 792 (1985); Law Bldg. of Asheboro, Inc. v. City of Asheboro, 108 N.C. App. 182, 423 S.E.2d 93 (1992); Hyatt v. Town of Lake Lure, 225 F. Supp. 2d 647, 2002 U.S. Dist. LEXIS 16862 (W.D.N.C. 2002).

§ 160A-411.1. Qualifications of inspectors.

On and after the applicable date set forth in the schedule in G.S. 160A-411, no city shall employ an inspector to enforce the State Building Code as a member of a city or joint inspection department who does not have one of the following types of certificates issued by the North Carolina Code Officials Qualification Board attesting to his qualifications to hold such position: (i) a probationary certificate, valid for one year only; (ii) a standard certificate; or (iii) a limited certificate which shall be valid only as an authorization for him to continue in the position held on the date specified in G.S. 143-151.13(c) and which shall become invalid if he does not successfully complete in-service training specified by the Qualification Board within the period specified in G.S. 143-151.13(c). An inspector holding one of the above certificates can be promoted to a position requiring a higher level certificate only upon issuance by the Board of a standard certificate or probationary certificate appropriate for such new position. (1977, c. 531, s. 6.)

Cross References. — As to the North Carolina Code Officials Qualification Board, and certification of Code-enforcement officials, see G.S. 143-151.8 through 143-151.20.

§ 160A-412. Duties and responsibilities.

The duties and responsibilities of an inspection department and of the inspectors therein shall be to enforce within their territorial jurisdiction State and local laws relating to

(1) The construction of buildings and other structures;
(2) The installation of such facilities as plumbing systems, electrical systems, heating systems, refrigeration systems, and air-conditioning systems;
(3) The maintenance of buildings and other structures in a safe, sanitary, and healthful condition;
(4) Other matters that may be specified by the city council.

These duties shall include the receipt of applications for permits and the issuance or denial of permits, the making of any necessary inspections, the issuance or denial of certificates of compliance, the issuance of orders to correct violations, the bringing of judicial actions against actual or threatened violations, the keeping of adequate records, and any other actions that may be required in order adequately to enforce those laws. The city council shall have the authority to enact reasonable and appropriate provisions governing the enforcement of those laws. (1969, c. 1065, s. 1; 1971, c. 698, s. 1.)

Legal Periodicals. — For note, "Municipal Liability for Negligent Inspections in Sinning v. Clark — A 'Hollow' Victory for the Public Duty Doctrine," see 18 Campbell L. Rev. 241 (1996).

CASE NOTES

Plaintiff stated a claim for mandamus to compel town and zoning administrator to scrutinize alleged violations of zoning ordinance by alleging that zoning administrator failed to enforce the ordinance; plaintiff's request that the alleged violations be corrected, the fact that she was an adjacent property owner subject to the same zoning restrictions, and the fact that she alleged special damages were sufficient to assert her legal right to enforcement of the ordinance. Midgette v. Pate, 94 N.C. App. 498, 380 S.E.2d 572 (1989).

Cited in First Am. Fed. Sav. & Loan Ass'n v. Royall, 77 N.C. App. 131, 334 S.E.2d 792 (1985); Hyatt v. Town of Lake Lure, 225 F. Supp. 2d 647, 2002 U.S. Dist. LEXIS 16862 (W.D.N.C. 2002).

§ 160A-413. Joint inspection department; other arrangements.

A city council may enter into and carry out contracts with another city, county, or combination thereof under which the parties agree to create and support a joint inspection department for the enforcement of State and local laws specified in the agreement. The governing boards of the contracting parties are authorized to make any necessary appropriations for this purpose.

In lieu of a joint inspection department, a city council may designate an inspector from any other city or county to serve as a member of its inspection department with the approval of the governing body of the other city or county. A city may also contract with an individual who is not a city or county employee but who holds one of the applicable certificates as provided in G.S. 160A-411.1 or G.S. 153A-351.1 or with the employer of an individual who holds one of the applicable certificates as provided in G.S. 160A-411.1 or G.S. 153A-351.1. The inspector, if designated from another city or county under this section, shall, while exercising the duties of the position, be considered a municipal employee. The city shall have the same potential liability, if any, for inspections conducted by an individual who is not an employee of the city as it does for an individual who is an employee of the city. The company or individual with whom the city contracts shall have errors and omissions and other insurance coverage acceptable to the city.

The city council of any city may request the board of county commissioners of the county in which the city is located to direct one or more county building inspectors to exercise their powers within part or all of the city's jurisdiction, and they shall thereupon be empowered to do so until the city council officially withdraws its request in the manner provided in G.S. 160A-360(g). (1969, c. 1065, s. 1; 1971, c. 698, s. 1; 1973, c. 426, s. 64; 1993, c. 232, s. 3; 1999-372, s. 3; 2001-278, s. 2.)

Local Modification. — Town of Hillsborough: 1997-407, s. 1.

CASE NOTES

Cited in City of New Bern v. New Bern-Craven County Bd. of Educ., 338 N.C. 430, 450 S.E.2d 735 (1994).

§ 160A-414. Financial support.

The city council may appropriate for the support of the inspection department any funds that it deems necessary. It may provide for paying inspectors fixed salaries or it may reimburse them for their services by paying over part or all of any fees collected. It shall have power to fix reasonable fees for issuance of permits, inspections, and other services of the inspection department. (1969, c. 1065, s. 1; 1971, c. 698, s. 1.)

OPINIONS OF ATTORNEY GENERAL

Statutorily Obligated Services to School System. — Any agreement between a county school system and a county or municipality which obligates the school system to pay the county or municipality "development charges" under the guise of consideration for services which the county or municipality is statutorily obligated to provide would be null and void as contrary to legislative intent. See opinion of Attorney General to The Honorable J. Sam Ellis House of Representatives, 1998 N.C.A.G. 41 (10/13/98).

§ 160A-415. Conflicts of interest.

No member of an inspection department shall be financially interested or employed by a business that is financially interested in the furnishing of labor, material, or appliances for the construction, alteration, or maintenance of any building within the city's jurisdiction or any part or system thereof, or in the making of plans or specifications therefor, unless he is the owner of the building. No member of an inspection department or other individual or an employee of a company contracting with a city to conduct inspections shall engage in any work that is inconsistent with his or her duties or with the interest of the city, as determined by the city. The city must find a conflict of interest if any of the following is the case:

(1) If the individual, company, or employee of a company contracting to perform inspections for the city has worked for the owner, developer, contractor, or project manager of the project to be inspected within the last two years.
(2) If the individual, company, or employee of a company contracting to perform inspections for the city is closely related to the owner, developer, contractor, or project manager of the project to be inspected.
(3) If the individual, company, or employee of a company contracting to perform inspections for the city has a financial or business interest in the project to be inspected.

The provisions of this section do not apply to a firefighter whose primary duties are fire suppression and rescue, but who engages in some fire inspection activities as a secondary responsibility of the firefighter's employment as a firefighter, except no firefighter may inspect any work actually done, or materials or appliances supplied, by the firefighter or the firefighter's business within the preceding six years. (1969, c. 1065, s. 1; 1971, c. 698, s. 1; 1993, c. 232, s. 4; 1998-122, s. 1; 1999-372, s. 4.)

OPINIONS OF ATTORNEY GENERAL

Inspector Prohibited from Furnishing Labor and Materials Within City. — This section prohibits a plumbing and mechanical inspector from furnishing labor and materials for installation and repair of garage doors and electric door openers within city's jurisdiction. See opinion of Attorney General to Mr. David A. Holec, Lumberton City Attorney, 51 N.C.A.G. 7 (1981).

§ 160A-416. Failure to perform duties.

If any member of an inspection department shall willfully fail to perform the duties required of him by law, or willfully shall improperly issue a permit, or shall give a certificate of compliance without first making the inspections required by law, or willfully shall improperly give a certificate of compliance, he shall be guilty of a Class 1 misdemeanor. (1969, c. 1065, s. 1; 1971, c. 698, s. 1; 1993, c. 539, s. 1089; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 160A-417. Permits.

(a) No person shall commence or proceed with any of the following without first securing from the inspection department with jurisdiction over the site of the work any and all permits required by the State Building Code and any other State or local laws applicable to the work:

(1) The construction, reconstruction, alteration, repair, movement to another site, removal, or demolition of any building or structure.

(2) The installation, extension, or general repair of any plumbing system except that in any one- or two-family dwelling unit a permit shall not be required for the connection of a water heater that is being replaced, provided that the work is performed by a person licensed under G.S. 87-21, who personally examines the work at completion and ensures that a leak test has been performed on the gas piping, and provided the energy use rate or thermal input is not greater than that of the water heater which is being replaced, there is no change in fuel, energy source, location, capacity, or routing or sizing of venting and piping, and the replacement is installed in accordance with the current edition of the State Building Code.

(3) The installation, extension, alteration, or general repair of any heating or cooling equipment system.

(4) The installation, extension, alteration, or general repair of any electrical wiring, devices, appliances, or equipment except that in any one- or two-family dwelling unit a permit shall not be required for repair or replacement of electrical lighting fixtures or devices, such as receptacles and lighting switches, or for the connection of an existing branch circuit to an electric water heater that is being replaced, provided that all of the following requirements are met:

a. With respect to electric water heaters, the replacement water heater is placed in the same location and is of the same or less capacity and electrical rating as the original.

b. With respect to electrical lighting fixtures and devices, the replacement is with a fixture or device having the same voltage and the same or less amperage.

c. The work is performed by a person licensed under G.S. 87-43.

d. The repair or replacement installation meets the current edition of the State Building Code, including the State Electrical Code.

A permit shall be in writing and shall contain a provision that the work done shall comply with the State Building Code and all other applicable State and local laws. Nothing in this section shall require a city to review and approve residential building plans submitted to the city pursuant to Section R-110 of Volume VII of the North Carolina State Building Code; provided that the city may review and approve such residential building plans as it deems necessary. No permits shall be issued unless the plans and specifications are identified by the name and address of the author thereof, and if the General Statutes of North Carolina require that plans for certain types of work be prepared only by a registered architect or registered engineer, no permit shall be issued unless the plans and specifications bear the North Carolina seal of a registered architect or of a registered engineer. When any provision of the General Statutes of North Carolina or of any ordinance requires that work be done by a licensed specialty contractor of any kind, no permit for the work shall be issued unless the work is to be performed by such a duly licensed contractor. No permit issued under Articles 9 or 9C of Chapter 143 shall be required for any construction, installation, repair, replacement, or alteration costing five thousand dollars ($5,000) or less in any single family residence or farm building unless the work involves: the addition, repair or replacement of load bearing structures; the addition (excluding replacement of same size and capacity) or change in the design of plumbing; the addition, replacement or change in the design of heating, air conditioning, or electrical wiring, devices, appliances, or equipment; the use of materials not permitted by the North Carolina Uniform Residential Building Code; or the addition (excluding replacement of like grade of fire resistance) of roofing. Violation of this section shall constitute a Class 1 misdemeanor.

(b) No permit shall be issued pursuant to subsection (a) for any land-disturbing activity, as defined in G.S. 113A-52(6), for any activity covered by G.S. 113A-57, unless an erosion and sedimentation control plan has been approved by the Sedimentation Pollution Control Commission pursuant to G.S. 113A-54(d)(4) or by a local government pursuant to G.S. 113A-61 for the site of the activity or a tract of land including the site of the activity.

(c) No permit shall be issued pursuant to subsection (a) of this section for any land-disturbing activity that is subject to, but does not comply with, the requirements of G.S. 113A-71. (1905, c. 506, s. 26; Rev., s. 2986; 1915, c. 192, s. 3; C.S., s. 2748; 1957, c. 817; 1969, c. 1065, s. 1; 1971, c. 698, s. 1; 1973, c. 426, s. 65; 1981, c. 677, s. 1; 1983, c. 377, s. 3; c. 614, s. 1; 1987 (Reg. Sess., 1988), c. 1000, s. 2; 1993, c. 539, s. 1090; 1994, Ex. Sess., c. 24, s. 14(c); 1993 (Reg. Sess., 1994), c. 741, s. 2; 2002-165, s. 2.20; 2008-198, s. 8(d); 2009-532, s. 3.)

Local Modification. — Alamance: 1993, c. 381, s. 2; Cumberland: 1995 (Reg. Sess., 1996), c. 732, s. 1; Scotland: 1995, c. 124, s. 1; towns of Columbia and Edenton: 2009-68; town of Sunset Beach: 1997-63; 1997-407, s. 1; town of Wrightsville Beach: 1989, c. 611, s. 1, as amended by 2005-265, s. 1.

Cross References. — For provisions specifying that permits required for installation, alteration, or restoration of any insulation or other materials or energy utilization equipment designed or intended to meet the State Building Code requirements for insulation and utilization standards meet all requirements of G.S. 153A-357 or this section, see G.S. 143-151.30.

Editor's Note. — Session Laws 2008-198, s. 12 provided, in part, that subsection 8(d) of the act applies to building permits issued pursuant to G.S. 153A-357 and G.S. 160A-417 for which applications are received on or after April 1, 2009.

The reference in subsection (c) to G.S. 113A-71 was substituted for G.S. 113A-72 following its renumbering at the direction of the Revisor of Statutes.

Effect of Amendments. — Session Laws 2008-198, s. 8(d), effective April 1, 2009, added subsection (c). For applicability, see Editor's note.

Session Laws 2009-532, s. 3, effective October 1, 2009, rewrote subsection (a).

CASE NOTES

Editor's Note. — *Some of the cases cited below were decided under former G.S. 160-122 and prior similar provisions.*

As to necessity for owner to obtain a permit before constructing or repairing a building under former statutory provisions, see State v. Eubanks, 154 N.C. 628, 70 S.E. 466 (1911); Warner v. W & O, Inc., 263 N.C. 37, 138 S.E.2d 782 (1964).

Effect of Issuance of Permit on Owner's Rights. — If a property owner, in good faith, makes expenditures in reliance on a building permit issued to him, his right to construct the building will be protected as an existing use upon later amendment of the municipal zoning regulations; however, the mere issuance of a building permit alone creates no property right in him, and he may not remain inactive and thereby deny the municipality the right to make needed changes in its ordinances. Warner v. W & O, Inc., 263 N.C. 37, 138 S.E.2d 782 (1964).

Mandamus Held Proper Remedy. — Where a city, under an ordinance, with legislative authority in such matters, issued a permit to build an additional room to a residence, but thereafter recalled the permit pending the settlement of a dispute as to whether it would be situated upon an alley claimed to have been widened, upon the finding by the jury that the alley had not been widened and that the room would not be thereon, mandamus was the proper remedy, though the form of the issue was incorrect. Clinard v. City of Winston-Salem, 173 N.C. 356, 91 S.E. 1039 (1917).

Ordinance Held Void for Lack of Uniformity. — City ordinance providing that no person should erect within the city limits any house or building of any kind, or add to, improve or change any building, without first obtaining permission from the board of aldermen, was void, for the reason that it did not prescribe a uniform rule of action for governing the exercises of the discretion of the aldermen, but on the contrary, left the rights of property subject to their arbitrary discretion. State v. Tenant, 110 N.C. 609, 14 S.E. 387 (1892).

Negligence Actionable Only if Proximate Cause of Injury. — Although the violation of a statute which imposes a duty upon the city building inspector in order to promote the safety of the public, including the plaintiffs, may be negligence per se, such negligence is actionable only if it is the proximate cause of injury to the plaintiff. Lynn v. Overlook Dev., 328 N.C. 689, 403 S.E.2d 469 (1991).

Permit issued to respondent was not a building permit under § 160A-385(b) although the zoning administrator stated that the permit that was issued to respondent was the equivalent of a building permit where the permit did not contain the compliance provision required by this section and in the notice sent to adjoining property owners, the zoning administrator referred to respondent's permit as a "zoning permit." Simpson v. City of Charlotte, 115 N.C. App. 51, 443 S.E.2d 772 (1994).

Cited in Sandy Mush Props. v. Rutherford County, 181 N.C. App. 224, 638 S.E.2d 557, 2007 N.C. App. LEXIS 87 (2007).

§ 160A-418. Time limitations on validity of permits.

A permit issued pursuant to G.S. 160A-417 shall expire by limitation six months, or any lesser time fixed by ordinance of the city council, after the date of issuance if the work authorized by the permit has not been commenced. If after commencement the work is discontinued for a period of 12 months, the permit therefor shall immediately expire. No work authorized by any permit that has expired shall thereafter be performed until a new permit has been secured. (1969, c. 1065, s. 1; 1971, c. 698, s. 1.)

§ 160A-419. Changes in work.

After a permit has been issued, no changes or deviations from the terms of the application, plans and specifications, or the permit, except where changes or deviations are clearly permissible under the State Building Code, shall be made until specific written approval of proposed changes or deviations has been obtained from the inspection department. (1969, c. 1065, s. 1; 1971, c. 698, s. 1.)

§ 160A-420. Inspections of work in progress.

As the work pursuant to a permit progresses, local inspectors shall make as many inspections thereof as may be necessary to satisfy them that the work is being done according to the provisions of any applicable State and local laws and of the terms of the permit. In exercising this power, members of the inspection department shall have a right to enter on any premises within the jurisdiction of the department at all reasonable hours for the purposes of inspection or other enforcement action, upon presentation of proper credentials. (1969, c. 1065, s. 1; 1971, c. 698, s. 1.)

Cross References. — As to inspections by the energy and insulation inspector during the installation, alteration, or restoration of any insulation or other materials or energy utilization equipment designed or intended to meet the State Building Code requirements for insulation and energy utilization standards, see G.S. 143-151.32.

CASE NOTES

Inspector's Negligence Actionable Only If Proximate Cause of Injury. — Although the violation of a statute which imposes a duty upon the city building inspector in order to promote the safety of the public, including the plaintiffs, may be negligence per se, such negligence is actionable only if it is the proximate cause of injury to the plaintiff. Lynn v. Overlook Dev., 328 N.C. 689, 403 S.E.2d 469 (1991).

Notice of Necessary Inspections Required. — This section only requires that the building inspector make inspections of work in progress when "necessary." This section and the Building Code contemplate that the permit holder or his agent will notify the inspection department that the work for the necessary inspections is ready, and where plaintiffs have not alleged that the city building inspector was notified or that he failed to make any "necessary" inspections, plaintiffs' allegations did not state a claim upon which relief can be granted. Lynn v. Overlook Dev., 328 N.C. 689, 403 S.E.2d 469 (1991).

Cited in Pigott v. City of Wilmington, 50 N.C. App. 401, 273 S.E.2d 752 (1981).

§ 160A-421. Stop orders.

(a) Whenever any building or structure or part thereof is being demolished, constructed, reconstructed, altered, or repaired in a hazardous manner, or in substantial violation of any State or local building law, or in a manner that endangers life or property, the appropriate inspector may order the specific part of the work that is in violation or presents such a hazard to be immediately stopped. The stop order shall be in writing, directed to the person doing the work, and shall state the specific work to be stopped, the specific reasons therefor, and the conditions under which the work may be resumed.

(b) The owner or builder may appeal from a stop order involving alleged violation of the State Building Code or any approved local modification thereof to the North Carolina Commissioner of Insurance or his designee within a period of five days after the order is issued. Notice of appeal shall be given in writing to the Commissioner of Insurance or his designee, with a copy to the local inspector. The Commissioner of Insurance or his designee shall promptly conduct an investigation and the appellant and the inspector shall be permitted to submit relevant evidence. The Commissioner of Insurance or his designee shall as expeditiously as possible provide a written statement of the decision setting forth the facts found, the decision reached, and the reasons for the decision. Pending the ruling by the Commissioner of Insurance or his designee on an appeal no further work shall take place in violation of a stop order. In the event of dissatisfaction with the decision, the person affected shall have the options of:

(1) Appealing to the Building Code Council, or
(2) Appealing to the Superior Court as provided in G.S. 143-141.

(c) The owner or builder may appeal from a stop order involving alleged violation of a local zoning ordinance by giving notice of appeal in writing to the board of adjustment. The appeal shall be heard and decided within the period established by the ordinance, or if none is specified, within a reasonable time. No further work shall take place in violation of a stop order pending a ruling.

(d) Violation of a stop order shall constitute a Class 1 misdemeanor. (1969, c. 1065, s. 1; 1971, c. 698, s. 1; 1983, c. 377, s. 5; 1989, c. 681, s. 6; 1991, c. 512, s. 3; 1993, c. 539, s. 1091; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 160A-422. Revocation of permits.

The appropriate inspector may revoke and require the return of any permit by notifying the permit holder in writing stating the reason for the revocation. Permits shall be revoked for any substantial departure from the approved application, plans, or specifications; for refusal or failure to comply with the requirements of any applicable State or local laws; or for false statements or misrepresentations made in securing the permit. Any permit mistakenly issued in violation of an applicable State or local law may also be revoked. (1969, c. 1065, s. 1; 1971, c. 698, s. 1.)

§ 160A-423. Certificates of compliance.

At the conclusion of all work done under a permit, the appropriate inspector shall make a final inspection, and if he finds that the completed work complies with all applicable State and local laws and with the terms of the permit, he shall issue a certificate of compliance. No new building or part thereof may be occupied, and no addition or enlargement of an existing building may be occupied, and no existing building that has been altered or moved may be occupied, until the inspection department has issued a certificate of compliance. A temporary certificate of compliance may be issued permitting occupancy for a stated period of specified portions of the building that the inspector finds may safely be occupied prior to final completion of the entire building. Violation of this section shall constitute a Class 1 misdemeanor. (1969, c. 1065, s. 1; 1971, c. 698, s. 1; 1973, c. 426, s. 66; 1993, c. 539, s. 1092; 1994, Ex. Sess., c. 24, s. 14(c).)

Cross References. — As to inspections by the energy and insulation inspector and issuance of a certificate of compliance for work done with regard to the installation, alteration, or restoration of any insulation or other materials or energy utilization equipment designed or intended to meet the State Building Code requirements for insulation and energy utilization standards, see G.S. 143-151.32.

Legal Periodicals. — For note, "Municipal Liability for Negligent Inspections in Sinning v. Clark — A 'Hollow' Victory for the Public Duty Doctrine," see 18 Campbell L. Rev. 241 (1996).

CASE NOTES

Issuance of Certificate of Occupancy Was Date of Substantial Completion for Purposes of Statute of Repose. — Summary judgment for a builder was proper in homeowners' claim for damages arising from alleged construction defects in their home because the suit was filed more than seven years after the certificate of occupancy was issued, and thus the homeowners were unable to prove that the G.S. 1-50(a)(5)(a) six-year statute of repose was not a bar; the homeowners alleged no act by the builder after the date of the certificate of occupancy, nor any fraud or willful or wanton negligence in the construction of the home pursuant to G.S. 1-50(a)(5)(e), and, as such, the date of "substantial completion" for purposes of G.S. 1-50(a)(5)(c) was the date of the certificate of occupancy. Peter T. v. Spectrum Homes, Inc., — N.C. App. —, — S.E.2d —, 2009 N.C. App. LEXIS 529 (May 5, 2009).

Cited in Pigott v. City of Wilmington, 50 N.C. App. 401, 273 S.E.2d 752 (1981); First Am. Fed. Sav. & Loan Ass'n v. Royall, 77 N.C. App. 131, 334 S.E.2d 792 (1985); Nolan v. Paramount Homes, Inc., 135 N.C. App. 73, 518 S.E.2d 789 (1999).

§ 160A-424. Periodic inspections.

The inspection department shall make periodic inspections, subject to the council's directions, for unsafe, unsanitary, or otherwise hazardous and unlawful conditions in structures within its territorial jurisdiction. In addition, it shall make inspections when it has reason to believe that such conditions may exist in a particular structure. In exercising this power, members of the department shall have a right to enter on any premises within the jurisdiction of the department at all reasonable hours for the purposes of inspection or other enforcement action, upon presentation of proper credentials. (1969, c. 1065, s. 1; 1971, c. 698, s. 1.)

§ 160A-425. Defects in buildings to be corrected.

When a local inspector finds any defects in a building, or finds that the building has not been constructed in accordance with the applicable State and local laws, or that a building because of its condition is dangerous or contains fire hazardous conditions, it shall be his duty to notify the owner or occupant of the building of its defects, hazardous conditions, or failure to comply with law. The owner or occupant shall each immediately remedy the defects, hazardous conditions, or violations of law in the property he owns. (1905, c. 506, s. 28; Rev., s. 3009; 1915, c. 192, s. 14; C.S., s. 2771; 1969, c. 1065, s. 1; 1971, c. 698, s. 1; 1973, c. 426, s. 67.)

CASE NOTES

Violations of Section Are Negligence Per Se. — Since the obvious purpose of this statute is to protect the lives and limbs of occupants of the buildings affected, and the Legislature has not provided otherwise, violations of it are negligence per se. Jackson v. Housing Auth., 73 N.C. App. 363, 326 S.E.2d 295 (1985), aff'd, 316 N.C. 259, 341 S.E.2d 523 (1986).

Cited in Pigott v. City of Wilmington, 50 N.C. App. 401, 273 S.E.2d 752 (1981); Coffey v. Town of Waynesville, 143 N.C. App. 624, 547 S.E.2d 132, 2001 N.C. App. LEXIS 348 (2001).

§ 160A-425.1: Repealed by Session Laws 2009-263, s. 1, effective October 1, 2009.

Editor's Note. — At the direction of the Revisor of Statutes, local modifications to G.S. 160A-426 were codified as this section. This section was subsequently repealed by Session Laws 2009-263, s. 1. Session Laws 2009-263, s. 2, amended G.S. 160A-426 by adding subsection (d).

Session Laws 2009-9, s. 1, had amended this section, effective March 23, 2009, by adding "Wallace" to the list of localities in subsection (d), and making a related stylistic change.

§ 160A-426. Unsafe buildings condemned in localities.

(a) Residential Building and Nonresidential Building or Structure. — Every building that shall appear to the inspector to be especially dangerous to life because of its liability to fire or because of bad condition of walls, overloaded floors, defective construction, decay, unsafe wiring or heating system, inadequate means of egress, or other causes, shall be held to be unsafe, and the inspector shall affix a notice of the dangerous character of the structure to a conspicuous place on the exterior wall of the building.

(b) Nonresidential Building or Structure. — In addition to the authority granted in subsection (a) of this section, an inspector may declare a nonresidential building or structure within a community development target area to be unsafe if it meets both of the following conditions:

(1) It appears to the inspector to be vacant or abandoned.
(2) It appears to the inspector to be in such dilapidated condition as to cause or contribute to blight, disease, vagrancy, fire or safety hazard, to be a danger to children, or to tend to attract persons intent on criminal activities or other activities that would constitute a public nuisance.

(c) If an inspector declares a nonresidential building or structure to be unsafe under subsection (b) of this section, the inspector must affix a notice of the unsafe character of the structure to a conspicuous place on the exterior wall of the building. For the purposes of this section, the term "community development target area" means an area that has characteristics of an urban progress zone under G.S. 143B-437.09, a "nonresidential redevelopment area" under G.S. 160A-503(10), or an area with similar characteristics designated by the city council as being in special need of revitalization for the benefit and welfare of its citizens.

(d) A municipality may expand subsections (b) and (c) of this section to apply to residential buildings by adopting an ordinance. Before adopting such an ordinance, a municipality shall hold a public hearing and shall provide notice of the hearing at least 10 days in advance of the hearing. (1905, c. 50-6, s. 15; Rev., s. 3010; 1915, c. 192, s. 15; C.S., s. 2773; 1929, c. 199, s. 1; 1969, c. 1065, s. 1; 1971, c. 698, s. 1; 2000-164, s. 1; 2001-386, s. 1; 2006-252, s. 2.19; 2009-263, s. 2.)

Editor's Note. — At the direction of the Revisor of Statutes, local modifications to this section were codified as G.S. 160A-425.1. That section was subsequently repealed by Session Laws 2009-263, s. 1.

Session Laws 2009-263, s. 5, provides, in part: "A municipality may adopt an ordinance under G.S. 160A-426(d) when this act becomes law, but the ordinance may not become effective prior to October 1, 2009."

Effect of Amendments. — Session Laws 2009-263, s. 2, effective July 10, 2009, deleted "other" preceding "localities" in the section catchline, and added subsection (d).

CASE NOTES

Cited in Pigott v. City of Wilmington, 50 N.C. App. 401, 273 S.E.2d 752 (1981); Coffey v. Town of Waynesville, 143 N.C. App. 624, 547 S.E.2d 132, 2001 N.C. App. LEXIS 348 (2001).

§ 160A-427. Removing notice from condemned building.

If any person shall remove any notice that has been affixed to any building or structure by a local inspector of any municipality and that states the dangerous character of the building or structure, he shall be guilty of a Class 1 misdemeanor. (1905, c. 506, s. 15; Rev., s. 3799; C.S., s. 2775; 1969, c. 1065, s. 1; 1971, c. 698, s. 1; 1993, c. 539, s. 1093; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 160A-428. Action in event of failure to take corrective action.

If the owner of a building or structure that has been condemned as unsafe pursuant to G.S. 160A-426 shall fail to take prompt corrective action, the local inspector shall give him written notice, by certified or registered mail to his last known address or by personal service:

(1) That the building or structure is in a condition that appears to meet one or more of the following conditions:
  a. Constitutes a fire or safety hazard.
  b. Is dangerous to life, health, or other property.
  c. Is likely to cause or contribute to blight, disease, vagrancy, or danger to children.
  d. Has a tendency to attract persons intent on criminal activities or other activities which would constitute a public nuisance.

(2) That a hearing will be held before the inspector at a designated place and time, not later than 10 days after the date of the notice, at which time the owner shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter; and

(3) That following the hearing, the inspector may issue such order to repair, close, vacate, or demolish the building or structure as appears appropriate.

If the name or whereabouts of the owner cannot after due diligence be discovered, the notice shall be considered properly and adequately served if a copy thereof is posted on the outside of the building or structure in question at least 10 days prior to the hearing and a notice of the hearing is published in a newspaper having general circulation in the city at least once not later than one week prior to the hearing. (1969, c. 1065, s. 1; 1971, c. 698, s. 1; 2000-164, s. 2; 2009-263, s. 4.)

Editor's Note. — At the direction of the Revisor of Statutes, "G.S. 160A-425.1 or" was inserted in the introductory paragraph due to the codification at G.S. 160A-425.1 of certain local modifications to G.S. 160A-426. That phrase was deleted by Session Laws 2009-263, which also repealed G.S. 160A-425.1.

Effect of Amendments. — Session Laws 2009-263, s. 4, effective July 10, 2009, deleted "G.S. 160A-425.1 or" preceding "G.S. 160A-426" in the introductory language.

CASE NOTES

Cited in Coffey v. Town of Waynesville, 143 N.C. App. 624, 547 S.E.2d 132, 2001 N.C. App. LEXIS 348 (2001).

§ 160A-429. Order to take corrective action.

If, upon a hearing held pursuant to the notice prescribed in G.S. 160A-428, the inspector shall find that the building or structure is in a condition that constitutes a fire or safety hazard or renders it dangerous to life, health, or other property, he shall make an order in writing, directed to the owner of such building or structure, requiring the owner to remedy the defective conditions by repairing, closing, vacating, or demolishing the building or structure or taking other necessary steps, within such period, not less than 60 days, as the inspector may prescribe; provided, that where the inspector finds that there is imminent danger to life or other property, he may order that corrective action be taken in such lesser period as may be feasible. (1969, c. 1065, s. 1; 1971, c. 698, s. 1; 1973, c. 426, s. 68; 1977, c. 912, s. 13.)

CASE NOTES

Demolition of Building Properly Ordered. — A municipality complied with the procedures set forth in G.S. 160A-424 to 160A-429 prior to ordering the demolition of a building where (1) the municipality's code enforcement official conducted an inspection of the property based on reason to believe the property was in dangerous condition and, upon inspection, found the property to be unsafe and posted notice of the dangerous character of the property, (2) after nearly a full month passed and no corrective action was taken, the official sent the plaintiffs a notice of hearing, (3) the official then held a hearing and determined that the property should be demolished, based on the length of time the property had been in unsafe condition and the unlikelihood that the plaintiffs would actually take sufficient steps to improve the property, and (4) the order was appealed and affirmed after two separate hearings. Coffey v. Town of Waynesville, 143 N.C. App. 624, 547 S.E.2d 132, 2001 N.C. App. LEXIS 348 (2001).

Standard of Review. — In reviewing a municipality's decision ordering demolition of a building, if the petitioner contends that the decision was based on an error of law, de novo review is the proper standard of review, but if the petitioner contends the decision was not supported by the evidence or was arbitrary and capricious, then the reviewing court must apply the whole record test. Coffey v. Town of Waynesville, 143 N.C. App. 624, 547 S.E.2d 132, 2001 N.C. App. LEXIS 348 (2001).

Cited in Pigott v. City of Wilmington, 50 N.C. App. 401, 273 S.E.2d 752 (1981).

§ 160A-430. Appeal; finality of order if not appealed.

Any owner who has received an order under G.S. 160A-429 may appeal from the order to the city council by giving notice of appeal in writing to the inspector and to the city clerk within 10 days following issuance of the order. In the absence of an appeal, the order of the inspector shall be final. The city council shall hear and render a decision in an appeal within a reasonable time. The city council may affirm, modify and affirm, or revoke the order. (1969, c. 1065, s. 1; 1971, c. 698, s. 1; 1973, c. 426, s. 69; 2000-164, s. 4.)

CASE NOTES

Cited in Coffey v. Town of Waynesville, 143 N.C. App. 624, 547 S.E.2d 132, 2001 N.C. App. LEXIS 348 (2001).

§ 160A-431. Failure to comply with order.

If the owner of a building or structure fails to comply with an order issued pursuant to G.S. 160A-429 from which no appeal has been taken, or fails to comply with an order of the city council following an appeal, he shall be guilty of a Class 1 misdemeanor. (1905, c. 506, s. 15; Rev., s. 3802; 1915, c. 192, s. 19; C.S., s. 2774; 1929, c. 199, s. 2; 1969, c. 1065, s. 1; 1971, c. 698, s. 1; 1993, c. 539, s. 1094; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 160A-432. Enforcement.

(a) [Action Authorized.] — Whenever any violation is denominated a misdemeanor under the provisions of this Part, the city, either in addition to or in lieu of other remedies, may initiate any appropriate action or proceedings to prevent, restrain, correct, or abate the violation or to prevent the occupancy of the building or structure involved.

(a1) Repealed by Session Laws 2009-263, s. 1, effective October 1, 2009.

(b) Removal of Building. — In the case of a building or structure declared unsafe under G.S. 160A-426 or an ordinance adopted pursuant to G.S. 160A-426, a city may, in lieu of taking action under subsection (a), cause the building or structure to be removed or demolished. The amounts incurred by the city in connection with the removal or demolition shall be a lien against the real property upon which the cost was incurred. The lien shall be filed, have the same priority, and be collected in the same manner as liens for special assessments provided in Article 10 of this Chapter. If the building or structure is removed or demolished by the city, the city shall sell the usable materials of the building and any personal property, fixtures, or appurtenances found in or attached to the building. The city shall credit the proceeds of the sale against the cost of the removal or demolition. Any balance remaining from the sale shall be deposited with the clerk of superior court of the county where the property is located and shall be disbursed by the court to the person found to be entitled thereto by final order or decree of the court.

(b1) Additional Lien. — The amounts incurred by the city in connection with the removal or demolition shall also be a lien against any other real property owned by the owner of the building or structure and located within the city limits or within one mile of the city limits, except for the owner's primary residence. The provisions of subsection (b) of this section apply to this additional lien, except that this additional lien is inferior to all prior liens and shall be collected as a money judgment.

(c) [Nonexclusive Remedy.] — Nothing in this section shall be construed to impair or limit the power of the city to define and declare nuisances and to cause their removal or abatement by summary proceedings, or otherwise. (1969, c. 1065, s. 1; 1971, c. 698, s. 1; 2000-164, s. 3; 2001-386, s. 2; 2001-448, s. 2; 2002-118, s. 2; 2003-23, s. 1; 2003-42, s. 1; 2004-6, s. 1; 2007-216, s. 2; 2008-59, s. 2; 2009-9, s. 2; 2009-263, ss. 1, 3.)

Editor's Note. — At the direction of the Revisor of Statutes, local modifications to G.S. 160A-432(b) were codified as subsection (a1) of this section. The historical citation was updated with modifying statutes at the direction of the Revisor of Statutes. Subsection (a1) was subsequently repealed by Session Laws 2009-263, s. 1.

Session Laws 2009-263, s. 5, provides, in part: "Section 1 of this act [which repealed subsection (a1)] is effective October 1, 2009, and the remainder of this act is effective when it becomes law [July 10, 2009].

Effect of Amendments. — Session Laws 2008-59, s. 2, effective July 7, 2008, substituted "Lumberton, Rocky Mount, and Wilson" for "and Lumberton" in the second paragraph of subsection (a1).

Session Laws 2009-9, s. 2, effective March 23, 2009, added "Wallace" to the list of localities in subsection (a1), and made a related stylistic change.

Session Laws 2009-263, ss. 1, 3, deleted subsection (a1); and, in subsection (b), added the subsection catchline, and in the first sentence, deleted "nonresidential" preceding "building or structure declared unsafe" and inserted "or an ordinance adopted pursuant to G.S. 160A-426." For effective dates, see Editor's note.

§ 160A-433. Records and reports.

The inspection department shall keep complete and accurate records in convenient form of all applications received, permits issued, inspections and reinspections made, defects found, certificates of compliance granted, and all other work and activities of the department. These records shall be kept in the manner and for the periods prescribed by the North Carolina Department of Cultural Resources. Periodic reports shall be submitted to the city council and to the Commissioner of Insurance as they shall by ordinance, rule, or regulation require. (1905, c. 506, ss. 30, 31; Rev., ss. 3004, 3005; 1915, c. 192, s. 12; C.S., ss. 2766, 2767; 1969, c. 1065, s. 1; 1971, c. 698, s. 1; 1983, c. 377, s. 7.)

§ 160A-434. Appeals in general.

Unless otherwise provided by law, appeals from any order, decision, or determination by a member of a local inspection department pertaining to the State Building Code or other State building laws shall be taken to the Commissioner of Insurance or his designee or other official specified in G.S. 143-139, by filing a written notice with him and with the inspection department within a period of 10 days after the order, decision, or determination. Further appeals may be taken to the State Building Code Council or to the courts as provided by law. (1969, c. 1065, s. 1; 1971, c. 698, s. 1; 1989, c. 681, s. 7A.)

CASE NOTES

Cited in Coffey v. Town of Waynesville, 143 N.C. App. 624, 547 S.E.2d 132, 2001 N.C. App. LEXIS 348 (2001).

§ 160A-435. Establishment of fire limits.

The city council of every incorporated city shall pass one or more ordinances establishing and defining fire limits, which shall include the principal business portions of the city and which shall be known as primary fire limits. In addition, the council may, in its discretion, establish and define one or more separate areas within the city as secondary fire limits. (1905, c. 506, s. 7; Rev., s. 2985; 1917, c. 136, subch. 8, s. 2; C.S., ss. 2746, 2802; 1961, c. 240; 1969, c. 1065, s. 1; 1971, c. 698, s. 1.)

CASE NOTES

The courts will not pass upon the reasonableness of fire limits established by an incorporated town under authority conferred by the legislature, at least where the limits established appear to be reasonable and without palpable oppression or injustice. State v. Lawing, 164 N.C. 492, 80 S.E. 69 (1913), decided under former similar provisions.

Liability for Torts of Officers. — A municipality was not immune from liability for the torts of defendant officers to the extent of defendant town's liability insurance. Davis v. Town of Southern Pines, 116 N.C. App. 663, 449 S.E.2d 240 (1994), cert. denied, 339 N.C. 737, 454 S.E.2d 648 (1995).

§ 160A-436. Restrictions within primary fire limits.

Within the primary fire limits of any city, as established and defined by ordinance, no frame or wooden building or structure or addition thereto shall hereafter be erected, altered, repaired, or moved (either into the limits or from one place to another within the limits), except upon the permit of the local inspection department approved by the city council and by the Commissioner of Insurance or his designee. The city council may make additional regulations for the prevention, extinguishment, or mitigation of fires within the primary fire limits. (1905, c. 506, s. 8; Rev., s. 2988; 1915, c. 192, s. 5; C.S., s. 2750; 1969, c. 1065, s. 1; 1971, c. 698, s. 1; 1989, c. 681, s. 8.)

CASE NOTES

Reasonableness of Ordinances. — While it might be unreasonable to prohibit even the slightest repairs to wooden buildings standing within the fire limits prior to the passage of a statute or ordinance establishing such limits, the power to prevent repairs is delegated and presumably exercised for the protection of property; hence, where a wooden structure within the bounds is partially destroyed by fire already, it is not unreasonable to require a new roof to be made of material less liable to combustion, or to forbid the repairs altogether when the damage to the building is serious, and to that end to compel the owners to give notice to the town authorities of their purpose to repair, and of the character of the contemplated work. State v. Johnson, 114 N.C. 846, 19 S.E. 599 (1894), decided under former similar provisions.

§ 160A-437. Restriction within secondary fire limits.

Within any secondary fire limits of any city or town, as established and defined by ordinance, no frame or wooden building or structure or addition thereto shall be erected, altered, repaired, or moved except in accordance with any rules and regulations established by ordinance of the areas. (1905, c. 506, s. 8; Rev., s. 2988; 1915, c. 192, s. 5; C.S., s. 2750; 1969, c. 1065, s. 1; 1971, c. 698, s. 1.)

§ 160A-438. Failure to establish primary fire limits.

If the council of any city shall fail or refuse to establish and define the primary fire limits of the city as required by law, after having such failure or refusal called to their attention in writing by the State Commissioner of Insurance, the Commissioner shall have the power to establish the limits upon making a determination that they are necessary and in the public interest. (1905, c. 506, s. 7; Rev., s. 3608; C.S., s. 2747; 1969, c. 1065, s. 1; 1971, c. 698, s. 1.)

Legal Periodicals. — For note, "Municipal Liability for Negligent Inspections in Sinning v. Clark — A 'Hollow' Victory for the Public Duty Doctrine," see 18 Campbell L. Rev. 241 (1996).

§ 160A-439. Ordinance authorized as to repair, closing, and demolition of nonresidential buildings or structures; order of public officer.

(a) Authority. — The governing body of the city may adopt and enforce ordinances relating to nonresidential buildings or structures that fail to meet minimum standards of maintenance, sanitation, and safety established by the governing body. The minimum standards shall address only conditions that are dangerous and injurious to public health, safety, and welfare and identify circumstances under which a public necessity exists for the repair, closing, or demolition of such buildings or structures. The ordinance shall provide for designation or appointment of a public officer to exercise the powers prescribed by the ordinance, in accordance with the procedures specified in this section. Such ordinance shall only be applicable within the corporate limits of the city.

(b) Investigation. — Whenever it appears to the public officer that any nonresidential building or structure has not been properly maintained so that the safety or health of its occupants or members of the general public are jeopardized for failure of the property to meet the minimum standards established by the governing body, the public officer shall undertake a preliminary investigation. If entry upon the premises for purposes of investigation is necessary, such entry shall be made pursuant to a duly issued administrative search warrant in accordance with G.S. 15-27.2 or with permission of the owner, the owner's agent, a tenant, or other person legally in possession of the premises.

(c) Complaint and Hearing. — If the preliminary investigation discloses evidence of a violation of the minimum standards, the public officer shall issue and cause to be served upon the owner of and parties in interest in the nonresidential building or structure a complaint. The complaint shall state the charges and contain a notice that a hearing will be held before the public officer (or his or her designated agent) at a place within the county scheduled not less than 10 days nor more than 30 days after the serving of the complaint; that the owner and parties in interest shall be given the right to answer the complaint and to appear in person, or otherwise, and give testimony at the place and time fixed in the complaint; and that the rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the public officer.

(d) Order. — If, after notice and hearing, the public officer determines that the nonresidential building or structure has not been properly maintained so that the safety or health of its occupants or members of the general public is jeopardized for failure of the property to meet the minimum standards established by the governing body, the public officer shall state in writing findings of fact in support of that determination and shall issue and cause to be served upon the owner thereof an order. The order may require the owner to take remedial action, within a reasonable time specified, subject to the procedures and limitations herein.

(e) Limitations on Orders. —

(1) An order may require the owner to repair, alter, or improve the nonresidential building or structure in order to bring it into compliance with the minimum standards established by the governing body or to vacate and close the nonresidential building or structure for any use.

(2) An order may require the owner to remove or demolish the nonresidential building or structure if the cost of repair, alteration, or improvement of the building or structure would exceed fifty percent (50%) of its then current value. Notwithstanding any other provision of law, if the nonresidential building or structure is designated as a local historic landmark, listed in the National Register of Historic

Places, or located in a locally designated historic district or in a historic district listed in the National Register of Historic Places and the governing body determines, after a public hearing as provided by ordinance, that the nonresidential building or structure is of individual significance or contributes to maintaining the character of the district, and the nonresidential building or structure has not been condemned as unsafe, the order may require that the nonresidential building or structure be vacated and closed until it is brought into compliance with the minimum standards established by the governing body.

(3) An order may not require repairs, alterations, or improvements to be made to vacant manufacturing facilities or vacant industrial warehouse facilities to preserve the original use. The order may require such building or structure to be vacated and closed, but repairs may be required only when necessary to maintain structural integrity or to abate a health or safety hazard that cannot be remedied by ordering the building or structure closed for any use.

(f) Action by Governing Body Upon Failure to Comply With Order. —

(1) If the owner fails to comply with an order to repair, alter, or improve or to vacate and close the nonresidential building or structure, the governing body may adopt an ordinance ordering the public officer to proceed to effectuate the purpose of this section with respect to the particular property or properties that the public officer found to be jeopardizing the health or safety of its occupants or members of the general public. The property or properties shall be described in the ordinance. The ordinance shall be recorded in the office of the register of deeds and shall be indexed in the name of the property owner or owners in the grantor index. Following adoption of an ordinance, the public officer may cause the building or structure to be repaired, altered, or improved or to be vacated and closed. The public officer may cause to be posted on the main entrance of any nonresidential building or structure so closed a placard with the following words: "This building is unfit for any use; the use or occupation of this building for any purpose is prohibited and unlawful." Any person who occupies or knowingly allows the occupancy of a building or structure so posted shall be guilty of a Class 3 misdemeanor.

(2) If the owner fails to comply with an order to remove or demolish the nonresidential building or structure, the governing body may adopt an ordinance ordering the public officer to proceed to effectuate the purpose of this section with respect to the particular property or properties that the public officer found to be jeopardizing the health or safety of its occupants or members of the general public. No ordinance shall be adopted to require demolition of a nonresidential building or structure until the owner has first been given a reasonable opportunity to bring it into conformity with the minimum standards established by the governing body. The property or properties shall be described in the ordinance. The ordinance shall be recorded in the office of the register of deeds and shall be indexed in the name of the property owner or owners in the grantor index. Following adoption of an ordinance, the public officer may cause the building or structure to be removed or demolished.

(g) Action by Governing Body Upon Abandonment of Intent to Repair. — If the governing body has adopted an ordinance or the public officer has issued an order requiring the building or structure to be repaired or vacated and closed and the building or structure has been vacated and closed for a period of two years pursuant to the ordinance or order, the governing body may make findings that the owner has abandoned the intent and purpose to repair, alter, or improve the building or structure and that the continuation of the building or structure in its vacated and closed status would be inimical to the health, safety, and welfare of the municipality in that it would continue to deteriorate, would create a fire or safety hazard, would be a threat to children and vagrants, would attract persons intent on criminal activities, or would cause or contribute to blight and the deterioration of property values in the area. Upon such findings, the governing body may, after the expiration of the two-year period, enact an ordinance and serve such ordinance on the owner, setting forth the following:

(1) If the cost to repair the nonresidential building or structure to bring it into compliance with the minimum standards is less than or equal to fifty percent (50%) of its then current value, the ordinance shall require that the owner either repair or demolish and remove the building or structure within 90 days; or

(2) If the cost to repair the nonresidential building or structure to bring it into compliance with the minimum standards exceeds fifty percent (50%) of its then current value, the ordinance shall require the owner to demolish and remove the building or structure within 90 days.

In the case of vacant manufacturing facilities or vacant industrial warehouse facilities, the building or structure must have been vacated and closed pursuant to an order or ordinance for a period of five years before the governing body may take action under this subsection. The ordinance shall be recorded in the office of the register of deeds in the county wherein the property or properties are located and shall be indexed in the name of the property owner in the grantor index. If the owner fails to comply with the ordinance, the public officer shall effectuate the purpose of the ordinance.

(h) Service of Complaints and Orders. — Complaints or orders issued by a public officer pursuant to an ordinance adopted under this section shall be served upon persons either personally or by registered or certified mail so long as the means used are reasonably designed to achieve actual notice. When service is made by registered or certified mail, a copy of the complaint or order may also be sent by regular mail. Service shall be deemed sufficient if the registered or certified mail is refused, but the regular mail is not returned by the post office within 10 days after the mailing. If regular mail is used, a notice of the pending proceedings shall be posted in a conspicuous place on the premises affected. If the identities of any owners or the whereabouts of persons are unknown and cannot be ascertained by the public officer in the exercise of reasonable diligence, and the public officer makes an affidavit to that effect, the serving of the complaint or order upon the owners or other persons may be made by publication in a newspaper having general circulation in the city at least once no later than the time that personal service would be required under this section. When service is made by publication, a notice of the pending proceedings shall be posted in a conspicuous place on the premises affected.

(i) Liens. —

(1) The amount of the cost of repairs, alterations, or improvements, or vacating and closing, or removal or demolition by the public officer shall be a lien against the real property upon which the cost was incurred, which lien shall be filed, have the same priority, and be collected as the lien for special assessment provided in Article 10 of Chapter 160A of the General Statutes.

(2) If the real property upon which the cost was incurred is located in an incorporated city, the amount of the costs is also a lien on any other real property of the owner located within the city limits except for the owner's primary residence. The additional lien provided in this subdivision is inferior to all prior liens and shall be collected as a money judgment.

(3) If the nonresidential building or structure is removed or demolished by the public officer, he or she shall offer for sale the recoverable materials of the building or structure and any personal property, fixtures, or appurtenances found in or attached to the building or structure and shall credit the proceeds of the sale, if any, against the cost of the removal or demolition, and any balance remaining shall be deposited in the superior court by the public officer, shall be secured in a manner directed by the court, and shall be disbursed by the court to the persons found to be entitled thereto by final order or decree of the court. Nothing in this section shall be construed to impair or limit in any way the power of the governing body to define and declare nuisances and to cause their removal or abatement by summary proceedings or otherwise.

(j) Ejectment. — If any occupant fails to comply with an order to vacate a nonresidential building or structure, the public officer may file a civil action in the name of the city to remove the occupant. The action to vacate shall be in the nature of summary ejectment and shall be commenced by filing a complaint naming as parties-defendant any person occupying the nonresidential building or structure. The clerk of superior court shall issue a summons requiring the defendant to appear before a magistrate at a certain time, date, and place not to exceed 10 days from the issuance of the summons to answer the complaint. The summons and complaint shall be served as provided in G.S. 42-29. The summons shall be returned according to its tenor, and if on its return it appears to have been duly served and if at the hearing the public officer produces a certified copy of an ordinance adopted by the governing body pursuant to subsection (f) of this section to vacate the occupied nonresidential building or structure, the magistrate shall enter judgment ordering that the premises be vacated and all persons be removed. The judgment ordering that the nonresidential building or structure be vacated shall be enforced in the same manner as the judgment for summary ejectment entered under G.S. 42-30. An appeal from any judgment entered under this subsection by the magistrate may be taken as provided in G.S. 7A-228, and the execution of the judgment may be stayed as provided in G.S. 7A-227. An action to remove an occupant of a nonresidential building or structure who is a tenant of the owner may not be in the nature of a summary ejectment proceeding pursuant to this subsection unless the occupant was served with notice, at least 30 days before the filing of the summary ejectment proceeding, that the governing body has ordered the public officer to proceed to exercise his duties under subsection (f) of this section to vacate and close or remove and demolish the nonresidential building or structure.

(k) Civil Penalty. — The governing body may impose civil penalties against any person or entity that fails to comply with an order entered pursuant to this section. However, the imposition of civil penalties shall not limit the use of any other lawful remedies available to the governing body for the enforcement of any ordinances adopted pursuant to this section.

(*l*) Powers Supplemental. — The powers conferred by this section are supplemental to the powers conferred by any other law. An ordinance adopted by the governing body may authorize the public officer to exercise any powers necessary or convenient to carry out and effectuate the purpose and provisions of this section, including the following powers in addition to others herein granted:

(1) To investigate nonresidential buildings and structures in the city to determine whether they have been properly maintained in compliance with the minimum standards so that the safety or health of the occupants or members of the general public are not jeopardized.

(2) To administer oaths, affirmations, examine witnesses, and receive evidence.

(3) To enter upon premises pursuant to subsection (b) of this section for the purpose of making examinations in a manner that will do the least possible inconvenience to the persons in possession.

(4) To appoint and fix the duties of officers, agents, and employees necessary to carry out the purposes of the ordinances adopted by the governing body.

(5) To delegate any of his or her functions and powers under the ordinance to other officers and agents.

(m) Appeals. — The governing body may provide that appeals may be taken from any decision or order of the public officer to the city's housing appeals board or zoning board of adjustment. Any person aggrieved by a decision or order of the public officer shall have the remedies provided in G.S. 160A-446.

(n) Funding. — The governing body is authorized to make appropriations from its revenues necessary to carry out the purposes of this section and may accept and apply grants or donations to assist in carrying out the provisions of the ordinances adopted by the governing body.

(o) No Effect on Just Compensation for Taking by Eminent Domain. — Nothing in this section shall be construed as preventing the owner or owners of any property from receiving just compensation for the taking of property by the power of eminent domain under the laws of this State, nor as permitting any property to be condemned or destroyed except in accordance with the police power of the State.

(p) Definitions. —

(1) "Parties in interest" means all individuals, associations, and corporations who have interests of record in a nonresidential building or structure and any who are in possession thereof.

(2) "Vacant industrial warehouse" means any building or structure designed for the storage of goods or equipment in connection with manufacturing processes, which has not been used for that purpose for at least one year and has not been converted to another use.

(3) "Vacant manufacturing facility" means any building or structure previously used for the lawful production or manufacturing of goods, which has not been used for that purpose for at least one year and has not been converted to another use. (2007-414, s. 1.)

Editor's Note. — The definitions in subsection (p) were redesignated at the direction of the Revisor of Statutes to preserve alphabetical order.

Session Laws 2007-414, s. 3, made this section effective August 21, 2007.

§ 160A-440: Reserved for future codification purposes.

Part 6. Minimum Housing Standards.

§ 160A-441. Exercise of police power authorized.

It is hereby found and declared that the existence and occupation of dwellings in this State that are unfit for human habitation are inimical to the welfare and dangerous and injurious to the health, safety and morals of the people of this State, and that a public necessity exists for the repair, closing or demolition of such dwellings. Whenever any city or county of this State finds that there exists in the city or county dwellings that are unfit for human habitation due to dilapidation, defects increasing the hazards of fire, accidents or other calamities, lack of ventilation, light or sanitary facilities, or due to other conditions rendering the dwellings unsafe or unsanitary, or dangerous or detrimental to the health, safety, morals, or otherwise inimical to the welfare of the residents of the city or county, power is hereby conferred upon the city or county to exercise its police powers to repair, close or demolish the dwellings in the manner herein provided. No ordinance enacted by the governing body of a county pursuant to this Part shall be applicable within the corporate limits of any city unless the city council of the city has by resolution expressly given its approval thereto.

In addition to the exercise of police power authorized herein, any city may by ordinance provide for the repair, closing or demolition of any abandoned structure which the city council finds to be a health or safety hazard as a result of the attraction of insects or rodents, conditions creating a fire hazard, dangerous conditions constituting a threat to children or frequent use by vagrants as living quarters in the absence of sanitary facilities. Such ordinance, if adopted, may provide for the repair, closing or demolition of such structure pursuant to the same provisions and procedures as are prescribed herein for the repair, closing or demolition of dwellings found to be unfit for human habitation. (1939, c. 287, s. 1; 1969, c. 913, s. 1; 1971, c. 698, s. 1; 1973, c. 426, s. 60; 1975, c. 664, s. 15.)

Local Modification. — (As to Part 6) City of Durham: 1993, c. 283, s. 1.

Legal Periodicals. — For article on the constitutional problems of housing codes as a means of preventing urban blight, see 6 Wake Forest Intra. L. Rev. 255 (1970).

For note on retaliatory evictions and housing code enforcement, see 49 N.C.L. Rev. 569 (1971).

For comment, "Urban Planning and Land Use Regulation: The Need for Consistency," see 14 Wake Forest L. Rev. 81 (1978).

CASE NOTES

Editor's Note. *— Some of the cases cited below were decided under former statutory provisions.*

Constitutionality Generally. — It is not unconstitutional for a municipality to take upon itself a duty to see that repairs to buildings within its domain will be made in such manner as will prevent fire and structural hazards. This duty it is bound to exercise to protect the safety and health of the general public. To require a permit in order to implement such reasonable supervision is not in violation of any provision of the Constitution of the United States. Walker v. North Carolina, 262 F. Supp. 102 (W.D.N.C. 1966), cert. denied, 388 U.S. 917, 87 S. Ct. 2134, 18 L. Ed. 2d 1360 (1967), aff'd, 372 F.2d 129 (4th Cir.)

Unconstitutional Action by Municipality. — An action by a municipality, pursuant to an ordinance adopted under the authority of former G.S. 160-182, in ordering the demolition of a dwelling house without compensation to the owner thereof, and in charging the expense of demolition to the owner upon his failure to demolish the house himself, such action being based upon findings by the city building inspector that the house was unfit for human habitation and that the repairs necessary to bring the house into conformity with the housing code would cost 60% or more of the present value of the house, was violative of the law of the land clause of the State Constitution, where (1) the house could be repaired so as to comply with the housing code, and (2) the owner was not afforded a reasonable opportunity to repair the house. Horton v. Gulledge, 277 N.C. 353, 177 S.E.2d 885 (1970).

A homeowner who was faced with a municipal housing inspector's order giving him no alternative but to demolish his home, declared uninhabitable by the municipality, or to pay the expense of demolition by the municipality, was not required to propose an alternative remedy for the condition of the house before asserting his constitutional right in the courts. Horton v. Gulledge, 277 N.C. 353, 177 S.E.2d 885 (1970).

Purpose of Part. — This Part was enacted for the purpose of ensuring that minimum housing standards would be achieved in the cities and counties of this State. Harrell v. City of Winston-Salem, 22 N.C. App. 386, 206 S.E.2d 802, cert. denied, 285 N.C. 757, 209 S.E.2d 281 (1974); Farmers Bank v. City of Elizabeth City, 54 N.C. App. 110, 282 S.E.2d 580 (1981).

Public Interference Warranted Only to Secure Public Safety or Protect Health. — The only warrant for public interference with a person's building is to secure public safety and to protect the health of those occupying the building. Horton v. Gulledge, 277 N.C. 353, 177 S.E.2d 885 (1970).

City May Not Destroy Private Property for Aesthetic Reasons Alone. — A municipal corporation has no inherent police power, but may exercise such power only to the extent that it has been conferred upon the city by statute.

Moreover, the legislature cannot confer upon a city a power which the legislature, itself, does not have. Consequently, a city may not, under the guise of the police power, destroy private property for aesthetic reasons alone. Horton v. Gulledge, 277 N.C. 353, 177 S.E.2d 885 (1970).

Trial court erred in granting summary judgment to the city on the homeowner's claim for violation of her due process rights because, although the homeowner's house was in severe disrepair, the city violated her due process rights by demolishing the home without giving her notice, as the condition of the house did not pose an imminent threat to the public, warranting its immediate demolition; accordingly, the appellate court reversed the judgment and remanded the case for an entry summary judgment in favor of the homeowner and a trial on the issue of damages. Monroe v. City of New Bern, 158 N.C. App. 275, 580 S.E.2d 372, 2003 N.C. App. LEXIS 1053 (2003), cert. denied, 357 N.C. 461, 586 S.E.2d 93 (2003).

Compensation to Owner Not Required. — The police power of the State, which it may delegate to its municipal corporations, extends to the prohibition of a use of private property which may reasonably be deemed to threaten the public health, safety, or morals or the general welfare, and when necessary to safeguard such public interest, such power may be exercised without payment of compensation to the owner, even though his property is thereby rendered substantially worthless. Horton v. Gulledge, 277 N.C. 353, 177 S.E.2d 885 (1970).

As to authorization of the exercise of police power by municipality, see State v. Walker, 265 N.C. 482, 144 S.E.2d 419 (1965).

As to the incorporation of former §§ 160-183 to 160-189 in the City Code of Morganton, see Dale v. City of Morganton, 270 N.C. 567, 155 S.E.2d 136 (1967).

Cited in Wiggins v. City of Monroe, 73 N.C. App. 44, 326 S.E.2d 39 (1985); Newton v. City of Winston-Salem, 92 N.C. App. 446, 374 S.E.2d 488 (1988); Coffey v. Town of Waynesville, 143 N.C. App. 624, 547 S.E.2d 132, 2001 N.C. App. LEXIS 348 (2001).

§ 160A-442. Definitions.

The following terms shall have the meanings whenever used or referred to as indicated when used in this Part unless a different meaning clearly appears from the context:

(1) "City" means any incorporated city or any county.

(2) "Dwelling" means any building, structure, manufactured home or mobile home, or part thereof, used and occupied for human habitation or intended to be so used, and includes any outhouses and appurtenances belonging thereto or usually enjoyed therewith, except that it does not include any manufactured home or mobile home, which is used solely for a seasonal vacation purpose.

(3) "Governing body" means the council, board of commissioners, or other legislative body, charged with governing a city or county.

(3a) "Manufactured home" or "mobile home" means a structure as defined in G.S. 143-145(7).

(4) "Owner" means the holder of the title in fee simple and every mortgagee of record.

(5) "Parties in interest" means all individuals, associations and corporations who have interests of record in a dwelling and any who are in possession thereof.

(6) "Public authority" means any housing authority or any officer who is in charge of any department or branch of the government of the city, county, or State relating to health, fire, building regulations, or other activities concerning dwellings in the city.

(7) "Public officer" means the officer or officers who are authorized by ordinances adopted hereunder to exercise the powers prescribed by the ordinances and by this Part. (1939, c. 287, s. 2; 1941, c. 140; 1953, c. 675, s. 29; 1961, c. 398, s. 1; 1969, c. 913, s. 2; 1971, c. 698, s. 1; 1973, c. 426, s. 60; 1983, c. 401, ss. 1, 2.)

CASE NOTES

Cited in Moores v. Greensboro Minimum Hous. Stds. Comm'n, — N.C. App. —, 679 S.E.2d 480, 2009 N.C. App. LEXIS 1171 (July 21, 2009); Harrell v. City of Winston-Salem, 22 N.C. App. 386, 206 S.E.2d 802 (1974); Farmers Bank v. City of Elizabeth City, 54 N.C. App. 110, 282 S.E.2d 580 (1981).

§ 160A-443. Ordinance authorized as to repair, closing, and demolition; order of public officer.

Upon the adoption of an ordinance finding that dwelling conditions of the character described in G.S. 160A-441 exist within a city, the governing body of the city is hereby authorized to adopt and enforce ordinances relating to dwellings within the city's territorial jurisdiction that are unfit for human habitation. These ordinances shall include the following provisions:

(1) That a public officer be designated or appointed to exercise the powers prescribed by the ordinance.

(2) That whenever a petition is filed with the public officer by a public authority or by at least five residents of the city charging that any dwelling is unfit for human habitation or whenever it appears to the public officer (on his own motion) that any dwelling is unfit for human habitation, the public officer shall, if his preliminary investigation discloses a basis for such charges, issue and cause to be served upon the owner of and parties in interest in such dwellings a complaint stating the charges in that respect and containing a notice that a hearing will be held before the public officer (or his designated agent) at a place within the county in which the property is located fixed not less than 10 days nor more than 30 days after the serving of the complaint; that the owner and parties in interest shall be given the right to file an answer to the complaint and to appear in person, or otherwise, and give testimony at the place and time fixed in the complaint; and that the rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the public officer.

(3) That if, after notice and hearing, the public officer determines that the dwelling under consideration is unfit for human habitation, he shall state in writing his findings of fact in support of that determination and shall issue and cause to be served upon the owner thereof an order,

   a. If the repair, alteration or improvement of the dwelling can be made at a reasonable cost in relation to the value of the dwelling (the ordinance of the city may fix a certain percentage of this value as being reasonable), requiring the owner, within the time specified, to repair, alter or improve the dwelling in order to render it fit for human habitation. The order may require that the property be vacated and closed only if continued occupancy during the time allowed for repair will present a significant threat of bodily harm, taking into account the nature of the necessary repairs, alterations, or improvements; the current state of the property; and any additional risks due to the presence and capacity of minors under the age of 18 or occupants with physical or mental disabilities. The order shall state that the failure to make timely repairs as directed in the order shall make the dwelling subject to the issuance of an unfit order under subdivision (4) of this section; or

   b. If the repair, alteration or improvement of the dwelling cannot be made at a reasonable cost in relation to the value of the dwelling (the ordinance of the city may fix a certain percentage of this value as being reasonable), requiring the owner, within the time specified in the order, to remove or demolish such dwelling. However, notwithstanding any other provision of law, if the dwelling is located in a historic district of the city and the Historic District Commission determines, after a public hearing as provided by ordinance, that the dwelling is of particular significance or value toward maintaining the character of the district, and the dwelling has not been condemned as unsafe, the order may require that the dwelling be vacated and closed consistent with G.S. 160A-400.14(a).

(4) That, if the owner fails to comply with an order to repair, alter or improve or to vacate and close the dwelling, the public officer may cause the dwelling to be repaired, altered or improved or to be vacated and closed; that the public officer may cause to be posted on the main entrance of any dwelling so closed, a placard with the following words: "This building is unfit for human habitation; the use or occupation of this building for human habitation is prohibited and unlawful." Occupation of a building so posted shall constitute a Class 1 misdemeanor. The duties of the public officer set forth in this subdivision shall not be exercised until the governing body shall have by ordinance ordered the public officer to proceed to effectuate the purpose of this Article with respect to the particular property or properties which the public officer shall have found to be unfit for human habitation and which property or properties shall be described in the ordinance. This ordinance shall be recorded in the office of the register of deeds in the county wherein the property or properties are located and shall be indexed in the name of the property owner in the grantor index.

(5) That, if the owner fails to comply with an order to remove or demolish the dwelling, the public officer may cause such dwelling to be removed or demolished. The duties of the public officer set forth in this subdivision shall not be exercised until the governing body shall have by ordinance ordered the public officer to proceed to effectuate the purpose of this Article with respect to the particular property or properties which the public officer shall have found to be unfit for human habitation and which property or properties shall be described in the ordinance. No such ordinance shall be adopted to require demolition of a dwelling until the owner has first been given a reasonable opportunity to bring it into conformity with the housing code. This ordinance shall be recorded in the office of the register of deeds in the county wherein the property or properties are located and shall be indexed in the name of the property owner in the grantor index.

(5a) If the governing body shall have adopted an ordinance as provided in subdivision (4) of this section, or the public officer shall have:

a. In a municipality located in counties which have a population in excess of 71,000 by the last federal census (including the entirety of any municipality located in more than one county at least one county of which has a population in excess of 71,000), other than municipalities with a population in excess of 190,000 by the last federal census, issued an order, ordering a dwelling to be repaired or vacated and closed, as provided in subdivision (3)a, and if the dwelling has been vacated and closed for a period of one year pursuant to the ordinance or order;

b. In a municipality with a population in excess of 190,000 by the last federal census, commenced proceedings under the substandard housing regulations regarding a dwelling to be repaired or vacated and closed, as provided in subdivision (3)a., and if the dwelling has been vacated and closed for a period of one year pursuant to the ordinance or after such proceedings have commenced,

then if the governing body shall find that the owner has abandoned the intent and purpose to repair, alter or improve the dwelling in order to render it fit for human habitation and that the continuation of the dwelling in its vacated and closed status would be inimical to the health, safety, morals and welfare of the municipality in that the dwelling would continue to deteriorate, would create a fire and safety hazard, would be a threat to children and vagrants, would attract persons intent on criminal activities, would cause or contribute to blight and the deterioration of property values in the area, and would render unavailable property and a dwelling which might otherwise have been made available to ease the persistent shortage of decent and affordable housing in this State, then in such circumstances, the governing body may, after the expiration of such one year period, enact an ordinance and serve such ordinance on the owner, setting forth the following:

a. If it is determined that the repair of the dwelling to render it fit for human habitation can be made at a cost not exceeding fifty percent (50%) of the then current value of the dwelling, the ordinance shall require that the owner either repair or demolish and remove the dwelling within 90 days; or

b. If it is determined that the repair of the dwelling to render it fit for human habitation cannot be made at a cost not exceeding fifty percent (50%) of the then current value of the dwelling, the ordinance shall require the owner to demolish and remove the dwelling within 90 days.

This ordinance shall be recorded in the Office of the Register of Deeds in the county wherein the property or properties are located and shall be indexed in the name of the property owner in the grantor index. If the owner fails to comply with this ordinance, the public officer shall effectuate the purpose of the ordinance.

This subdivision only applies to municipalities located in counties which have a population in excess of 71,000 by the last federal census (including the entirety of any municipality located in more than one county at least one county of which has a population in excess of 71,000).

[This subdivision does not apply to the local government units listed in subdivision (5b) of this section.]

(5b) If the governing body shall have adopted an ordinance as provided in subdivision (4) of this section, or the public officer shall have:

a. In a municipality other than municipalities with a population in excess of 190,000 by the last federal census, issued an order, ordering a dwelling to be repaired or vacated and closed, as provided in subdivision (3)a, and if the dwelling has been vacated and closed for a period of one year pursuant to the ordinance or order;

b. In a municipality with a population in excess of 190,000 by the last federal census, commenced proceedings under the substandard housing regulations regarding a dwelling to be repaired or vacated and closed, as provided in subdivision (3)a., and if the dwelling has been vacated and closed for a period of one year pursuant to the ordinance or after such proceedings have commenced, then if the governing body shall find that the owner has abandoned the intent and purpose to repair, alter or improve the dwelling in order to render it fit for human habitation and that the continuation of the dwelling in its vacated and closed status would be inimical to the health, safety, morals and welfare of the municipality in that the dwelling would continue to deteriorate, would create a fire and safety hazard, would be a threat to children and vagrants, would attract persons intent on criminal activities, would cause or contribute to blight and the deterioration of property values in the area, and would render unavailable property and a dwelling which might otherwise have been made available to ease the persistent shortage of decent and affordable housing in this State, then in such circumstances, the governing body may, after the expiration of such one year period, enact an ordinance and serve such ordinance on the owner, setting forth the following:

a. If it is determined that the repair of the dwelling to render it fit for human habitation can be made at a cost not exceeding fifty percent (50%) of the then current value of the dwelling, the ordinance shall require that the owner either repair or demolish and remove the dwelling within 90 days; or

b. If it is determined that the repair of the dwelling to render it fit for human habitation cannot be made at a cost not exceeding fifty percent (50%) of the then current value of the dwelling, the ordinance shall require the owner to demolish and remove the dwelling within 90 days.

This ordinance shall be recorded in the Office of the Register of Deeds in the county wherein the property or properties are located and shall be indexed in the name of the property owner in the grantor index. If the owner fails to comply with this ordinance, the public officer shall effectuate the purpose of the ordinance.

This subdivision applies to the Cities of Eden, Lumberton, Roanoke Rapids, and Whiteville, to the municipalities in Lee County, and the Towns of Bethel, Farmville, Newport, and Waynesville only.

(6) Liens. —

a. That the amount of the cost of repairs, alterations or improvements, or vacating and closing, or removal or demolition by the public officer shall be a lien against the real property upon which the cost was incurred, which lien shall be filed, have the same priority, and be collected as the lien for special assessment provided in Article 10 of this Chapter.

b. If the real property upon which the cost was incurred is located in an incorporated city, then the amount of the cost is also a lien on any other real property of the owner located within the city limits or within one mile thereof except for the owner's primary residence. The additional lien provided in this sub-subdivision is inferior to all prior liens and shall be collected as a money judgment.

c. If the dwelling is removed or demolished by the public officer, he shall sell the materials of the dwelling, and any personal property, fixtures or appurtenances found in or attached to the dwelling, and shall credit the proceeds of the sale against the cost of the removal or demolition and any balance remaining shall be deposited in the superior court by the public officer, shall be secured in a manner directed by the court, and shall be disbursed by the court to the persons found to be entitled thereto by final order or decree of the court. Nothing in this section shall be construed to impair or limit in any way the power of the city to define and declare nuisances and to cause their removal or abatement by summary proceedings, or otherwise.

(7) If any occupant fails to comply with an order to vacate a dwelling, the public officer may file a civil action in the name of the city to remove such occupant. The action to vacate the dwelling shall be in the nature of summary ejectment and shall be commenced by filing a complaint naming as parties-defendant any person occupying such dwelling. The clerk of superior court shall issue a summons requiring the defendant to appear before a magistrate at a certain time, date and place not to exceed 10 days from the issuance of the summons to answer the complaint. The summons and complaint shall be served as provided in G.S. 42-29. The summons shall be returned according to its tenor, and if on its return it appears to have been duly served, and if at the hearing the public officer produces a certified copy of an ordinance adopted by the governing body pursuant to subdivision (5) authorizing the officer to proceed to vacate the occupied dwelling, the magistrate shall enter judgment ordering that the premises be vacated and that all persons be removed. The judgment ordering that the dwelling be vacated shall be enforced in the same manner as the judgment for summary ejectment entered under G.S. 42-30. An appeal from any judgment entered hereunder by the magistrate may be taken as provided in G.S. 7A-228, and the execution of such judgment may be stayed as provided in G.S. 7A-227. An action to remove an occupant of a dwelling who is a tenant of the owner may not be in the nature of a summary ejectment proceeding pursuant to this paragraph unless such occupant was served with notice at least 30 days before the filing of the summary ejectment proceeding that the governing body has ordered the public officer to proceed to exercise his duties under subdivisions (4) and (5) of this section to vacate and close or remove and demolish the dwelling.

(8) That whenever a determination is made pursuant to subdivision (3) of this section that a dwelling must be vacated and closed, or removed or demolished, under the provisions of this section, notice of the order shall be given by first-class mail to any organization involved in providing or restoring dwellings for affordable housing that has filed a written request for such notices. A minimum period of 45 days from the mailing of such notice shall be given before removal or demolition by action of the public officer, to allow the opportunity for any organization to negotiate with the owner to make repairs, lease, or purchase the property for the purpose of providing affordable housing. The public officer or clerk shall certify the mailing of the notices, and the certification shall be conclusive in the absence of fraud. Only an organization that has filed a written request for such notices may raise the issue of failure to mail such notices, and the sole remedy shall be an order requiring the public officer to wait 45 days before causing removal or demolition. (1939, c. 287, s. 3; 1969, c. 868, ss. 1, 2; c. 1065, s. 2; 1971, c. 698, s. 1; 1973, c. 426, s. 70; 1983, c. 698; 1987, c. 542; 1989, c. 562; 1991, c. 208, s. 1; c. 315, s. 1; c. 581, s. 1; 1993, c. 539, s. 1095; c. 553, ss. 58, 59; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 347, s. 1; c. 509, s. 112; c. 733, ss. 1, 2; 1997-101, ss. 1, 2; 1997-414, s. 1; 1997-449, s. 1; 1998-26, s. 1; 1998-87, s. 1; 2000-186, s. 1; 2001-283, s. 1; 2001-448, s. 3; 2002-118, s. 3; 2005-200, s. 3; 2009-279, s. 7.)

Local Modification. — City of Durham; 2004-98, s. 1, as amended by 2007-219, s. 1; city of Greensboro: 2003-76, s. 1, 2003-320, s. 2, 2004-70, s. 1; city of Greenville: 2005-200, s. 1;

city of High Point: 2005-200, s.1; city of Morehead City: 2005-305, s. 12; city of New Bern: 1985 (Reg. Sess., 1986), c. 876; city of Reidsville: 1991 (Reg. Sess., 1992), c. 996, s. 1, 2004-98, s. 2; city of Roanoke Rapids: 2003-76, s. 1; 2003-320, s. 2, 2004-70, s. 1; city of Winston-Salem: 2004-70, s. 1, 2004-98, s. 1; (as to subsection (5b)) town of Ayden: 2007-202, s. 1; (as to subsection (5b)) town of Burgaw: 2007-202, s. 1.

Editor's Note. — Session Laws 2002-118, s. 3, added the city of Whiteville to the jurisdictions to which the amendment made by Session Laws 1995, c. 733, s. 1, applies. Session Laws 1995, c. 733, s. 2, provided the amendment only applied to the city of Lumberton.

Session Laws 1997-101, s. 1, added the city of Roanoke Rapids, and s. 2, amended Session Laws 1995, c. 733, s. 1.

Session Laws 1997-414, s. 1, added the City of Greenville, and the towns of Bethel, Farmville and Newport. Session Laws 2005-200, s. 3, repealed Session Laws 1997-414, as it applies to the City of Greenville.

Session Laws 1997-449, s. 1, added the municipalities in Lee county.

Session Laws 1998-26, s. 1, added the town of Waynesville.

Session Laws 1998-87, s. 1, added the city of Eden.

Since Session Laws 1995-733, s. 1, now applies to 10 jurisdictions, it has been codified as subdivision (5b) at the direction of the Revisor of Statutes. The bracketed sentence at the end of subdivision (5a) has also been added at the direction of the Revisor of Statutes.

Effect of Amendments. — Session Laws 2009-279, s. 7, effective October 1, 2009, in subdivision (3)a., deleted "or to vacate and close the dwelling as a human habitation; or" from the end of the first sentence, and added the last two sentences; in subdivision (4), added the last two sentences; in subdivision (5), substituted "this subdivision" for "subdivisions (4) and (5)" in the second sentence; in subdivisions (5a) and (5b), inserted "as provided in subdivision (4) of this section" in the introductory language; and, in subdivisions (5a)a., (5a)b., (5b)a., and (5b)b., substituted "dwelling has been" for "owner has vacated and closed such dwelling and kept such dwelling" near the end.

CASE NOTES

Editor's Note. — *Some of the cases cited below were decided under former similar statutory provisions.*

Substantial compliance with required procedures is a condition precedent to city's authority to forbid use of a dwelling house for human habitation. Dale v. City of Morganton, 270 N.C. 567, 155 S.E.2d 136 (1967).

Variation in Wording of Notice Held Immaterial. — The variation between the wording of a posted notice reading "This Building Is Unsafe, And Its Use For Occupancy Has Been Prohibited By The Building Official" and the notice prescribed by statute was not material. Dale v. City of Morganton, 270 N.C. 567, 155 S.E.2d 136 (1967).

Three-Year Delay Between Order to Repair and Order to Demolish Entitled Owner to New Hearing. — An order to repair is issued after a determination that repairs can be made at a reasonable cost in relation to the value of the dwelling; an order to demolish involves a different determination, namely, that the repairs cannot be made at a reasonable cost in relation to the value of the dwelling; therefore, where city's demolition order was issued almost three years after the city held a hearing and issued its order to repair, plaintiff was entitled to another hearing on the issue of demolition. Newton v. City of Winston-Salem, 92 N.C. App. 446, 374 S.E.2d 488 (1988).

Failure to Provide Notice and Hearing Before Demolition. — Where city acted without authority in ordering the demolition of plaintiff's building without affording plaintiff notice and an opportunity to be heard as required by statute, the city acted at its peril in failing to exercise its powers in the manner prescribed by the statute, and thus was liable to plaintiff for any provable damages. Newton v. City of Winston-Salem, 92 N.C. App. 446, 374 S.E.2d 488 (1988).

Trial court erred in granting summary judgment to the city on the homeowner's claim for violation of her due process rights because, although the homeowner's house was in severe disrepair, the city violated her due process rights by demolishing the home without giving her notice, as the condition of the house did not pose an imminent threat to the public, warranting its immediate demolition; accordingly, the appellate court reversed the judgment and remanded the case for an entry summary judgment in favor of the homeowner and a trial on the issue of damages. Monroe v. City of New Bern, 158 N.C. App. 275, 580 S.E.2d 372, 2003 N.C. App. LEXIS 1053 (2003), cert. denied, 357 N.C. 461, 586 S.E.2d 93 (2003).

Proof of actual notice was irrelevant to plaintiff's right to recover damages against city for failing to comply with statutory procedures before demolishing plaintiff's building; therefore, the trial court's instruction to the jury that it could find that the city used reasonable diligence to provide actual notice and thus absolve city of its liability for damages even though city failed to serve plaintiff as required by G.S. 160A-445, was error. Newton v. City of Winston-Salem, 92 N.C. App. 446, 374 S.E.2d 488 (1988).

Summary Judgment Improper. — Hertford, N.C., Ordinance § 17 is not inconsistent with the provisions of G.S. 160A-443(6)(c); however, a town was required to comply with G.S. 160A-443(6)(c) to salvage personal property or appurtenances on real estate and apply the proceeds to the cost of removal or demolition, and where owners claimed that mobile homes and contents removed from their property had value, but the town claimed they did not, summary judgment was improper. Town of Hertford v. Harris, 169 N.C. App. 838, 611 S.E.2d 194, 2005 N.C. App. LEXIS 827 (2005).

Summary Judgment for City Not Authorized Where Question of Reasonable Diligence Raised. — In an action to recover damages from defendant city for destruction of a residence on property held under a deed of trust to one plaintiff and secured under a promissory note held by the other plaintiff, summary judgment was improperly granted for city where one of the questions raised by city's motion therefor was whether its building inspector used "reasonable diligence" in attempting to locate plaintiff and others connected with the property. Farmers Bank v. City of Elizabeth City, 54 N.C. App. 110, 282 S.E.2d 580 (1981).

Authority of Greensboro Minimum Housing Standards Commission—. — Greensboro, N.C., Minimum Housing Code § 11-39(d), gave the Greensboro Minimum Housing Standards Commission the power to make a final order directing a building inspector to repair a building not brought into compliance pursuant to a previous order as local governments could exercise their police power to maintain suitable buildings through their local ordinances under G.S. 160A-443. Moores v. Greensboro Minimum Hous. Stds. Comm'n, — N.C. App. —, 679 S.E.2d 480, 2009 N.C. App. LEXIS 1171 (July 21, 2009).

Cited in Harrell v. City of Winston-Salem, 22 N.C. App. 386, 206 S.E.2d 802 (1974); Wiggins v. City of Monroe, 73 N.C. App. 44, 326 S.E.2d 39 (1985); Yates v. Jamison, 782 F.2d 1182 (4th Cir. 1986); Carolina Holdings, Inc. v. Hous. Appeals Bd., 149 N.C. App. 579, 561 S.E.2d 541, 2002 N.C. App. LEXIS 281 (2002).

OPINIONS OF ATTORNEY GENERAL

As to priority of demolition lien over welfare lien, see opinion of Attorney General to Mr. Cicero P. Yow, Wilmington City Attorney, 40 N.C.A.G. 691 (1970); Mr. James C. Fox, New Hanover County Attorney, 40 N.C.A.G. 693 (1970).

§ 160A-443.1. Heat source required.

(a) A city shall, by ordinance, require that by January 1, 2000, every dwelling unit leased as rental property within the city shall have, at a minimum, a central or electric heating system or sufficient chimneys, flues, or gas vents, with heating appliances connected, so as to heat at least one habitable room, excluding the kitchen, to a minimum temperature of 68 degrees Fahrenheit measured three feet above the floor with an outside temperature of 20 degrees Fahrenheit.

(b) If a dwelling unit contains a heating system or heating appliances that meet the requirements of subsection (a) of this section, the owner of the dwelling unit shall not be required to install a new heating system or heating appliances, but the owner shall be required to maintain the existing heating system or heating appliances in a good and safe working condition. Otherwise, the owner of the dwelling unit shall install a heating system or heating appliances that meet the requirements of subsection (a) of this section and shall maintain the heating system or heating appliances in a good and safe working condition.

(c) Portable kerosene heaters are not acceptable as a permanent source of heat as required by subsection (a) of this section but may be used as a supplementary source in single family dwellings and duplex units. An owner who has complied with subsection (a) shall not be held in violation of this section where an occupant of a dwelling unit uses a kerosene heater as a primary source of heat.

(d) This section applies only to cities with a population of 200,000 or over, according to the most recent decennial federal census.

(e) Nothing in this section shall be construed as:
- (1) Diminishing the rights of or remedies available to any tenant under a lease agreement, statute, or at common law; or
- (2) Prohibiting a city from adopting an ordinance with more stringent heating requirements than provided for by this section. (1999-14, s. 1.)

Editor's Note. — Session Laws 1999-14, s. 1, originally enacted this section as G.S. 160A-443A; it has been recodified as G.S. 160A-443.1 at the direction of the Revisor of Statutes.

§ 160A-444. Standards.

An ordinance adopted by a city under this Part shall provide that the public officer may determine that a dwelling is unfit for human habitation if he finds that conditions exist in the dwelling that render it dangerous or injurious to the health, safety or morals of the occupants of the dwelling, the occupants of neighboring dwellings, or other residents of the city. Defective conditions may include the following (without limiting the generality of the foregoing): defects therein increasing the hazards of fire, accident, or other calamities; lack of adequate ventilation, light, or sanitary facilities; dilapidation; disrepair; structural defects; uncleanliness. The ordinances may provide additional standards to guide the public officers, or his agents, in determining the fitness of a dwelling for human habitation. (1939, c. 287, s. 4; 1971, c. 698, s. 1; 1973, c. 426, s. 60.)

§ 160A-445. Service of complaints and orders.

(a) Complaints or orders issued by a public officer pursuant to an ordinance adopted under this Part shall be served upon persons either personally or by registered or certified mail. When service is made by registered or certified mail, a copy of the complaint or order may also be sent by regular mail. Service shall be deemed sufficient if the registered or certified mail is unclaimed or refused, but the regular mail is not returned by the post office within 10 days after the mailing. If regular mail is used, a notice of the pending proceedings shall be posted in a conspicuous place on the premises affected.

(a1) If the identities of any owners or the whereabouts of persons are unknown and cannot be ascertained by the public officer in the exercise of reasonable diligence, or, if the owners are known but have refused to accept service by registered or certified mail, and the public officer makes an affidavit to that effect, then the serving of the complaint or order upon the owners or other persons may be made by publication in a newspaper having general circulation in the city at least once no later than the time at which personal service would be required under the provisions of this Part. When service is made by publication, a notice of the pending proceedings shall be posted in a conspicuous place on the premises thereby affected.

(b) Repealed by Session Laws 1997-201, s. 1. (1939, c. 287, s. 5; 1965, c. 1055; 1969, c. 868, ss. 3, 4; 1971, c. 698, s. 1; 1973, c. 426, s. 60; 1977, c. 912, s. 14; 1979, 2nd Sess., c. 1247, s. 38; 1991, c. 526, s. 1; 1997-201, s. 1.)

Local Modification. — Conover: 1997-160; Forsyth: 1997-126; Sanford: 1997-160; city of Conover: 1997-93; city of Winston-Salem: 1997-126.

Legal Periodicals. — For 1997 legislative survey, see 20 Campbell L. Rev. 399.

CASE NOTES

Failure to Provide Notice and Hearing Before Demolition. — Where city acted without authority in ordering the demolition of plaintiff's building without affording plaintiff notice and an opportunity to be heard as required by statute, the city acted at its peril in failing to exercise its powers in the manner prescribed by the statute, and thus was liable to plaintiff for any provable damages. Newton v. City of Winston-Salem, 92 N.C. App. 446, 374 S.E.2d 488 (1988).

Proof of actual notice was irrelevant to plaintiff's right to recover damages against city for failing to comply with statutory procedures before demolishing plaintiff's building; therefore, the trial court's instruction to the jury that it could find that the city used reasonable diligence to provide actual notice and thus absolve city of its liability for damages even though city failed to serve plaintiff as required by this section, was error. Newton v. City of Winston-Salem, 92 N.C. App. 446, 374 S.E.2d 488 (1988).

Summary Judgment for City Not Authorized Where Question of Reasonable Diligence in Locating Interested Parties Raised. — In an action to recover damages from defendant city for destruction of a residence on property held under a deed of trust to one plaintiff and secured under a promissory note held by the other plaintiff, summary judgment was improperly granted for city where one of the questions raised by city's motion therefor was whether its building inspector used "reasonable diligence" in attempting to locate plaintiff and others connected with the property. Farmers Bank v. City of Elizabeth City, 54 N.C. App. 110, 282 S.E.2d 580 (1981).

Cited in Yates v. Jamison, 782 F.2d 1182 (4th Cir. 1986).

§ 160A-446. Remedies.

(a) The governing body may provide for the creation and organization of a housing appeals board to which appeals may be taken from any decision or order of the public officer, or may provide for such appeals to be heard and determined by its zoning board of adjustment.

(b) The housing appeals board, if created, shall consist of five members to serve for three-year staggered terms. It shall have the power to elect its own officers, to fix the times and places for its meetings, to adopt necessary rules of procedure, and to adopt other rules and regulations for the proper discharge of its duties. It shall keep an accurate record of all its proceedings.

(c) An appeal from any decision or order of the public officer may be taken by any person aggrieved thereby or by any officer, board or commission of the city. Any appeal from the public officer shall be taken within 10 days from the rendering of the decision or service of the order by filing with the public officer and with the board a notice of appeal which shall specify the grounds upon which the appeal is based. Upon the filing of any notice of appeal, the public officer shall forthwith transmit to the board all the papers constituting the record upon which the decision appealed from was made. When an appeal is from a decision of the public officer refusing to allow the person aggrieved thereby to do any act, his decision shall remain in force until modified or reversed. When any appeal is from a decision of the public officer requiring the person aggrieved to do any act, the appeal shall have the effect of suspending the requirement until the hearing by the board, unless the public officer certifies to the board, after the notice of appeal is filed with him, that because of facts stated in the certificate (a copy of which shall be furnished the appellant), a suspension of his requirement would cause imminent peril to life or property. In that case the requirement shall not be suspended except by a restraining order, which may be granted for due cause shown upon not less than one day's written notice to the public officer, by the board, or by a court of record upon petition made pursuant to subsection (f) of this section.

(d) The appeals board shall fix a reasonable time for hearing appeals, shall give due notice to the parties, and shall render its decision within a reasonable time. Any party may appear in person or by agent or attorney. The board may reverse or affirm, wholly or partly, or may modify the decision or order appealed from, and may make any decision and order that in its opinion ought to be made in the matter, and to that end it shall have all the powers of the public officer, but the concurring vote of four members of the board shall be necessary to reverse or modify any decision or order of the public officer. The board shall have power also in passing upon appeals, when practical difficulties or unnecessary hardships would result from carrying out the strict letter of the ordinance, to adapt the application of the ordinance to the necessities of the case to the end that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done.

(e) Every decision of the board shall be subject to review by proceedings in the nature of certiorari instituted within 15 days of the decision of the board, but not otherwise.

(f) Any person aggrieved by an order issued by the public officer or a decision rendered by the board may petition the superior court for an injunction restraining the public officer from carrying out the order or decision and the court may, upon such petition, issue a temporary injunction restraining the public officer pending a final disposition of the cause. The petition shall be filed within 30 days after issuance of the order or rendering of the decision. Hearings shall be had by the court on a petition within 20 days, and shall be given preference over other matters on the court's calendar. The court shall hear and determine the issues raised and shall enter such final order or decree as law and justice may require. It shall not be necessary to file bond in any amount before obtaining a temporary injunction under this subsection.

(g) If any dwelling is erected, constructed, altered, repaired, converted, maintained, or used in violation of this Part or of any ordinance or code adopted under authority of this Part or any valid order or decision of the public officer or board made pursuant to any ordinance or code adopted under authority of this Part, the public officer or board may institute any appropriate action or proceedings to prevent the unlawful erection, construction, reconstruction, alteration or use, to restrain, correct or abate the violation, to prevent the occupancy of the dwelling, or to prevent any illegal act, conduct or use in or about the premises of the dwelling. (1939, c. 287, s. 6; c. 386; 1969, c. 868, s. 5; 1971, c. 698, s. 1.)

Local Modification. — City of Charlotte: 1989 (Reg. Sess., 1990), c. 859.

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Purpose of writ of certiorari in subsection (e) is to bring the matter before the court, upon the evidence presented by the record itself. Axler v. City of Wilmington, 25 N.C. App. 110, 212 S.E.2d 510, cert. denied, 287 N.C. 258, 214 S.E.2d 429 (1975).

Purpose of restraining order authorized by subsection (f) is to protect an aggrieved party until there has been a final determination of a proceeding commenced under authority of the minimum housing standards of this Part. Axler v. City of Wilmington, 25 N.C. App. 110, 212 S.E.2d 510, cert. denied, 287 N.C. 258, 214 S.E.2d 429 (1975).

Plaintiffs must exhaust the administrative remedies available to them, and they cannot be allowed to undermine the prescribed statutory procedure set forth in this section. Harrell v. City of Winston-Salem, 22 N.C. App. 386, 206 S.E.2d 802, cert. denied, 285 N.C. 757, 209 S.E.2d 281 (1974).

Cited in Wiggins v. City of Monroe, 73 N.C. App. 44, 326 S.E.2d 39 (1985).

§ 160A-447. Compensation to owners of condemned property.

Nothing in this Part shall be construed as preventing the owner or owners of any property from receiving just compensation for the taking of property by the power of eminent domain under the laws of this State, nor as permitting any property to be condemned or destroyed except in accordance with the police power of the State. (1939, c. 386; 1943, c. 196; 1971, c. 698, s. 1.)

§ 160A-448. Additional powers of public officer.

An ordinance adopted by the governing body of the city may authorize the public officer to exercise any powers necessary or convenient to carry out and effectuate the purpose and provisions of this Part, including the following powers in addition to others herein granted:

(1) To investigate the dwelling conditions in the city in order to determine which dwellings therein are unfit for human habitations;

(2) To administer oaths, affirmations, examine witnesses and receive evidence;

(3) To enter upon premises for the purpose of making examinations in a manner that will do the least possible inconvenience to the persons in possession;

(4) To appoint and fix the duties of officers, agents and employees necessary to carry out the purposes of the ordinances; and

(5) To delegate any of his functions and powers under the ordinance to other officers and other agents. (1939, c. 287, s. 7; 1971, c. 698, s. 1; 1973, c. 426, s. 60.)

§ 160A-449. Administration of ordinance.

The governing body of any city adopting an ordinance under this Part shall, as soon as possible thereafter, prepare an estimate of the annual expenses or costs to provide the equipment, personnel and supplies necessary for periodic examinations and investigations of the dwellings in the city for the purpose of determining the fitness of dwellings for human habitation, and for the enforcement and administration of its ordinances adopted under this Part. The city is authorized to make appropriations from its revenues necessary for this purpose and may accept and apply grants or donations to assist it in carrying out the provisions of the ordinances. (1939, c. 287, s. 8; 1971, c. 698, s. 1.)

§ 160A-450. Supplemental nature of Part.

Nothing in this Part shall be construed to abrogate or impair the powers of the courts or of any department of any city to enforce any provisions of its charter or its ordinances or regulations, nor to prevent or punish violations thereof; and the powers conferred by this Part shall be in addition and supplemental to the powers conferred by any other law. (1939, c. 287, s. 9; 1971, c. 698, s. 1.)

CASE NOTES

Cited in Moores v. Greensboro Minimum Hous. Stds. Comm'n, — N.C. App. —, 679 S.E.2d 480, 2009 N.C. App. LEXIS 1171 (July 21, 2009); Newton v. City of Winston-Salem, 92 N.C. App. 446, 374 S.E.2d 488 (1988).

Part 7. Community Appearance Commissions.

§ 160A-451. Membership and appointment of commission; joint commission.

Each municipality and county in the State may create a special commission, to be known as the official appearance commission for the city or county. The commission shall consist of not less than seven nor more than 15 members, to be appointed by the governing body of the municipality or county for such terms, not to exceed four years, as the governing body may by ordinance provide. All members shall be residents of the municipality's or county's area of planning and zoning jurisdiction at the time of appointment. Where possible, appointments shall be made in such a manner as to maintain on the commission at all times a majority of members who have had special training or experience in a design field, such as architecture, landscape design, horticulture, city planning, or a closely related field. Members of the commission may be reimbursed for actual expenses incidental to the performance of their duties within the limits of any funds available to the commission, but shall serve without pay unless otherwise provided in the ordinance establishing the commission. Membership of the commission is declared to be an office that may be held concurrently with any other elective or appointive office pursuant to Article VI, Sec. 9, of the Constitution.

A county and one or more cities in the county may establish a joint appearance commission. If a joint commission is established, the county and the city or cities involved shall determine the residence requirements for members of the joint commission. (1971, c. 896, s. 6; c. 1058; 1973, c. 426, s. 63.)

Editor's Note. — Sections 160A-451 to 160A-455 were enacted as G.S. 160-181.11 to 160-181.15. They were transferred to their present position by Session Laws 1971, c. 896, s. 6.

Legal Periodicals. — For a symposium on historic preservation which includes a discussion of relevant North Carolina law, see 12 Wake Forest L. Rev. 9 (1976).

For article discussing legal issues of historic preservation for local government in North Carolina, see 17 Wake Forest L. Rev. 707 (1981).

§ 160A-452. Powers and duties of commission.

The commission, upon its appointment, shall make careful study of the visual problems and needs of the municipality or county within its area of zoning jurisdiction, and shall make any plans and carry out any programs that will, in accordance with the powers herein granted, enhance and improve the visual quality and aesthetic characteristics of the municipality or county. To this end, the governing board may confer upon the appearance commission the following powers and duties:

(1) To initiate, promote and assist in the implementation of programs of general community beautification in the municipality or county;

(2) To seek to coordinate the activities of individuals, agencies and organizations, public and private, whose plans, activities and programs bear upon the appearance of the municipality or county;

(3) To provide leadership and guidance in matters of area or community design and appearance to individuals, and to public and private organizations, and agencies;

(4) To make studies of the visual characteristics and problems of the municipality or county, including surveys and inventories of an appropriate nature, and to recommend standards and policies of design for the entire area, any portion or neighborhood thereof, or any project to be undertaken;

(5) To prepare both general and specific plans for the improved appearance of the municipality or county. These plans may include the entire area or any part thereof, and may include private as well as public property. The plans shall set forth desirable standards and goals for the aesthetic enhancement of the municipality or county or any part thereof within its area of planning and zoning jurisdiction, including public ways and areas, open spaces, and public and private buildings and projects;

(6) To participate, in any way deemed appropriate by the governing body of the municipality or county and specified in the ordinance establishing the commission, in the implementation of its plans. To this end, the governing body may include in the ordinance the following powers:

a. To request from the proper officials of any public agency or body, including agencies of the State and its political subdivisions, its plans for public buildings, facilities, or projects to be located within the municipality or its area of planning and zoning jurisdiction of the city or county.

b. To review these plans and to make recommendations regarding their aesthetic suitability to the appropriate agency, or to the municipal or county planning or governing board. All plans shall be reviewed by the commission in a prompt and expeditious manner, and all recommendations of the commission with regard to any public project shall be made in writing. Copies of the recommendations shall be transmitted promptly to the planning or governing body of the city or county, and to the appropriate agency.

c. To formulate and recommend to the appropriate municipal planning or governing board the adoption or amendment of ordinances (including the zoning ordinance, subdivision regulations, and other local ordinances regulating the use of property) that will, in the opinion of the commission, serve to enhance the appearance of the municipality and its surrounding areas.

d. To direct the attention of city or county officials to needed enforcement of any ordinance that may in any way affect the appearance of the city or county.

e. To seek voluntary adherence to the standards and policies of its plans.

f. To enter, in the performance of its official duties and at reasonable times, upon private lands and make examinations or surveys.

g. To promote public interest in and an understanding of its recommendations, studies, and plans, and to that end to prepare, publish and distribute to the public such studies and reports as will, in the opinion of the commission, advance the cause of improved municipal or county appearance.

h. To conduct public meetings and hearings, giving reasonable notice to the public thereof. (1971, c. 896, s. 6; c. 1058.)

§ 160A-453. Staff services; advisory council.

The commission may recommend to the municipal or county governing board suitable arrangements for the procurement or provision of staff or technical services for the commission, and the governing board may appropriate such amount as it deems necessary to carry out the purposes for which it was created. The commission may establish an advisory council or other committees. (1971, c. 896, s. 6; c. 1058.)

§ 160A-454. Annual report.

The commission shall, no later than April 15 of each year, submit to the municipal or county governing body a written report of its activities, a statement of its expenditures to date for the current fiscal year, and its requested budget for the next fiscal year. All accounts and funds of the commission shall be administered substantially in accordance with the requirements of the Municipal Fiscal Control Act or the County Fiscal Control Act. (1971, c. 896, s. 6; c. 1058.)

§ 160A-455. Receipt and expenditure of funds.

The commission may receive contributions from private agencies, foundations, organizations, individuals, the State or federal government, or any other source, in addition to any sums appropriated for its use by the city or county governing body. It may accept and disburse these funds for any purpose within the scope of its authority as herein specified. All sums appropriated by the city or county to further the work and purposes of the commission are deemed to be for a public purpose. (1971, c. 896, s. 6; c. 1058; 1975, c. 664, s. 16.)

Part 8. Miscellaneous Powers.

§ 160A-456. Community development programs and activities.

(a) Any city is authorized to engage in, to accept federal and State grants and loans for, and to appropriate and expend funds for community development programs and activities. In undertaking community development programs and activities, in addition to other authority granted by law, a city may engage in the following activities:

(1) Programs of assistance and financing of rehabilitation of private buildings principally for the benefit of low and moderate income persons, or for the restoration or preservation of older neighborhoods or properties, including direct repair, the making of grants or loans, the subsidization of interest payments on loans, and the guaranty of loans;

(2) Programs concerned with employment, economic development, crime prevention, child care, health, drug abuse, education, and welfare needs of persons of low and moderate income.

(b) Any city council may exercise directly those powers granted by law to municipal redevelopment commissions and those powers granted by law to municipal housing authorities, and may do so whether or not a redevelopment commission or housing authority is in existence in such city. Any city council desiring to do so may delegate to any redevelopment commission or to any housing authority the responsibility of undertaking or carrying out any specified community development activities. Any city council and any board of county commissioners may by agreement undertake or carry out for each other any specified community development activities. Any city council may contract with any person, association, or corporation in undertaking any specified community development activities. Any county or city board of health, county board of social services, or county or city board of education, may by agreement undertake or carry out for any city council any specified community development activities.

(c) Any city council undertaking community development programs or activities may create one or more advisory committees to advise it and to make recommendations concerning such programs or activities.

(d) Any city council proposing to undertake any loan guaranty or similar program for rehabilitation of private buildings is authorized to submit to its voters the question whether such program shall be undertaken, such referendum to be conducted pursuant to the general and local laws applicable to special elections in such city.

(d1) Any city may receive and dispense funds from the Community Development Block Grant Section 108 Loan Guarantee program, Subpart M, 24 CFR 570.700 et seq., either through application to the North Carolina Department of Commerce or directly from the federal government, in accordance with State and federal laws governing these funds. Any city that receives these funds directly from the federal government may pledge current and future CDBG funds for use as loan guarantees in accordance with State and federal laws governing these funds. A city may implement the receipt, dispensing, and pledging of CDBG funds under this subsection by borrowing CDBG funds and lending all or a portion of those funds to a third party in accordance with applicable laws governing the CDBG program.

Any city that has pledged current or future CDBG funds for use as loan guarantees prior to the enactment of this subsection is authorized to have taken such action. A pledge of future CDBG funds under this subsection is not a debt or liability of the State or any political subdivision of the State or a pledge of the faith and credit of the State or any political subdivision of the State. The pledging of future CDBG funds under this subsection does not directly, indirectly, or contingently obligate the State or any political subdivision of the State to levy or to pledge any taxes.

(e) Repealed by Session Laws 1985, c. 665, s. 5.

(e1) All program income from Economic Development Grants from the Small Cities Community Development Block Grant Program may be retained by recipient cities in "economically distressed counties", as defined in G.S. 143B-437.01, for the purposes of creating local economic development revolving loan funds. Such program income derived through the use by cities of Small Cities Community Development Block Grant money includes but is not limited to: (i) payment of principal and interest on loans made by the county using Community Development Block Grant Funds; (ii) proceeds from the lease or disposition of real property acquired with Community Development Block Grant Funds; and (iii) any late fees associated with loan or lease payments in (i) and (ii) above. The local economic development revolving loan fund set up by the city shall fund only those activities eligible under Title I of the federal Housing and Community Development Act of 1974, as amended (P.L. 93-383), and shall meet at least one of the three national objectives of the Housing and Community Development Act. Any expiration of G.S. 143B-437.01 or G.S. 105-129.3 shall not affect this subsection as to designations of economically distressed counties made prior to its expiration. (1975, c. 435, s. 1; c. 689, s. 1; c. 879, s. 46; 1983, c. 908, s. 4; 1985, c. 665, s. 5; 1987, c. 464, s. 10; 1987 (Reg. Sess., 1988), c. 992, s. 2; 1995, c. 310, s. 3; 1995 (Reg. Sess., 1996), c. 13, s. 3.9; c. 575, s. 3; 2006-259, s. 27(b).)

Local Modification. — City of Durham: 1987, c. 206; city of New Bern: 1987, c. 291; (As to Part 8) town of Ayden: 1991, c. 58.

Editor's Note. — Session Laws 1996, Second Extra Session, c. 13, s. 10.1, provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

Legal Periodicals. — For a symposium on historic preservation which includes a discussion of relevant North Carolina law, see 12 Wake Forest L. Rev. 9 (1976).

§ 160A-457. Acquisition and disposition of property for redevelopment.

In addition to the powers granted by G.S. 160A-456, any city is authorized, either as a part of a community development program or independently thereof, and without the necessity of compliance with the Urban Redevelopment Law, to exercise the following powers:

(1) To acquire, by voluntary purchase from the owner or owners, real property which is either:
  a. Blighted, deteriorated, deteriorating, undeveloped, or inappropriately developed from the standpoint of sound community development and growth;
  b. Appropriate for rehabilitation or conservation activities;
  c. Appropriate for housing construction or the economic development of the community; or
  d. Appropriate for the preservation or restoration of historic sites, the beautification of urban land, the conservation of open space, natural resources, and scenic areas, the provision of recreational opportunities, or the guidance of urban development;

(2) To clear, demolish, remove, or rehabilitate buildings and improvements on land so acquired; and

(3) To retain property so acquired for public purposes, or to dispose, through sale, lease, or otherwise, of any property so acquired to any person, firm, corporation, or governmental unit; provided, the disposition of such property shall be undertaken in accordance with the procedures of Article 12 of this Chapter, or the procedures of G.S. 160A-514, or any applicable local act or charter provision modifying such procedures; or subsection (4) of this section.

(4) To sell, exchange, or otherwise transfer real property or any interest therein in a community development project area to any redeveloper at private sale for residential, recreational, commercial, industrial or other uses or for public use in accordance with the community development plan, subject to such covenants, conditions and restrictions as may be deemed to be in the public interest or to carry out the purposes of this Article; provided that such sale, exchange or other transfer, and any agreement relating thereto, may be made only after approval of the municipal governing body and after a public hearing; a notice of the public hearing shall be given once a week for two successive weeks in a newspaper having general circulation in the municipality, and the notice shall be published the first time not less than 10 days nor more than 25 days preceding the public hearing; and the notice shall disclose the terms of the sale, exchange or transfer. At the public hearing the appraised value of the property to be sold, exchanged or transferred shall be disclosed; and the consideration for the conveyance shall not be less than the appraised value. (1977, c. 660, s. 1; 1983, c. 797, ss. 1, 2.)

Local Modification. — City of Asheville: 1981, c. 632; city of Durham: 1993 (Reg. Sess., 1994), c. 658, s. 1; city of Wilmington: 1981 (Reg. Sess., 1982), c. 1162; city of Wilson: 1977, 2nd Sess., c. 1196.

§ 160A-457.1. Urban Development Action Grants.

In addition to the powers granted by G.S. 160A-456 and G.S. 160A-457, any city is authorized, either as a part of a community development program or independently thereof, to enter into contracts or agreements with any person, association, or corporation to undertake and carry out specified activities in furtherance of the purposes of Urban Development Action Grants authorized by the Housing and Community Development Act of 1977 (P.L. 95-128) or any amendment thereto which is a continuation of such grant programs by whatever designation, including the authority to enter into and carry out contracts or agreements to extend loans, loan subsidies, or grants to persons, associations, or corporations and to dispose of real or personal property by private sale in furtherance of such contracts or agreements.

Any enabling legislation contained in local acts which refers to "Urban Development Action Grants" or the Housing and Community Development Act of 1977 (P.L. 95-128) shall be construed also to refer to any continuation of such grant programs by whatever designation. (1981, c. 865, ss. 1, 2.)

Local Modification. — Town of Faison: 1993 (Reg. Sess., 1994), c. 769, s. 28.16.

§ 160A-457.2. Urban homesteading programs.

A city may establish a program of urban homesteading, in which residential property of little or no value is conveyed to persons who agree to rehabilitate the property and use it, for a minimum number of years, as their principal place of residence. Residential property is considered of little or no value if the cost of bringing the property into compliance with the city's housing code exceeds sixty percent (60%) of the property's appraised value on the county tax records. In undertaking such a program a city may:

(1) Acquire by purchase, gift or otherwise, but not eminent domain, residential property specifically for the purpose of reconveyance in the urban homesteading program or may transfer to the program residential property acquired for other purposes, including property purchased at a tax foreclosure sale.
(2) Under procedures and standards established by the city, convey residential property by private sale under G.S. 160A-267 and for nominal monetary consideration to persons who qualify as grantees.
(3) Convey property subject to conditions that:
  a. Require the grantee to use the property as his or her principal place of residence for a minimum number of years,
  b. Require the grantee to rehabilitate the property so that it meets or exceeds minimum code standards,
  c. Require the grantee to maintain insurance on the property,
  d. Set out any other specific conditions (including, but not limited to, design standards) or actions that the city may require, and
  e. Provide for the termination of the grantee's interest in the property and its reversion to the city upon the grantee's failure to meet any condition so established.
(4) Subordinate the city's interest in the property to any security interest granted by the grantee to a lender of funds to purchase or rehabilitate the property. (1987, c. 464, s. 8; 1997-456. s. 27.)

Editor's Note. — Subdivisions (3)(a) through (3)(e) were renumbered as subdivisions (3)a. through (3)e. pursuant to Session Laws 1997-456, s. 27, which authorized the Revisor of Statutes to renumber or reletter sections and parts of sections having a number or letter designation that is incompatible with the General Assembly's computer database.

§ 160A-458. Erosion and sedimentation control.

Any city may enact and enforce erosion and sedimentation control ordinances as authorized by Article 4 of Chapter 113A of the General Statutes, and in such enactment and enforcement shall comply with all applicable provisions of Article 4. (1979, 2nd Sess., c. 1247, s. 39.)

CASE NOTES

Cited in Homebuilders Ass'n v. City of Charlotte, 336 N.C. 37, 442 S.E.2d 45 (1994).

§ 160A-458.1. Floodway regulations.

Any city may enact and enforce floodway regulation ordinances as authorized by Part 6 of Article 21 of Chapter 143 of the General Statutes, and in such enactment and enforcement shall comply with all applicable provisions of Part 6. (1979, 2nd Sess., c. 1247, s. 39.)

§ 160A-458.2. Mountain ridge protection.

Cities may enact and enforce mountain ridge protection ordinances pursuant to Article 14 of Chapter 113A of the General Statutes, and in such enactment and enforcement shall comply with all applicable provisions of Article 14 unless the city has removed itself from the coverage of Article 14 through the procedure provided by law. (1983, c. 676, s. 3.)

Legal Periodicals. — For article, "The Evolution of Modern North Carolina Environmental and Conservation Policy Legislation," see 29 Campbell L. Rev. 535 (2007).

§ 160A-458.3. Downtown development projects.

(a) In this section, "downtown development project" means a capital project in the city's central business district, as that district is defined by the city council, comprising one or more buildings and including both public and private facilities. By way of illustration but not limitation, such a project might include a single building comprising a publicly owned parking structure and publicly owned convention center and a privately owned hotel or office building.

(b) If the city council finds that it is likely to have a significant effect on the revitalization of the central business district, the city may acquire, construct, own, and operate or participate in the acquisition, construction, ownership, and operation of a downtown development project or of specific facilities within such a project. The city may enter into binding contracts with one or more private developers with respect to acquiring, constructing, owning, or operating such a project. Such a contract may, among other provisions, specify the following:

(1) The property interests of both the city and the developer or developers in the project, provided that the property interests of the city shall be limited to facilities for a public purpose;
(2) The responsibilities of the city and the developer or developers for construction of the project;
(3) The responsibilities of the city and the developer or developers with respect to financing the project.

Such a contract may be entered into before the acquisition of any real property necessary to the project.

(c) A downtown development project may be constructed on property acquired by the developer or developers, on property directly acquired by the city, or on property acquired by the city while exercising the powers, duties, and responsibilities of a redevelopment commission pursuant to G.S. 160A-505 or G.S. 160A-456.

(d) In connection with a downtown development project, the city may convey interests in property owned by it, including air rights over public facilities, as follows:

(1) If the property was acquired while the city was exercising the powers, duties, and responsibilities of a redevelopment commission, the city may convey property interests pursuant to the "Urban Redevelopment Law" or any local modification thereof.

(2) If the property was acquired by the city directly, the city may convey property interests pursuant to G.S. 160A-457, and Article 12 of Chapter 160A of the General Statutes does not apply to such dispositions.

(3) In lieu of conveying the fee interest in air rights, the city may convey a leasehold interest for a period not to exceed 99 years, using the procedures of subparagraphs (1) or (2) of this subsection, as applicable.

(e) The contract between the city and the developer or developers may provide that the developer or developers shall be responsible for construction of the entire downtown development project. If so, the contract shall include such provisions as the city council deems sufficient to assure that the public facility or facilities included in the project meet the needs of the city and are constructed at a reasonable price. A project constructed pursuant to this paragraph is not subject to Article 8 of Chapter 143 of the General Statutes, provided that city funds constitute no more than fifty percent (50%) of the total costs of the downtown development project. Federal funds available for loan to private developers in connection with a downtown development project shall not be considered city funds for purposes of this subsection.

(f) Operation. — The city may contract for the operation of any public facility or facilities included in a downtown redevelopment project by a person, partnership, firm or corporation, public or private. Such a contract shall include provisions sufficient to assure that any such facility or facilities are operated for the benefit of the citizens of the city.

(g) Grant funds. — To assist in the financing of its share of a downtown development project, the city may apply for, accept and expend grant funds from the federal or State governments. (1987, c. 619, s. 1.)

Local Modification. — City of Greenville: 1998-144, s. 1.

§ 160A-458.4. Designation of transportation corridor official maps.

Any city may establish transportation corridor official maps and may enact and enforce ordinances pursuant to Article 2E of Chapter 136 of the General Statutes. (1987, c. 747, s. 23; 1998-184, s. 4.)

§ 160A-458.5. Restriction of certain forestry activities prohibited.

(a) The following definitions apply to this section:

(1) Development. — Any activity, including timber harvesting, that is associated with the conversion of forestland to nonforest use.

(2) Forest management plan. — A document that defines a landowner's forest management objectives and describes specific measures to be taken to achieve those objectives. A forest management plan shall include silvicultural practices that both ensure optimal forest productivity and environmental protection of land by either commercially growing timber through the establishment of forest stands or by ensuring the proper regeneration of forest stands to commercial levels of production after the harvest of timber.

(3) Forestland. — Land that is devoted to growing trees for the production of timber, wood, and other forest products.

(4) Forestry. — The professional practice embracing the science, business, and art of creating, conserving, and managing forests and forestland for the sustained use and enjoyment of their resources, materials, or other forest products.

(5) Forestry activity. — Any activity associated with the growing, managing, harvesting, and related transportation, reforestation, or protection of trees and timber, provided that such activities comply with existing State rules and regulations pertaining to forestry.

(b) A city shall not adopt or enforce any ordinance, rule, regulation, or resolution that regulates either:

(1) Forestry activity on forestland that is taxed on the basis of its present-use value as forestland under Article 12 of Chapter 105 of the General Statutes.

(2) Forestry activity that is conducted in accordance with a forest management plan that is prepared or approved by a forester registered in accordance with Chapter 89B of the General Statutes.

(c) This section shall not be construed to limit, expand, or otherwise alter the authority of a city to:

(1) Regulate activity associated with development. A city may deny a building permit or refuse to approve a site or subdivision plan for either a period of up to:

a. Three years after the completion of a timber harvest if the harvest results in the removal of all or substantially all of the trees that were protected under city regulations governing development from the tract of land for which the permit or approval is sought.

b. Five years after the completion of a timber harvest if the harvest results in the removal of all or substantially all of the trees that were protected under city regulations governing development from the tract of land for which the permit or approval is sought and the harvest was a willful violation of the city regulations.

(2) Regulate trees pursuant to any local act of the General Assembly.

(3) Adopt ordinances that are necessary to comply with any federal or State law, regulation, or rule.

(4) Exercise its planning or zoning authority under this Article.

(5) Regulate and protect streets under Article 15 of this Chapter. (2005-447, s. 2.)

Editor's Note. — The definitions in this section were placed in alphabetical order at the direction of the Revisor of Statutes.

§ 160A-459. Stormwater control.

(a) A city may adopt and enforce a stormwater control ordinance to protect water quality and control water quantity. A city may adopt a stormwater management ordinance pursuant to this Chapter, its charter, other applicable laws, or any combination of these powers.

(b) A federal, State, or local government project shall comply with the requirements of a city stormwater control ordinance unless the federal, State, or local government agency has a National Pollutant Discharge Elimination System (NPDES) stormwater permit that applies to the project. A city may take enforcement action to compel a State or local government agency to comply with a stormwater control ordinance that implements the National Pollutant Discharge Elimination System (NPDES) stormwater permit issued to the city. To the extent permitted by federal law, including Chapter 26 of Title 33 of the United States Code, a city may take enforcement action to compel a federal government agency to comply with a stormwater control ordinance.

(c) A city may implement illicit discharge detection and elimination controls, construction site stormwater runoff controls, and post-construction runoff controls through an ordinance or other regulatory mechanism to the extent allowable under State law.

(d) A city that holds a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to G.S. 143-214.7 may adopt an ordinance, applicable within its corporate limits and its planning jurisdiction, to establish the stormwater control program necessary for the city to comply with the permit. A city may adopt an ordinance that bans illicit discharges within its corporate limits and its planning jurisdiction. A city may adopt an ordinance, applicable within its corporate limits and its planning jurisdiction, that requires (i) deed restrictions and protective covenants to ensure that each project, including the stormwater management system, will be maintained so as to protect water quality and control water quantity and (ii) financial arrangements to ensure that adequate funds are available for the maintenance and replacement costs of the project.

(e) Unless the city requests the permit condition in its permit application, the Environmental Management Commission may not require as a condition of a National Pollutant Discharge Elimination System (NPDES) stormwater permit issued pursuant to G.S. 143-214.7 that a city implement the measure required by 40 Code of Federal Regulations § 122.34(b)(3)(1 July 2003 Edition) in its extraterritorial jurisdiction. (2006-246, s. 17(b).)

Cross References. — As to stormwater runoff rules and programs, see G.S. 143-214.7.

Local Modification. — City of Raleigh: 2009-293.

Editor's Note. — Session Laws 2006-246, s. 20, made this section effective retroactively to July 1, 2006.

§ 160A-459.1. Revolving loan program for energy improvements.

(a) Purpose. — The General Assembly finds it is in the best interest of the citizens of North Carolina to promote and encourage renewable energy and energy efficiency within the State in order to conserve energy, promote economic competitiveness, and expand employment in the State. In furtherance of this purpose, a city may establish a program to finance the purchase and installation of distributed generation renewable energy sources or energy efficiency improvements that are permanently affixed to residential, commercial, or other real property.

(b) Revolving Loan Fund. — A city may establish a revolving loan fund for the purpose of providing loans to finance the purchase and installation of distributed generation renewable energy sources or energy efficiency improvements that are permanently fixed to residential, commercial, or other real property. A city may use Energy Efficiency and Conservation Block Grant Funds and its unrestricted revenue to fund the revolving loan fund. The annual interest rate charged for the use of funds from the revolving fund may not exceed eight percent (8%) per annum, excluding other fees for loan application review and origination. The term of any loan originated under this section may not be greater than 15 years.

(c) Definition. — As used in this Article, "renewable energy source" has the same meaning as "renewable energy resource" in G.S. 62-133.8. (2009-522, s. 1.)

Editor's Note. — Session Laws 2009-522, s. 3, made this section effective August 26, 2009.

ARTICLE 20.

Interlocal Cooperation.

Part 1. Joint Exercise of Powers.

§ 160A-460. Definitions.

The words defined in this section shall have the meanings indicated when used in this Part:

(1) "Undertaking" means the joint exercise by two or more units of local government, or the contractual exercise by one unit for one or more other units, of any power, function, public enterprise, right, privilege, or immunity of local government.

(2) "Unit," or "unit of local government" means a county, city, consolidated city-county, local board of education, sanitary district, facility authority created under Part 4 of this Article, special district created under Article 43 of Chapter 105 of the General Statutes, or other local political subdivision, authority, or agency of local government. (1971, c. 698, s. 1; 1975, c. 821, s. 4; 1979, c. 774, s. 1; 1981, c. 641; 1995, c. 458, s. 3; 2009-527, s. 2(f).)

Local Modification. — Cherokee, Graham, Jackson and Swain: 1973, c. 1406.

Cross References. — As to application of this Part to joint construction of buildings by counties, cities or other units of local government, see G.S. 153A-164. As to authority of counties under this Part, see also G.S. 153A-212. As to power of county to take action under the provisions of this Part, see G.S. 153A-445.

Funds for Local Government Water and Sewer Improvement Grants. — Session Laws 2007-323, s. 13.13A, provides for the use of certain funds appropriated to the Rural Economic Development Center, Inc. for the 2007-2008 fiscal year for wastewater-related and public water system-related projects. See note at G.S. 160A-311.

Session Laws 2008-107, s. 13.8, provides for the use of certain funds appropriated to the Rural Economic Development Center, Inc. for the 2007-2008 fiscal year for wastewater-related and public water system-related projects. See note at G.S. 160A-311.

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

Effect of Amendments. — Session Laws 2009-527, s. 2(f), effective August 27, 2009, inserted "special district created under Article 43 of Chapter 105 of the General Statutes," in subdivision (2).

CASE NOTES

Applied in Trask v. City of Wilmington, 64 N.C. App. 17, 306 S.E.2d 832 (1983); Reese v. City of Charlotte, — N.C. App. —, 676 S.E.2d 493, 2009 N.C. App. LEXIS 506 (2009).

Cited in Cash v. Granville County Board of Educ., 242 F.3d 219, 2001 U.S. App. LEXIS 2976 (4th Cir. 2001); BellSouth Telecomms., Inc. v. City of Laurinburg, 168 N.C. App. 75, 606 S.E.2d 721, 2005 N.C. App. LEXIS 164.

OPINIONS OF ATTORNEY GENERAL

Local boards of education have authority to make agreements establishing self-insurance program, provided (1) the contracts establishing such program contain the provisions required by G.S. 160A-464, and (2) the contracts incorporate certain limitations set forth in G.S. 115C-42 and 115C-43. See opinion of Attorney General to Mr. Gene Causby, Executive Director, North Carolina School Boards Association, 55 N.C.A.G. 77 (1986).

§ 160A-461. Interlocal cooperation authorized.

Any unit of local government in this State and any one or more other units of local government in this State or any other state (to the extent permitted by the laws of the other state) may enter into contracts or agreements with each other in order to execute any undertaking. The contracts and agreements shall be of reasonable duration, as determined by the participating units, and shall be ratified by resolution of the governing board of each unit spread upon its minutes. (1971, c. 698, s. 1.)

CASE NOTES

This section merely extends the powers of a municipality to act in concert with other local governments and in no way restricts the anticompetitive conduct contemplated in supplying sewage services. Pinehurst Enters., Inc. v. Town of S. Pines, 690 F. Supp. 444 (M.D.N.C. 1988), aff'd, 887 F.2d 1080 (4th Cir. 1989).

Agreements Not Prohibited. — Nothing in Chapter 162A indicates it was designed to restrict the broad grant of authority to local governmental units for interlocal cooperation; therefore, an agreement to construct a water distribution facility was not prohibited because units of local government were permitted to enter into contracts under G.S. 160A-461. Caswell County v. Town of Yanceyville, 170 N.C. App. 124, 611 S.E.2d 451, 2005 N.C. App. LEXIS 898 (2005).

Property transactions encompassed by an Interlocal Cooperation Agreement between a city and a county were authorized by G.S. 160A-461, G.S. 160A-460(1), G.S. 160A-274(b), and G.S. 160A-266(a). The city and the county entered into the agreement to achieve the specific government-related goals of the development of an urban park; the development of a mixed-use, residential-commercial community; the development of a baseball stadium; and the sale of a city square to fund infrastructure improvements for the baseball facility. Reese v. City of Charlotte, — N.C. App. —, 676 S.E.2d 493, 2009 N.C. App. LEXIS 506 (2009).

Applied in Trask v. City of Wilmington, 64 N.C. App. 17, 306 S.E.2d 832 (1983).

Cited in Chapel Hill Country Club, Inc. v. Town of Chapel Hill, 97 N.C. App. 171, 388 S.E.2d 168 (1990); Cash v. Granville County Board of Educ., 242 F.3d 219, 2001 U.S. App. LEXIS 2976 (4th Cir. 2001); Grassy Creek Neighborhood Alliance v. City of Winston-Salem, 142 N.C. App. 290, 542 S.E.2d 296, 2001 N.C. App. LEXIS 84 (2001).

§ 160A-462. Joint agencies.

(a) Units agreeing to an undertaking may establish a joint agency charged with any or all of the responsibility for the undertaking. The units may confer on the joint agency any power, duty, right, or function needed for the execution of the undertaking, except that legal title to all real property necessary to the undertaking shall be held by the participating units individually, or jointly as tenants in common, in such manner and proportion as they may determine.

(b) The participating units may appropriate funds to the joint agency on the basis of an annual budget recommended by the agency and submitted to the governing board of each unit for approval. (1971, c. 698, s. 1.)

Local Modification. — (As to subsection (a)) Clay County: 2003-127, s. 2.

Cross References. — For transfer of ownership of provisionally approved septic tanks and innovative septic tank systems to joint agency in certain counties and inspection fees in those counties, see G.S. 130A-343.1.

CASE NOTES

Cited in Grassy Creek Neighborhood Alliance v. City of Winston-Salem, 142 N.C. App. 290, 542 S.E.2d 296, 2001 N.C. App. LEXIS 84 (2001).

§ 160A-463. Personnel.

(a) The units may agree that any joint agency established under G.S. 160A-462 shall appoint the officers, agents, and employees necessary to execute the undertaking, or that the units jointly shall appoint these personnel, or that one of the units shall appoint the personnel with their services contracted for by the other units or by the joint agency. If the units determine that one unit shall appoint the personnel, the agreement shall provide that the jurisdiction, authority, rights, privileges, and immunities (including coverage under the workers' compensation laws) which the officers, agents, and employees of the appointing unit enjoy within the territory of that unit shall also be enjoyed by them outside its territory when they are acting pursuant to the agreement and within the scope of their authority or the course of their employment.

(b) When the subject of an undertaking is a sovereign function of government, the exercise of which has been delegated to an officer of each participating unit, the agreement may provide that one officer shall exercise the function for all the participating units, with all of the powers, duties, and obligations that an officer exercising the function in a single unit would have. (1971, c. 698, s. 1; 1991, c. 636, s. 3.)

§ 160A-464. Provisions of the agreement.

Any contract or agreement establishing an undertaking shall specify:

(1) The purpose or purposes of the contract or agreement;
(2) The duration of the agreement;
(3) If a joint agency is established, its composition, organization, and nature, together with the powers conferred on it;
(4) The manner of appointing the personnel necessary to the execution of the undertaking;
(5) The method of financing the undertaking, including the apportionment of costs and revenues;
(6) The formula for ownership of real property involved in the undertaking, and procedures for the disposition of such property when the contract or agreement expires or is terminated;
(7) Methods for amending the contract or agreement;
(8) Methods for terminating the contract or agreement;
(9) Any other necessary or proper matter. (1971, c. 698, s. 1.)

CASE NOTES

Cited in BellSouth Telecomms., Inc. v. City of Laurinburg, 168 N.C. App. 75, 606 S.E.2d 721, 2005 N.C. App. LEXIS 164.

OPINIONS OF ATTORNEY GENERAL

Local boards of education have authority to make agreements establishing self-insurance program, provided (1) the contracts establishing such program contain the provisions required by G.S. 160A-464, and (2) the contracts incorporate certain limitations set forth in G.S. 115C-42 and 115C-43. See Opinion of Attorney General to Mr. Gene Causby, Executive Director, North Carolina School Boards Association, 55 N.C.A.G. 77 (1986).

Local boards of education may enter into interlocal agreements to form the North Carolina School Boards Trust. See opinion of Attorney General to Edwin Dunlap, Jr., Executive Director, North Carolina School Boards Association, 2002 N.C. AG LEXIS 12 (2/20/02).

§ 160A-465: Repealed by Session Laws 1979, c. 774, s. 2.

§ 160A-466. Revenue and expenditures for joint undertakings.

When two or more units of local government are engaged in a joint undertaking, they may enter into agreements regarding financing, expenditures, and revenues related to the joint undertaking. Funds collected by any participating unit of government may be transferred to and expended by any other unit of government in a manner consistent with the agreement. An agreement regarding expenses and revenues may be of reasonable duration not to exceed 99 years. (2003-417, s. 1.)

Cross References. — As to interlocal agreements concerning economic development, see G.S. 158-7.3.

§§ 160A-467 through 160A-469: Reserved for future codification purposes.

Part 2. Regional Councils of Governments.

§ 160A-470. Creation of regional councils; definition of "unit of local government".

(a) Any two or more units of local government may create a regional council of governments by adopting identical concurrent resolutions to that effect in accordance with the provisions and procedures of this Part. To the extent permitted by the laws of its state, a local government in a state adjoining North Carolina may participate in regional councils of governments organized under this Part to the same extent as if it were located in this State. The concurrent resolutions creating a regional council of governments, and any amendments thereto, will be referred to in this Part as the "charter" of the regional council.

(b) For the purposes of this Part, "unit of local government" means a county, city, or consolidated city-county. (1971, c. 698, s. 1; 1973, c. 426, s. 71.)

Cross References. — As to power of county to take action under the provisions of this Part, see G.S. 153A-445.

Legal Periodicals. — For survey of 1978 administrative law, see 57 N.C.L. Rev. 831 (1979).

For survey of 1978 law on civil procedure, see 57 N.C.L. Rev. 891 (1979).

CASE NOTES

The purpose of councils of governments is to coordinate governmental functions best undertaken on a regional level. Kloster v. Region D Council of Gov'ts, 36 N.C. App. 421, 245 S.E.2d 180, cert. denied, 295 N.C. 466, 246 S.E.2d 215 (1978).

Nature of Council. — Once created, a council does not become a municipality, or a political or governmental subdivision of the State in the same sense as a city, town or county. A council may take on some of the attributes and functions of a political subdivision, but does not possess the powers which municipalities are said to possess. Kloster v. Region D Council of Gov'ts, 36 N.C. App. 421, 245 S.E.2d 180, cert. denied, 295 N.C. 466, 246 S.E.2d 215 (1978).

Standing to Contest Council Activities. — A taxpayer and resident of an area encompassed by a regional council of governments has standing to contest allegedly illegal activities of the council, where such activities are funded by tax moneys or property derived from local or federal sources, or where such activities may later require support by tax moneys. Kloster v. Region D Council of Gov'ts, 36 N.C. App. 421, 245 S.E.2d 180, cert. denied, 295 N.C. 466, 246 S.E.2d 215 (1978).

§ 160A-471. Membership.

Each unit of local government initially adopting a concurrent resolution under G.S. 160A-470 shall become a member of the regional council. Thereafter, any local government may join the regional council by ratifying its charter and by being admitted by a majority vote of the existing members. All of the rights and privileges of membership in a regional council of governments shall be exercised on behalf of its member governments by their delegates to the council. (1971, c. 698, s. 1; 1973, c. 426, s. 72.)

§ 160A-472. Contents of charter.

The charter of a regional council of governments shall:

(1) Specify the name of the council;

(2) Establish the powers, duties, and functions that it may exercise and perform;

(3) Establish the number of delegates to represent the member governments, fix their terms of office, provide methods for filling vacancies, and prescribe the compensation and allowances, if any, to be paid to delegates;

(4) Set out the method of determining the financial support that will be given to the council by each member government;

(5) Establish a method for amending the charter, and for dissolving the council and liquidating its assets and liabilities.

In addition, the charter may, but need not, contain rules and regulations for the conduct of council business and any other matter pertaining to the organization, powers, and functioning of the council that the member governments deem appropriate. (1971, c. 698, s. 1.)

§ 160A-473. Organization of council.

Upon its creation, a regional council shall meet at a time and place agreed upon by its member governments and shall organize by electing a chairman and any other officers that the charter may specify or the delegates may deem advisable. The council shall then adopt bylaws for the conduct of its business. All meetings of the council shall be open to the public. (1971, c. 698, s. 1.)

§ 160A-474. Withdrawal from council.

Any member government may withdraw from a regional council at the end of any fiscal year by giving at least 60 days' written notice to each of the other members. Withdrawal of a member government shall not dissolve the council if at least two members remain. (1971, c. 698, s. 1.)

§ 160A-475. Specific powers of council.

The charter may confer on the regional council any of the following powers:

(1) To apply for, accept, receive, and dispense funds and grants made available to it by the State of North Carolina or any agency thereof, the United States of America or any agency thereof, any unit of local government (whether or not a member of the council), and any private or civic agency.
(2) To employ personnel.
(3) To contract with consultants.
(4) To contract with the State of North Carolina, any other state, the United States of America, or any agency thereof, for services.
(5) To study regional governmental problems, including matters affecting health, safety, welfare, education, recreation, economic conditions, regional planning, and regional development.
(6) To promote cooperative arrangements and coordinated action among its member governments.
(7) To make recommendations for review and action to its member governments and other public agencies which perform functions within the region in which its member governments are located.
(7a) For the purpose of meeting the regional council's office space and program needs, to acquire real property by purchase, gift, or otherwise, and to improve that property. The regional council may pledge real property as security for indebtedness used to finance acquisition of that property or for improvements to that real property, subject to approval by the Local Government Commission as required under G.S. 159-153. A regional council may not exercise the power of eminent domain.
(8) Any other powers that are exercised or capable of exercise by its member governments and desirable for dealing with problems of mutual concern to the extent such powers are specifically delegated to it from time to time by resolution of the governing board of each of its member governments which are affected thereby, provided, that no regional council of governments shall have the authority to construct or purchase buildings, or acquire title to real property, except for the purposes permitted under subdivision (7a) of this section or in order to exercise the authority granted by Chapter 260 of the Session Laws of 1979. (1971, c. 698, s. 1; 1975, c. 517, ss. 1, 2; 1979, c. 902; 2005-290, s. 1; 2006-211, s. 1.)

Editor's Note. — Session Laws 2009-451, s. 14.21(e), provides: "By September 1 of each year, and more frequently as requested, each council of government or lead regional organization shall report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division of the General Assembly on prior State fiscal year program activities, objectives, and accomplishments, and prior State fiscal year itemized expenditures and fund sources. Each council of government or lead regional organization shall provide to the Fiscal Research Division of the General Assembly a copy of the organization's annual audited financial statement within 30 days of issuance of the statement."

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2009-2011 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2009-2011 fiscal biennium.'"

Session Laws 2009-451, s. 28.5 is a severability clause.

Legal Periodicals. — For survey of 1978 administrative law, see 57 N.C.L. Rev. 831 (1979).

For note on the expansion of standing in North Carolina taxpayers' actions, see 15 Wake Forest L. Rev. 126 (1979).

CASE NOTES

The purpose of councils of governments is to coordinate governmental functions best undertaken on a regional level. Kloster v. Region D Council of Gov'ts, 36 N.C. App. 421, 245 S.E.2d 180, cert. denied, 295 N.C. 466, 246 S.E.2d 215 (1978).

Nature of Council. — Once created, council does not become a municipality, or a political or governmental subdivision of the State in the same sense as a city, town or county. A council may take on some of the attributes and functions of a political subdivision, but does not possess the powers which municipalities are said to possess. Kloster v. Region D Council of Gov'ts, 36 N.C. App. 421, 245 S.E.2d 180, cert. denied, 295 N.C. 466, 246 S.E.2d 215 (1978).

Powers Not Conferred by Charter Must Be Specifically Delegated. — The intention of the legislature, by the adoption of subdivision (8) of this section, is that any powers not conferred on a council by its charter be possessed and exercised only upon the express authorization of each of the member governments. Kloster v. Region D Council of Gov'ts, 36 N.C. App. 421, 245 S.E.2d 180, cert. denied, 295 N.C. 466, 246 S.E.2d 215 (1978).

Except for the powers conferred by its charter, a council may neither possess nor exercise any powers which are not specifically delegated by each of its member governments. Kloster v. Region D Council of Gov'ts, 36 N.C. App. 421, 245 S.E.2d 180, cert. denied, 295 N.C. 466, 246 S.E.2d 215 (1978).

Council of Governments did not have power to hold title to real estate and to construct thereon an office building for its own use and for rental purposes, in competition with private enterprise, since subdivisions (1) through (7) of this section do not include the power of land ownership, and since that power was not delegated by the member governments. Kloster v. Region D Council of Gov'ts, 36 N.C. App. 421, 245 S.E.2d 180, cert. denied, 295 N.C. 466, 246 S.E.2d 215 (1978), (decided prior to 1979 amendment).

Standing to Contest Council Activities. — A taxpayer and resident of an area encompassed by a regional council of governments has standing to contest allegedly illegal activities of the council, where such activities are funded by tax moneys or property derived from local or federal sources, or where such activities may later require support by tax moneys. Kloster v. Region D Council of Gov'ts, 36 N.C. App. 421, 245 S.E.2d 180, cert. denied, 295 N.C. 466, 246 S.E.2d 215 (1978).

§ 160A-476. Fiscal affairs.

Each unit of local government having membership in a regional council may appropriate funds to the council from any legally available revenues. Services of personnel, use of equipment and office space, and other services may be made available to the council by its member governments as a part of their financial support. (1971, c. 698, s. 1; 1973, c. 426, s. 73.)

CASE NOTES

Nature of Council. — Once created, a council does not become a municipality, or a political or governmental subdivision of the State in the same sense as a city, town or county. A council may take on some of the attributes and functions of a political subdivision, but does not possess the powers which municipalities are said to possess. Kloster v. Region D Council of Gov'ts, 36 N.C. App. 421, 245 S.E.2d 180, cert. denied, 295 N.C. 466, 246 S.E.2d 215 (1978).

§ 160A-477. Reports.

Each regional council shall prepare and distribute to its member governments and to the public an annual report of its activities including a financial statement. (1971, c. 698, s. 1.)

§ 160A-478. Powers granted are supplementary.

The powers granted to cities and counties by this Article are supplementary to any powers heretofore or hereafter granted by any other general law, local act, or city charter for the same or similar purposes. (1971, c. 698, s. 1.)

Part 3. Regional Sports Authorities.

§ 160A-479. Creation of authority; definition.

(a) Any two or more units of local government may create a regional sports authority by adopting identical concurrent resolutions to that effect in accordance with the provisions of this Part. The concurrent resolutions creating a regional sports authority, and any amendments thereto will be referred to in this Part as the "charter" of the regional sports authority. For the purposes of this Part, "unit of local government" means a county, city or consolidated city-county.

(b) Any regional sports authority created pursuant to this Part shall be a body corporate and politic. (1989, c. 780, s. 1.)

§ 160A-479.1. Purpose of the authority.

The purpose of a regional sports authority shall be to research, design, construct, provide, finance, operate, improve, and maintain facilities for public participation and enjoyment of sports, fitness, health and recreational activities of as many different types and kinds as possible. The primary purpose of any and all such facilities shall be the conduct of sports events but use of these facilities need not be limited to such. (1989, c. 780, s. 1.)

§ 160A-479.2. Jurisdiction of the authority.

(a) The territorial jurisdiction of any authority created pursuant to this Part shall be coterminous with the boundaries of the respective units of local government creating and participating in the authority.

(b) The jurisdiction of any authority created pursuant to this Part shall include any and all currently existing public sports facilities operating within its territorial jurisdiction to the extent that any person or governmental entity owning or controlling such facilities has reached mutual and written agreement with an authority for the operation and maintenance of such facilities by the authority.

(c) The jurisdiction of an authority shall also include any and all new public sports facilities within the regional authority's territorial jurisdiction developed specifically for operation and maintenance by an authority with the agreement of an authority. (1989, c. 780, s. 1.)

§ 160A-479.3. Membership.

Each unit of local government initially adopting a concurrent resolution under G.S. 160A-479 shall become a member of the regional authority. Thereafter, any local government may join the regional authority by ratifying its charter and by being admitted by a majority vote of the existing members. All of the rights and privileges of membership in a regional sports authority shall be exercised on behalf of its member governments by their delegates to the authority. (1989, c. 780, s. 1.)

§ 160A-479.4. Contents of charter.

The charter of a regional sports authority shall:

(1) Specify the name of the authority;

(2) Establish the powers, duties, and functions that it may exercise and perform;

(3) Establish the number of delegates to represent the member governments, fix their terms of office, provide methods for filling vacancies, and prescribe the compensation and allowances, if any, to be paid to delegates;

(4) Set out the method of determining the financial support that will be given to the authority by each member government;

(5) Establish a method for amending the charter, and for dissolving the authority and liquidating its assets and liabilities.

In addition, the charter may, but need not, contain rules and regulations for the conduct of authority business and any other matter pertaining to the organization, powers, and functioning of the authority that the member governments deem appropriate. (1989, c. 780, s. 1.)

§ 160A-479.5. Organization of authority.

Upon its creation, a regional sports authority shall meet at a time and place agreed upon by its member governments and shall organize by electing a chairman and any other officers that the charter may specify or the delegates may deem advisable. The authority shall then adopt bylaws for the conduct of its business. All meetings of the authority shall be open to the public. (1989, c. 780, s. 1.)

§ 160A-479.6. Withdrawal from authority.

Any member government may withdraw from a regional sports authority at the end of any fiscal year by giving at least 60 days' written notice to each of the other members. A withdrawal does not affect the validity of any revenue bonds or notes, and any revenue from sports facilities in the area of the member government that was pledged in payment of bonds or notes issued before the date of notice of withdrawal remains pledged for that purpose until the bonds and notes and interest on the bonds and notes have been paid. Withdrawal of a member government shall not dissolve the authority if at least two members remain. (1989, c. 780, s. 1.)

§ 160A-479.7. Powers of authority.

(a) The charter may confer on the regional sports authority any or all of the following powers:

(1) To apply for, accept, receive, and dispense funds and grants made available to it by the State of North Carolina or any agency thereof, the United States of America or any agency thereof, any unit of local government (whether or not a member of the authority), and any private or civic agency;

(2) To employ personnel;

(3) To contract with consultants;

(4) To contract with the State of North Carolina, any other state, the United States of America, or any agency thereof, for services;

(5) To adopt bylaws for the regulation of the affairs and the conduct of its business, and to prescribe rules, regulations and policies in connection with the performance of its functions and duties, not inconsistent with this Part;

(6) To adopt an official seal and alter the same at pleasure;

(7) To acquire and maintain an administrative building or office at such place or places as it may determine, which building or office may be used or owned alone or together with any municipalities, corporations, associations or persons under such terms and provisions for sharing costs and otherwise as may be determined;

(8) To sue and be sued in its own name, and to plead and be impleaded;

(9) To receive, administer, and comply with the conditions and requirements respecting any gift, grant, or donation of any property or money;

(10) To acquire by purchase, lease, gift, or otherwise, or to obtain options for the acquisition of, any property, real or personal, improved or unimproved, including an interest in land less than the fee thereof;

(11) To sell, lease, exchange, transfer, or otherwise dispose of, or to grant options for any such purposes with respect to, any real or personal property or interest therein;

(12) To pledge, assign, mortgage, or otherwise grant a security interest in any real or personal property or interest therein, including the right and power to pledge, assign, or otherwise grant a security interest in any money, rents, charges, or other revenues and any proceeds derived by an authority from any and all sources;

(13) To issue revenue bonds of the authority to finance regional sports and recreational facilities, including support facilities, to refund any revenue bonds or notes issued by the authority, whether or not in advance of their maturity or earliest redemption date, or to provide funds for other corporate purposes of the authority;

(14) With the approval of the unit of local government's chief administrative official, to use officers, employees, agents, and facilities of the unit of local government for such purposes and upon such terms as may be mutually agreeable;

(15) To develop and make data, plans, information, surveys, and studies of public sports and recreation facilities within the territorial jurisdiction of an authority, to prepare and make recommendations in regard thereto;

(16) To study and plan for new and improved major regional sports and recreational facilities including but not limited to arenas, stadia, gymnasia, natatoria, pitches, fields, watercourses, and other areas for the conduct of sports and recreational activities. These facilities should be of such sizes and in such locations that they will be adequate to serve the population of the entire jurisdiction of the authority (and beyond) to the extent possible;

(17) To design any new such facilities so they include such equipment and design that efficiency, cost, accessibility, utility, and usability of such facilities will be maximized;

(18) To have sports facilities grouped into complexes or separated as an authority may see fit, and such facilities may include ancillary support facilities including but not limited to those for administration, sports science, sports medicine, training, museums, meeting rooms and conference centers, accommodations, food services, retail shops, theatres, video services, schools, and educational services.

(19) To operate the facilities in such a way as to make them as accessible as possible for rental and use by the public while balancing the need for as many of the facilities as possible (particularly any arenas and stadia) to operate annually without a deficit (exclusive of any debt service);

(20) To operate such facilities together with the State, any entity of the State, or local government as appropriate to maintain a high profile

and promotional value for North Carolina and the region encompassed by an authority and to attract as many major regional, national, and international tournaments, events, championships training centers, training camps, and headquarters for the governance of various sports, associations, and events as reasonable and possible;

(21) To generate a significant and continuing positive economic impact on the region and State through the construction and operation of facilities and conduct of events and activities within the facilities;

(22) To set and collect such fees and charges for use of such facilities as is reasonable to offset operating costs of said facilities and yet enable said facilities to be affordable to and used by as much of the regional and State population as possible;

(23) To apply to the appropriate agencies of the State, the United States or any state thereof, and to any other proper agency for such permits, licenses, certificates or approvals as may be necessary, and to construct, maintain and operate projects in accordance with such licenses, permits, certificates or approvals in the same manner as any other person or operating unit of any other person;

(24) To employ engineers, architects, attorneys, real estate counselors, appraisers, financial advisors and such other consultants and employees as may be required in the judgment of an authority and to fix and pay their compensation from funds available to an authority therefor and to select and retain subject to approval of the Local Government Commission, the financial consultants, underwriters and bond attorneys to be associated with the issuance of any revenue bonds and to pay for services rendered by underwriters, financial consultants, or bond attorneys out of the proceeds of any such issue with regard to which the services were performed; and

(25) To do all acts and things necessary, convenient, or desirable to carry out the purposes, and to exercise the powers granted to an authority herein.

(b) The charter may not confer the following powers on the regional sports authority:

(1) To issue general obligation bonds or otherwise incur a debt that is secured by the full faith and/or credit of the authority, a member government of the authority, or the State.

(2) To levy a property tax or other tax.

(3) To acquire property by eminent domain. (1989, c. 780, s. 1; 2007-495, s. 19.)

§ 160A-479.8. Fiscal accountability.

A Regional Sports Authority is a public authority subject to the provisions of Chapter 159 of the General Statutes of North Carolina. (1989, c. 780, s. 1.)

§ 160A-479.9. Funds.

(a) The establishment and operation of an authority as herein authorized are governmental functions and constitute a public purpose, and the State of North Carolina and any unit of local government may appropriate funds to support the establishment and operation of an authority.

(b) The State of North Carolina and any unit of local government may also dedicate, sell, convey, donate or lease any of their interests in any property to an authority. (1989, c. 780, s. 1.)

§ 160A-479.10. Controlling provisions.

Insofar as the provisions of this Part are not consistent with the provisions of any other law, public or private, the provisions of this Part shall be controlling. (1989, c. 780, s. 1.)

§ 160A-479.11. Conflicts of interest of public officials.

Members, officers, and employees of any authority created under this Part shall be subject to the provisions of G.S. 14-234. (1989, c. 780, s. 1.)

§ 160A-479.12. Issuance of revenue bonds and notes.

The Local Government Revenue Bond Act, G.S. Chapter 159, Article 5, governs the issuance of revenue bonds by an authority. G.S. Chapter 159, Article 9, governs the issuance of notes in anticipation of the sale of revenue bonds. (1989, c. 780, s. 1.)

§ 160A-479.13. Acquisition of property.

In addition to the powers hereinbefore granted, an authority may, in its charter, be granted continuing power to acquire, by gift, grant, devise, bequest, exchange, purchase, lease with or without option to purchase, or any other lawful method, the fee or any lesser interest in real or personal property for use by an authority. (1989, c. 780, s. 1.)

§ 160A-479.14. Tax exemption.

(a) The property of an authority, both real and personal, its acts, activities and income shall be exempt from any tax or tax obligation; in the event of any lease of authority property, or other arrangement which amounts to a leasehold interest, to a private party, this exemption shall not apply to the value of such leasehold interest nor shall it apply to the income of the lessee.

(b) Otherwise, however, for the purpose of taxation, when property of an authority is leased to private parties solely for the purpose of an authority, the acts and activities of an authority for the purpose of exemption of the lessee shall be considered as the acts and activities of the private parties.

(c) The interest on revenue bonds or notes issued by an authority shall be exempt from State taxes. (1989, c. 780, s. 1.)

§ 160A-479.15. Removal and relocation of utility structures.

(a) An authority may require any public utility, railroad, or other public service corporation owning or operating any installations, structures, equipment, apparatus, appliances or facilities in, upon, under, over, across or along any land or facility where an authority has the right to own, construct, operate or maintain its facilities to remove or relocate such installation, structures, equipment, apparatus, appliances or facilities from their location.

(b) If the owner or operator thereof fails or refuses to remove or relocate them, an authority may proceed to do so.

(c) An authority may provide the necessary new locations or an authority may also acquire the necessary new locations by purchase or otherwise, but not by eminent domain.

(d) An authority shall reimburse the public utility, railroad or other public service corporation, for the cost of relocations which shall be the entire amount paid or incurred by the utility properly attributable thereto after deducting the cost of any increase in the service capacity of the new installations, structures, equipment, apparatus, appliances or facilities and any salvage value derived from the old installations, structures, equipment, apparatus or appliances. (1989, c. 780, s. 1.)

§ 160A-479.16. Advances.

Any member government unit may make advances, from any moneys that may be available for such purpose, in connection with the creation of the authority and to provide for the preliminary expenses of such authority. Any such advances may be repaid to such participating units of local government from the proceeds of the revenue bonds issued by such authority, if capital in nature, or from other available funds of the authority. (1989, c. 780, s. 1.)

§ 160A-479.17. Annexation.

The annexation by a member government which is a city of areas lying outside of the territorial jurisdiction of the authority shall make such annexed area a part of the territorial jurisdiction of the authority, and such area shall be subject to all debts and all obligations thereof. (1989, c. 780, s. 1.)

§ 160A-480: Reserved for future codification purposes.

Part 4. Facility Authorities.

§ 160A-480.1. Short title.

This Part is the "Facility Authority Act" and may be cited by that name. (1995, c. 458, s. 1.)

OPINIONS OF ATTORNEY GENERAL

Appointment Prohibition. — The General Assembly did not restrict boards of county commissioners and city councils from appointing their employees, agents or officers, although the General Assembly prohibited these bodies from appointing themselves to a facility authority. See opinion of Attorney General to George B. Daniel, Chairman, Legal Bylaws Committee, The Centennial Authority, 1999 N.C.A.G. 3 (1/28/99).

§ 160A-480.2. Definitions.

The following definitions apply in this Part:

(1) Authority. — A Facility Authority.

(2) Credit facility. — An agreement with a banking institution, an insurance institution, an investment institution, or other financial institution located inside or outside the United States of America that provides for prompt payment, whether at maturity, presentment, or tender for purchase, redemption, or acceleration, of part or all of the principal or purchase price, redemption premium, if any, and interest on a bond or note issued by the Authority and for repayment of the institution.

(3) Member. — A person appointed to a facility authority.

(4) Par formula. — A provision or formula to make periodic adjustments in the interest rate of a bond or note, including:

a. A provision for an adjustment to keep the purchase price of the bond or note in the open market as close to par as possible.

b. A provision for an adjustment based on one or more percentages of a prime rate or base rate that may vary or apply for specified periods of time.

c. Any other provision that does not materially and adversely affect the financial position of the Authority and the marketing of the bonds or notes at a reasonable interest cost to the Authority.

(5) Regional facility. — A facility consisting of an arena, coliseum, or other buildings or both, or areas where sports, fitness, health, recreational, entertainment, or cultural activities can be conducted. The facility may be composed of buildings grouped into complexes or separated from each other and may include ancillary support facilities, such as those for administration, sports science, sports medicine, training, museums, meeting rooms and conference centers, accommodations, parking, and food services. The facility should be designed to attract to the State as many major regional, national, and international tournaments, events, championships, training centers, training camps, and headquarters for the governance of various sports, associations, and events as possible. The regional facility shall be constructed on land owned by the State. (1995, c. 458, s. 1.)

§ 160A-480.3. Creation of Authority; additional membership.

(a) Creation. — An authority may be created only by act of the General Assembly. An authority so created shall be a political subdivision of the State. The territorial jurisdiction of the authority shall be a county authorized by the General Assembly to levy a room occupancy tax and a prepared food and beverage tax, and where both those taxes have been levied.

(b) Membership. — An authority shall have 10 or 21 members. Members shall be chosen for terms as follows:

(1) Five shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121, at least one of whom shall be a resident of the territorial jurisdiction of the authority, and at least one other of whom shall have been recommended by the board of trustees of the constituent institution of The University of North Carolina whose main campus is located within the county;

(2) Five shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121, at least one of whom shall be a resident of the territorial jurisdiction of the authority, and at least one other of whom shall have been recommended by the Board of Trustees of the constituent institution of The University of North Carolina whose main campus is located within the county; and

(3) If the territorial jurisdiction of the authority is a county where the main campus of a constituent institution of The University of North Carolina is located, then:

a. Four members shall be appointed by the board of commissioners of that county, one of whom at the time of appointment is a resident of the municipality with the second largest population in the county, according to the most recent decennial federal census;

b. Four members shall be appointed by the city council of the city with the largest population in the county, according to the most recent decennial federal census;

c. Two members shall be appointed jointly by the mayors of all the cities in that county.

d. The Chancellor of the main campus of a constituent institution of The University of North Carolina within the county, or the Chancellor's designee.

Beginning January 1, 1999, a majority of any executive committee, or other committee however termed having supervisory or management authority over the facility to be constructed by the authority, shall consist of authority members appointed under this subsection.

Neither the board of commissioners nor the city council may appoint a member of its board to serve on the authority.

Two of the initial appointments under subdivision (1) of this subsection, two of the initial appointments under subdivision (2) of this subsection, one of the initial appointments under subdivision (3)a. of this subsection, and one of the initial appointments under subdivision (3)b. of this section shall be for terms expiring July 1 of the second year after the year in which the authority is created. The remaining initial appointments shall be for terms expiring July 1 of the fourth year after the year in which the authority is created. The third member appointed by the board of commissioners shall serve a term beginning January 1, 1999, and expiring July 1, 2001, and the fourth member appointed by the board of commissioners shall serve a term beginning January 1, 1999, and expiring July 1, 2003. The third member appointed by the city council shall serve a term beginning January 1, 1999, and expiring July 1, 2001, and the fourth member appointed by the city council shall serve a term beginning January 1, 1999, and expiring July 1, 2003. Of the two appointments made by the General Assembly in 1999 and quadrennially thereafter upon the recommendation of the Speaker of the House of Representatives, one shall be the person recommended by the board of trustees of the constituent institution of The University of North Carolina whose main campus is located within the county. Of the two appointments made by the General Assembly in 1999 and quadrennially thereafter upon the recommendation of the President Pro Tempore of the Senate, one shall be the person recommended by the board of trustees of the constituent institution of The University of North Carolina whose main campus is located within the county. The second member appointed under sub-subdivision (3)c. of this section shall serve an initial term expiring July 1, 2003. Successors shall be appointed in the same manner for four-year terms. A member may be removed by the appointing authority for cause. Vacancies occurring in the membership of the authority shall be filled by the remaining members.

(c) Purpose. — The purpose of an authority is to study, design, plan, construct, own, promote, finance, and operate a regional facility.

(d) Charter and Bylaws. — The act creating an authority and any amendments to it is the Authority's charter. The charter of an authority shall include the name of the Authority. An authority may adopt bylaws. Any bylaw that conflicts with the declared public policy of the State as expressed by law is void and unenforceable. The bylaws may do any one or more of the following:

(1) Limit the powers, duties, and functions that the Authority may exercise and perform.

(2) Prescribe the compensation and allowances not to exceed those provided by G.S. 93B-5, if any, to be paid to the members of the Authority.

(3) Contain rules for the conduct of Authority business and any other matter pertaining to the organization, powers, and functioning of the Authority that the members consider appropriate.

(e) Meetings. — An authority shall meet at a time and place agreed upon by its members. The initial meeting may be called by any four members. At its first meeting, the members shall elect a chairperson and any other officers that the charter may specify or the members may consider advisable. The Authority shall then adopt bylaws for the conduct of its business.

(f) Fiscal Accountability. — An authority is a public authority subject to the provisions of Article 3 of Chapter 159 of the General Statutes.

(g) Conflicts. — If any member, officer, or employee of an Authority shall be:

(1) Interested either directly or indirectly; or

(2) An officer or employee of or have an ownership interest in any firm or corporation, not including units of local government or the Chancellor of the main campus of a constituent institution of The University of North Carolina within the county, or the Chancellor's designee, interested directly or indirectly,

in any contract with that Authority, the interest shall be disclosed to the Authority and shall be set forth in the minutes of the Authority. The member, officer, or employee having an interest shall not participate on behalf of the Authority in the authorization of such contract. Other provisions of law notwithstanding, failure to take any or all actions necessary to carry out the purposes of this subsection do not affect the validity of any bonds or notes issued under this Chapter.

It is not a violation of this subsection for the Chancellor of the main campus of a constituent institution of The University of North Carolina within the county, or the Chancellor's designee, to participate in discussion of or to vote on any matter, including but not limited to the execution of any contract by the Authority, where the matter relates to the interest of a constituent institution of The University of North Carolina within the county.

(h) Any authority created under this Part shall be treated as a board for purposes of Chapter 138A of the General Statutes. (1995, c. 458, s. 1; 1997-68, s. 1; 2000-181, s. 2.5; 2001-311, ss. 1, 2; 2004-158, ss. 3.1, 3.2, 3.3; 2007-348, s. 43.)

Editor's Note. — Session Laws 2007-348, s. 44, as amended by Session Laws 2008-187, s. 32, and Session Laws 2008-213, s. 91, provides: "Sections 17, 23, 39, 40 and 41 of this act are effective January 1, 2007. Section 9 of this act is effective July 1, 2007. Sections 8, 11, 15, 20, 22, 25, and 42 of this act become effective October 1, 2007. Section 18 of this act becomes effective December 1, 2007. Section 34 of this act becomes effective January 1, 2008. The remainder of this act is effective when this act becomes law."

OPINIONS OF ATTORNEY GENERAL

Participation by Local Government Employees. — The managers and attorneys of a local city and county appointed to the Centennial Authority could participate in discussions and votes affecting their employers, the city and county, because the General Assembly specifically excluded from the definition of "conflicts" an officer or employee of "units of local government." See opinion of Attorney General to George B. Daniel, Chairman, Legal Bylaws Committee, The Centennial Authority, 1999 N.C.A.G. 3 (1/28/99).

Filling Vacancies. — If a member of the Centennial Authority who is holding over beyond the expiration of his term of office resigns, a vacancy is created which is filled as provided in subsection (b) of this section "by the remaining members" of the Authority's governing board. See opinion of Attorney General to Mr. Jeffrey P. Gray, 2003 N.C.A.G. 11 (10/21/03).

§ 160A-480.4. Powers of an Authority.

An Authority shall have all of the powers necessary or convenient to carry out and effectuate the purposes and provisions of this Part. These powers may include any one or more of the following:

(1) To apply for, accept, receive, and dispense funds and grants made available to it by the State or any of its agencies or political subdivisions, the United States, any member unit, or any private entity.

(2) To study, design, plan, construct, own, and operate a regional facility.

(3) To employ consultants and employees as may be required in the judgment of the Authority, to fix and pay their compensation from funds available to the Authority. In employing consultants, the Authority shall promote participation by minority businesses.

(4) To contract with any public or private entity, and The University of North Carolina or any constituent institution of The University of North Carolina may enter into any such contract if the function is one The University of North Carolina or any constituent institution of The University of North Carolina could undertake separately.

(5) To adopt bylaws for the regulation of its affairs and the conduct of its business, and to adopt rules in connection with the performance of its functions and duties.

(6) To adopt an official seal.

(7) To acquire and maintain administrative offices.

(8) To sue and be sued in its own name, and to plead and be impleaded.

(9) To receive, administer, and comply with the conditions and requirements respecting any gift, grant, or donation of any property or money.

(10) To acquire by purchase, lease, gift, or otherwise, or to obtain options for the acquisition of, any real or personal property or interest therein.

(11) To sell, lease, exchange, transfer, or otherwise dispose of, or to grant options for any of these purposes with respect to, any real or personal property or interest therein.

(12) Subject to the provisions of this Part, to pledge, assign, mortgage, or otherwise grant a security interest in any real or personal property or interest therein, including a leasehold interest, including the right and power to pledge, assign, or otherwise grant a security interest in any money, rents, charges, or other revenues and any proceeds derived by the Authority from any and all sources.

(13) Subject to the provisions of this Part, to borrow money to finance part or all of a regional facility, to issue revenue bonds or notes, to refund any revenue bonds or notes issued by the Authority, or to provide funds for other corporate purposes of the Authority.

(14) To use officers, employees, agents, and facilities of units of local government or constituent institutions of The University of North Carolina for purposes and upon the terms that are mutually agreeable between the Authority and the unit or institution.

(15) To develop and make data, plans, information, surveys, and studies of public facilities within the area where constituent institutions of The University of North Carolina are located, and to prepare and make recommendations in regard thereto.

(16) To set and collect fees and charges for the use of the regional facility.

(17) To pay for services rendered by underwriters, financial consultants, or bond attorneys in connection with the issuance of revenue bonds or notes of the Authority out of the proceeds of the bonds or notes. In employing consultants, underwriters, attorneys, and others, the Authority shall promote participation by minority businesses.

(18) To purchase or finance real or personal property in the manner provided for cities and counties under G.S. 160A-20. (1995, c. 458, s. 1.)

§ 160A-480.5. Dissolution of Authority.

The General Assembly may dissolve an authority if all bonds or notes issued by the Authority and all other obligations incurred by the Authority have been fully paid or satisfied. In such event any assets of the Authority shall become the property of the county authorized to levy a room occupancy and prepared food and beverage tax to be distributed to the Authority. (1995, c. 458, s. 1.)

§ 160A-480.6. Construction contracts.

Article 8 of Chapter 143 of the General Statutes applies to a construction contract of an Authority. An Authority may solicit bids on the basis of separate specifications for the branches or work described in G.S. 143-128(a) and on a single-prime contract basis and accept the lowest bid. (1995, c. 458, s. 1.)

§ 160A-480.7. Seating at regional facility arena.

The Authority shall ensure that at least fifty percent (50%) of the seats for an athletic event that is sponsored by a constituent institution of The University of North Carolina whose principal campus is in the territorial jurisdiction of the authority and is held at the arena of the regional facility are made available to students at that constituent institution and members of the general public. (1995, c. 458, s. 1.)

§ 160A-480.8. Bonds.

(a) Terms. — An Authority may provide for the issuance, at one time or from time to time, of bonds or notes to carry out its corporate purposes. The principal of, the interest on, and any premium payable upon the redemption of the bonds or notes shall be payable from the proceeds of bonds or renewal notes, or, in the event bond or renewal note proceeds are not available, from any available revenues or other funds provided for this purpose. The bonds or notes of each issue shall be dated and may be made redeemable prior to maturity at the option of the Authority or otherwise, at one or more prices, on one or more dates, and upon the terms and conditions set by the Authority. The bonds or notes may also be made payable from time to time on demand or tender for purchase by the owner upon terms and conditions set by the Authority. Notes and bonds shall mature at times determined by the Authority, not exceeding 40 years from the date of issue. The Authority shall determine the form and the manner of execution of the bonds or notes, and shall fix the denomination of the bonds or notes and the place of payment of principal and interest. In case an officer whose signature or a facsimile of whose signature appears on any bonds or notes ceases to be an officer before the delivery of the bond or note, the signature or facsimile shall nevertheless be valid and sufficient for all purposes the same as if the officer had remained in office until delivery. The Authority may also provide for the authentication of the bonds or notes by a trustee or fiscal agent.

Bonds or notes may be issued under this Part without obtaining, except as otherwise expressly provided in this Part, the consent of any department, division, commission, board, body, bureau, or other agency of the State or of a political subdivision of the State, and without any other proceedings or conditions except as specifically required by this Part or the provisions of the resolution authorizing the issuance of, or any trust agreement securing, the bonds or notes.

Prior to the preparation of definitive bonds, the Authority may issue interim receipts or temporary bonds exchangeable for definitive bonds when the bonds have been executed and are available for delivery. The Authority may also provide for the replacement of any bonds or notes which have been mutilated, destroyed, or lost.

(b) Use of Proceeds. — The proceeds of a bond or note shall be used solely for the purposes for which the bond or note was issued and shall be disbursed in accordance with the resolution authorizing the issuance of a bond or note and with any trust agreement securing the bond or note. If the proceeds of a bond or note of any issue, by reason of increased construction costs or error in estimates or otherwise, is less than the cost, additional bonds or notes may in like manner be issued to provide the amount of the deficiency.

(c) Security. — Bonds or notes issued by an Authority may be secured in one or more of the following ways:

(1) By the revenues of the regional facility.
(2) By security interests in real or personal property or interest therein, including a leasehold interest, acquired with the proceeds of the bonds or notes or improved with the proceeds of the bonds or notes as described in subsection (e) of this section.
(3) With the approval of the county levying the tax, by receipts, if any, from a room occupancy and prepared food and beverage tax levied by a county and distributed to the Authority; provided, however, that any agreement or undertaking by a county to distribute receipts, if any, from the tax to the Authority may not obligate the county to exercise any power of taxation, or restrict the ability of the county to repeal the tax. However, no action by a county to discontinue, decrease, or repeal a room occupancy tax shall become effective while previously issued bonds or notes secured by receipts from such a tax allocated to an authority by the county remain outstanding.

The security for the bonds or notes shall be specified in the resolution or trust instrument authorizing the bonds or notes.

(d) Revenues. — The Authority may pledge to the payment of its revenue bonds or notes the revenues from the regional facility, including revenues from improvements, betterments, or extensions to the facility. The Authority may establish, maintain, revise, charge, and collect such rates, fees, rentals, or other charges for the use, services, and facilities of or furnished by a regional facility and provide methods of collection of and penalties for nonpayment of these rates, fees, rentals, or other charges. Except as otherwise permitted, the rates, fees, rentals, and charges fixed and charged shall be in an amount that will produce sufficient revenues, with any other available funds, to meet the maintenance and operation expenses of the regional facility as well as any improvements and renewals and replacements to the facility, including reserves to pay the principal, interest, and redemption premium due, if any, on any bonds or notes secured by the facility, and to fulfill the terms of any agreements made by the Authority with the holders of bonds or notes secured by revenues of the facility.

(e) Security Interests. — Bonds or notes may be secured by security interests in any real or personal property or interest therein, including a leasehold interest, either acquired with the proceeds of bonds or notes, or upon which improvements are provided from the proceeds of bonds or notes. The security interest may cover all real and personal property acquired or improved or any portion of the property, except that if the property subject to the security interest is a leasehold interest, the security interest is not to the fee simple title. The Authority is authorized to enter into deeds of trust, mortgages, security agreements, and similar instruments as shall be necessary to carry out the powers in this subsection. Bonds or notes may also be secured by security interests in any real or personal property conveyed to the Authority.

In the event the Authority fails to perform its obligations with respect to the bonds or notes and foreclosure or similar sale of property subject to a security interest occurs, a deficiency judgment may not be rendered against the Authority except to the extent that the deficiency is payable from either revenues from the regional facility or from any revenues dedicated by act of the General Assembly to the Authority.

(f) Issuance. — The issuance of bonds or notes of the Authority is subject to the approval of the Local Government Commission. Upon the filing with the Local Government Commission of a resolution of the Authority requesting that its bonds or notes be sold, the Commission shall determine the manner in which the bonds or notes will be sold and the price or prices at which the bonds or notes will be sold. In determining whether to approve a proposed bond or note issue of the Authority, the Local Government Commission shall consider the criteria for approval of revenue bonds under G.S. 159-86. The Local Government Commission shall approve the proposed issue if it determines the bond or note issue will meet such criteria and will effect the purposes of this Part. With the approval of the Authority, the Local Government Commission shall sell the bonds or notes either at public or private sale in the manner and at the prices determined to be in the best interests of the Authority and to effect the purposes of this Part.

(g) Certification of Approval. — Each bond or note that is represented by an instrument shall contain a statement signed by the Secretary of the Local Government Commission, or an assistant designated by the Secretary, certifying that the issuance of the bond or note has been approved under this Part. The signature may be a manual signature or a facsimile signature, as determined by the Local Government Commission. Each bond or note that is not represented by an instrument shall be evidenced by a writing relating to the obligation that identifies the obligation or the issue of which it is a part, contains the signed statement certifying approval of the Local Government Commission that is required on an instrument, and is filed with the Local Government Commission. A certification of approval by the Local Government Commission is conclusive evidence that a bond or note complies with this Part.

(h) State Pledge. — The State pledges to the holder of a bond or note issued under this Part that, as long as the bond or note is outstanding and unpaid, the State will not limit or alter the power the Authority had when the bond or note was issued in a way that impairs the ability of the Authority to produce revenues sufficient with other available funds to do all of the following:

(1) Maintain and operate the facility for which the bond or note was issued.
(2) Pay the principal of, interest on, and redemption premium, if any, of the bond or note.
(3) Fulfill the terms of an agreement with the holder.

The State further pledges to the holder of a bond or note issued under this Part that the State will not impair the rights and remedies of the holder concerning the bond or note.

(i) Investment Securities. — All bonds and notes and interest coupons, if any, issued under this Part are made investment securities within the meaning of and for all the purposes of Article 8 of the Uniform Commercial Code, as enacted in Chapter 25 of the General Statutes.

(j) Details of Bonds or Notes. — In fixing the details of bonds or notes, the Authority may provide that the bonds or notes may:

(1) Be payable from time to time on demand or tender for purchase by the owner of the bond or note if a credit facility supports the bond or note, unless the Local Government Commission specifically determines that a credit facility is not required because the absence of a credit facility will not materially and adversely affect the financial position of the Authority and the marketing of the bonds or notes at a reasonable interest cost to the Authority.
(2) Be additionally supported by a credit facility.
(3) Be made subject to redemption or a mandatory tender for purchase prior to maturity.
(4) Be capital appreciation bonds.

(5) Bear interest at a rate or rates that may vary, including variations permitted pursuant to a par formula.
(6) Be made the subject of a remarketing agreement whereby an attempt is made to remarket the bonds or notes to new purchasers prior to their presentment for payment to the provider of the credit facility or to the Authority.

(k) Basis of Investment. — In connection with or incidental to the acquisition or carrying of any investment relating to bonds, program of investment relating to bonds, or carrying of bonds, the Authority may, with the approval of the Local Government Commission, enter into a contract to place the investment or obligation of the Authority, as represented by the bonds, investment, or program of investment and the contract or contracts, in whole or in part, on an interest rate, currency, cash flow, or other basis, including the following:
(1) Interest rate swap agreements, currency swap agreements, insurance agreements, forward payment conversion agreements, and futures.
(2) Contracts providing for payments based on levels of, or changes in, interest rates, currency exchange rates, or stock or other indices.
(3) Contracts to exchange cash flows or a series of payments.
(4) Contracts to hedge payment, currency, rate, spread, or similar exposure, including interest rate floors or caps, options, puts, and calls.

The Authority may enter a contract of this type in connection with, or incidental to, entering into or maintaining any agreement that secures bonds. A contract shall contain the payment, security, term, default, remedy, and other terms and conditions the Board considers appropriate. The Authority may enter a contract of this type with any person after giving due consideration, where applicable, of the person's creditworthiness as determined by a rating by a nationally recognized rating agency or any other criteria the Board considers appropriate. In connection with, or incidental to, the issuance or carrying of bonds, or the entering of any contract described in this subsection, the Authority may enter into credit enhancement or liquidity agreements, with payment, interest rate, termination date, currency, security, default, remedy, and other terms and conditions as the Authority determines. Proceeds of bonds and any moneys set aside and pledged to secure payment of bonds or any of the contracts entered into under this subsection may be pledged to and used to service any of the contracts entered into under this section. (1995, c. 458, s. 1; 1997-68, s. 2.)

§ 160A-480.9. Trust agreement or resolution.

In the discretion of the Authority, any bonds or notes issued under this Part may be secured by a trust instrument between the Authority and a bank or trust company or individual within the State, or a bank or a trust company outside the State, as trustee. The trust instrument or the resolution of the Authority authorizing the issuance of bonds or notes may pledge and assign all or any part of the revenues, funds, and other property provided for the security of the bonds, including proceeds from the sale of any project, or part thereof, insurance proceeds, and condemnation awards, and may convey or mortgage property to secure a bond issue as provided in this Part.

The revenues and other funds derived from the project, except any part thereof that may be necessary to provide reserves therefor, if any, shall be set aside at regular intervals as may be provided in the resolution or trust instrument in a sinking fund which may be thereby pledged to, and charged with, the payment of the principal of and the interest on the bonds or notes as they become due and of the redemption price or the purchase price of bonds retired by call or purchase as therein provided. This pledge shall be valid and binding from the time the pledge is made. The revenues so pledged and thereafter received by the Authority shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act, and the lien of the pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the Authority, irrespective of whether the parties have notice of the pledge. The use and disposition of money to the credit of such sinking fund shall be subject to the provisions of the resolution or trust instrument. The resolution or trust instrument may contain provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including, without limitation, any one or more of the following:

(1) Acceleration of all amounts payable under the resolution or trust instrument.
(2) Appointment of a receiver to manage the project and any other property mortgaged or assigned as security for the bonds.
(3) Foreclosure and sale of the project and any other property mortgaged or assigned as security for the bonds.
(4) Rights to bring and maintain other actions at law or in equity as may appear necessary or desirable to collect the amounts payable under, or to enforce the covenants made in, the security document.

It shall be lawful for any bank or trust company incorporated under the laws of this State which may act as depository of the proceeds of bonds, revenues, or other funds provided under this Part to furnish such indemnifying bonds or to pledge such securities as may be required by the Authority. All expenses incurred in carrying out the provisions of the resolution or trust instrument may be treated as a part of the cost of the project in connection with which bonds or notes are issued or as an expense of administration of the project.

The Authority may subordinate bonds or notes to any prior, contemporaneous, or future securities or obligations or lien, mortgage, or other security interest securing bonds or notes.

Any owner of bonds or notes issued under the provisions of this Part or any coupons appertaining thereto, and the trustee under any trust agreement securing or resolution authorizing the issuance of such bonds or notes, except to the extent the rights given may be restricted by the trust agreement or resolution, may either at law or in equity, by suit, action, mandamus, or other proceeding, protect and enforce any and all rights under the laws of the State or granted hereunder or under the trust agreement or resolution, or under any other contract executed by the Authority pursuant to this Chapter; and may enforce and compel the performance of all duties required by this Part or by the trust agreement or resolution by the Authority or by any officer of the Authority. (1995, c. 458, s. 1.)

§ 160A-480.10. Trust funds.

Notwithstanding any other provision of law to the contrary, all money received pursuant to the authority of this Part, whether as proceeds from the sale of bonds or notes or as revenues, shall be deemed to be trust funds to be held and applied solely as provided in this Part. The resolution authorizing the issuance of, or the trust agreement securing, any bonds or notes may provide that any of these moneys may be temporarily invested and reinvested pending their disbursement and shall provide that any officer with whom, or any bank or trust company with which, the moneys shall be deposited shall act as trustee of the moneys and shall hold and apply the moneys for the purpose hereof, subject to any regulations this Part and the resolution or trust agreement may provide. Any of these moneys may be invested as provided in G.S. 159-30, as it may be amended from time to time. (1995, c. 458, s. 1.)

§ 160A-480.11. Faith and credit of State and units of local government not pledged.

Bonds or notes issued under this Part shall not constitute a debt secured by a pledge of the faith and credit of the State or a political subdivision of the State and shall be payable solely from the revenues, property, and other funds pledged for their payment. The bonds or notes issued by an Authority shall contain a statement that the Authority is obligated to pay the bond or note or the interest on the bond or note only from the revenues, property, or other funds pledged for their payment and that neither the faith and credit nor the taxing power of the State or any political subdivision of the State is pledged as security for the payment of the principal of or the interest or premium on the bonds or notes. (1995, c. 458, s. 1.)

§ 160A-480.12. Revenue refunding bonds.

The Authority may issue refunding bonds or notes for one or more of the following purposes:

(1) Refunding any outstanding bonds or notes issued under this Part, including any redemption premium on the bonds or notes and any interest accrued or to accrue to the date of redemption.
(2) Constructing improvements, additions, extensions or enlargements of the project, or projects in connection with which the bonds or notes to be refunded have been issued.
(3) Paying all or any part of the cost of any additional project or projects.

Refunding bonds or notes shall be issued in accordance with the same procedures and requirements as bonds or notes. Refunding bonds issued under this section may be sold or exchanged for outstanding bonds or notes issued under this Part and, if sold, the proceeds of the refunding bonds may be applied, in addition to any authorized purposes, to the purchase, redemption, or payment of outstanding bonds or notes.

Pending the application of the proceeds of refunding bonds, with any other available funds, to the payment of the principal of and accrued interest and any redemption premium on the bonds or notes being refunded, and, if so provided or permitted in securing the same, to the payment of any interest on such refunding bonds and any expenses in connection with such refunding, such proceeds may be invested in direct obligations of, or obligations the principal of and the interest on which are unconditionally guaranteed by, the United States of America which shall mature or which shall be subject to redemption by the holder thereof, at the option of such holder, not later than the respective dates when the proceeds, together with the interest accruing thereon, will be required for the purposes intended. (1995, c. 458, s. 1.)

§ 160A-480.13. Bonds eligible for investment.

Bonds and notes issued under this Part are hereby made securities in which all public officers, agencies, and public bodies of the State and its political subdivisions, all insurance companies, trust companies, investment companies, banks, savings banks, building and loan associations, credit unions, pension or retirement funds, other financial institutions engaged in business in the State, executors, administrators, trustees, and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. These bonds or notes are hereby made securities that may properly and legally be deposited with and received by any officer or agency of the State or political subdivision of the State for any purpose for which the deposit of bonds, notes, or obligations of the State or any political subdivision of the State is authorized by law. This section does not apply to any State pension or retirement fund or a pension or retirement fund of a political subdivision of the State. (1995, c. 458, s. 1.)

§ 160A-480.14. Taxation of revenue bonds.

Any bonds and notes issued by the Authority under the provisions of this Part shall be exempt from all State, county, and municipal taxation or assessment, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, excluding inheritance and gift taxes, income taxes on the gain from the transfer of bonds and notes, and franchise taxes. The interest on bonds and notes issued by an Authority under the provisions of this Part shall not be subject to taxation as to income. (1995, c. 458, s. 1.)

§ 160A-480.15. Members and officers not liable.

No member or officer of an Authority shall be subject to any personal liability or accountability by reason of the execution of any bonds or notes or the issuance of any bonds or notes. (1995, c. 458, s. 1.)

§§ 160A-481 through 160A-484: Reserved for future codification purposes.

Article 21.

Miscellaneous.

§ 160A-485. Waiver of immunity through insurance purchase.

(a) Any city is authorized to waive its immunity from civil liability in tort by the act of purchasing liability insurance. Participation in a local government risk pool pursuant to Article 23 of General Statute Chapter 58 shall be deemed to be the purchase of insurance for the purposes of this section. Immunity shall be waived only to the extent that the city is indemnified by the insurance contract from tort liability. No formal action other than the purchase of liability insurance shall be required to waive tort immunity, and no city shall be deemed to have waived its tort immunity by any action other than the purchase of liability insurance. If a city uses a funded reserve instead of purchasing insurance against liability for wrongful death, negligence, or intentional damage to personal property, or absolute liability for damage to person or property caused by an act or omission of the city or any of its officers, agents, or employees acting within the scope of their authority and the course of their employment, the city council may adopt a resolution that deems the creation of a funded reserve to be the same as the purchase of insurance under this section. Adoption of such a resolution waives the city's governmental immunity only to the extent specified in the council's resolution, but in no event greater than funds available in the funded reserve for the payment of claims.

(b) An insurance contract purchased pursuant to this section may cover such torts and such officials, employees, and agents of the city as the governing board may determine. The city may purchase one or more insurance contracts, each covering different torts or different officials, employees, or agents of the city. An insurer who issues a contract of insurance to a city pursuant to this section thereby waives any defense based upon the governmental immunity of the city, and any defense based upon lack of authority for the city to enter into the contract. Each city is authorized to pay the lawful premiums for insurance purchased pursuant to this section.

(c) Any plaintiff may maintain a tort claim against a city insured under this section in any court of competent jurisdiction. As to any such claim, to the extent that the city is insured against such claim pursuant to this section, governmental immunity shall be no defense. Except as expressly provided herein, nothing in this section shall be construed to deprive any city of any defense to any tort claim lodged against it, or to restrict, limit, or otherwise affect any defense that the city may have at common law or by virtue of any statute. Nothing in this section shall relieve a plaintiff from any duty to give notice of his claim to the city, or to commence his action within the applicable period of time limited by statute. No judgment may be entered against a city in excess of its insurance policy limits on any tort claim for which it would have been immune but for the purchase of liability insurance pursuant to this section. No judgment may be entered against a city on any tort claim for which it would have been immune but for the purchase of liability insurance pursuant to this section except a claim arising at a time when the city is insured under an insurance contract purchased and issued pursuant to this section. If, in the trial of any tort claim against a city for which it would have been immune but for the purchase of liability insurance pursuant to this section, a verdict is returned awarding damages to the plaintiff in excess of the insurance limits, the presiding judge shall reduce the award to the maximum policy limits before entering judgment.

(d) Except as otherwise provided in this section, tort claims against a city shall be governed by the North Carolina Rules of Civil Procedure. No document or exhibit which relates to or alleges facts as to the city's insurance against liability shall be read, exhibited, or mentioned in the presence of the trial jury in the trial of any claim brought pursuant to this section, nor shall the plaintiff, his counsel, or anyone testifying in his behalf directly or indirectly convey to the jury any inference that the city's potential liability is covered by insurance. No judgment may be entered against the city unless the plaintiff waives his right to a jury trial on all issues of law or fact relating to insurance coverage. All issues relating to insurance coverage shall be heard and determined by the judge without resort to a jury. The jury shall be absent during all motions, arguments, testimony, or announcement of findings of fact or conclusions of law with respect to insurance coverage. The city may waive its right to have issues concerning insurance coverage determined by the judge without a jury, and may request a jury trial on these issues.

(e) Nothing in this section shall apply to any claim in tort against a city for which the city is not immune from liability under the statutes or common law of this State. (1951, c. 1015, ss. 1-5; 1971, c. 698, s. 1; 1975, c. 723; 1985 (Reg. Sess., 1986), c. 1027, s. 27; 2003-175, s. 1.)

Cross References. — For provision that no local act, including city charters, shall require notice to a local unit of government of any claim against it and prohibit suit if such notice is not given, see G.S. 1-539.16.

Editor's Note. — The Rules of Civil Procedure, referred to in this section, are found in G.S. 1A-1.

Session Laws 2003-175, s. 3, provides: "Section 1 of Chapter 980 of the 1988 Session Laws and Section 2 of S.L. 1998-200, as amended by S.L. 2002-79, are repealed, but any resolution adopted under those sections and still effective on the effective date of this act shall continue to be valid as if they were adopted under G.S. 153A-435(a) or G.S. 160A-485(a) as amended by this act."

Legal Periodicals. — For article, "Statutory Waiver of Municipal Immunity upon Purchase of Liability Insurance in North Carolina and the Municipal Liability Crisis," see 4 Campbell L. Rev. 41 (1981).

For survey of 1981 tort law, see 60 N.C.L. Rev. 1465 (1982).

For comment on the need for reform in North Carolina of local government sovereign immunity, see 18 Wake Forest L. Rev. 43 (1982).

For note, "North Carolina's New AIDS Discrimination Protection: Who Do They Think They're Fooling?", see 12 Campbell L. Rev. 475 (1990).

For comment, "Waiving Local Government Immunity in North Carolina: Risk Management Programs Are Insurance," see 27 Wake Forest L. Rev. 709 (1992).

For note, "Municipal Liability for Negligent Inspections in Sinning v. Clark — A 'Hollow' Victory for the Public Duty Doctrine," see 18 Campbell L. Rev. 241 (1996).

For survey of 1996 developments in tort law, see 75 N.C.L. Rev. 2468 (1997).

For note, "Searching for Limits on a Municipality's Retention of Governmental Immunity," see 76 N.C.L. Rev. 269 (1997).

For comment, "'Inevitable Inequities:' The Public Duty Doctrine and Sovereign Immunity in North Carolina," see 28 Campbell L. Rev. 271 (2006).

CASE NOTES

Editor's Note. — *Many of the cases cited below were decided under former G.S. 160-191.1 to 160-191.5.*

Misleading Internal Reference. — The reference to Article 39 of Chapter 58, which formerly appeared in subsection (a) of this section, should refer to Article 23 of Chapter 58. Blackwelder v. City of Winston-Salem, 332 N.C. 319, 420 S.E.2d 432 (1992).

Statutory Intent. — This statute was not meant to abrogate any statutory defenses available to a municipality. Askew Kawasaki, Inc. v. City of Elizabeth City, 124 N.C. App. 453, 477 S.E.2d 85 (1996).

Municipality's Immunity Under Common-Law Rule. — Prior to legislative enactment of these provisions, the common-law rule of governmental immunity prevailed in North Carolina. Under this common-law rule a municipality was not liable for the torts of its employees or agents committed while performing a governmental function. Galligan v. Town of Chapel Hill, 276 N.C. 172, 171 S.E.2d 427 (1970); Town of Hillsborough v. Smith, 10 N.C. App. 70, 178 S.E.2d 18 (1970), cert. denied, 277 N.C. 727, 178 S.E.2d 831 (1971).

Except where waived under authority of statute, the common-law rule of governmental immunity is still the law in North Carolina. Town of Hillsborough v. Smith, 10 N.C. App. 70, 178 S.E.2d 18 (1970), cert. denied, 277 N.C. 727, 178 S.E.2d 831 (1971).

In the absence of statutory authority, a municipality has no power to waive its governmental immunity. Galligan v. Town of Chapel Hill, 276 N.C. 172, 171 S.E.2d 427 (1970).

A municipal corporation may not waive or contract away its governmental immunity in the absence of legislative authority for such action. Town of Hillsborough v. Smith, 10 N.C. App. 70, 178 S.E.2d 18 (1970), cert. denied, 277 N.C. 727, 178 S.E.2d 831 (1971).

Waiver to the Extent of Coverage. — A municipality may waive governmental immunity by the purchase of liability insurance to the extent that the city or town is indemnified by the insurance contract from liability for the acts alleged. Davis v. Messer, 119 N.C. App. 44, 457 S.E.2d 902 (1995), overruled on other grounds, Willis v. Town of Beaufort, 544 S.E.2d 600 (N.C. Ct. App. 2001).

To the extent a city does not purchase liability insurance or participate in a local government risk, a city generally retains immunity from civil liability in tort. Young v. Woodall, 119 N.C. App. 132, 458 S.E.2d 225 (1995), rev'd on other grounds, 343 N.C. 459, 471 S.E.2d 357 (1996).

Defendant town which purchased insurance covering itself and its agents, was deemed to have waived its governmental immunity defense to the extent of its coverage. Willis v. Town of Beaufort, 143 N.C. App. 106, 544 S.E.2d 600, 2001 N.C. App. LEXIS 227 (2001).

Waiver as Applied to Agent of Governmental Entity Which Purchased Insurance. — To the extent that defendant town waived its immunity through the purchase of liability insurance, defendant town, and defendant police officer, as sued in his official capacity, were not immune from suit for officer's alleged negligent acts, and summary judgment was properly denied for such claims. Thompson v. Town of Dallas, 142 N.C. App. 651, 543 S.E.2d 901, 2001 N.C. App. LEXIS 191 (2001).

Modification of Immunity as Function of Legislature. — Although the doctrine of sovereign immunity was first adopted in North Carolina by the Supreme Court, this judicial doctrine is firmly established in law today, and by legislation has been recognized by the General Assembly as the public policy of the State. Any further modification or the repeal of the doctrine should come from the General Assembly, not the Supreme Court. Steelman v. City of New Bern, 279 N.C. 589, 184 S.E.2d 239 (1971).

Any change in the doctrine of governmental immunity should come from the General Assembly. Blackwelder v. City of Winston-Salem, 332 N.C. 319, 420 S.E.2d 432 (1992).

This Section Creates Exception to Common-Law Sovereign Immunity. — Under the common law, a municipality is immune from liability for the torts of its officers committed while they were performing a governmental function. However, this section establishes an exception to the common-law rule: Any city is authorized to waive its immunity from civil liability in tort by the act of purchasing liability insurance. Herndon v. Barrett, 101 N.C. App. 636, 400 S.E.2d 767 (1991).

Existence of Immunity Prerequisite for Waiver. — Municipalities in North Carolina have never been immune from civil liability for negligence based upon the failing to keep its streets free of unnecessary obstructions, as in untrimmed shrubs and bushes that obstructed the view of motorists using the streets involved; therefore, in the case at bar, insofar as this case is concerned defendant had no immunity to waive and the insolvency of its insurer did not affect its liability. McDonald v. Village of Pinehurst, 91 N.C. App. 633, 372 S.E.2d 733 (1988).

Public Duty Doctrine Did Not Shield a City Engaged in an Ultrahazardous Activity. — The plaintiff stated a claim upon which relief could be granted when he alleged that defendant/city was strictly liable for the injuries which he sustained as a result of defendants' use of dynamite, an ultrahazardous activity. The public duty doctrine did not shield the city from liability for this claim because the protection afforded by the public duty doctrine does not extend to local governmental agencies other than law enforcement agencies engaged in their general duty to protect the public. Hargrove v. Billings & Garrett, Inc., 137 N.C. App. 759, 529 S.E.2d 693, 2000 N.C. App. LEXIS 535 (2000).

Methods of Waiver. — City may waive governmental immunity by the purchase of liability insurance or by joining a local government risk pool. Young v. Woodall, 119 N.C. App. 132, 458 S.E.2d 225 (1995), rev'd on other grounds, 343 N.C. 459, 471 S.E.2d 357 (1996).

This statute explicitly equates participation in a local government risk pool with the purchase of insurance for the purposes of a city's immunity from liability. Lyles v. City of Charlotte, 120 N.C. App. 96, 461 S.E.2d 347 (1995).

Settlement of Claims Does Not Cause Waiver. — Trial court decision denying JNOV to a city, one of its police officers, and its police department was reversed on appeal, because the plaintiff, an arrestee injured in a squad car, failed to prove gross negligence and only showed simple negligence by evidence that the police officer drove 30 to 35 miles above the legal speed limit although he knew that plaintiff was not wearing a seat belt and had to brake suddenly to avoid a collision causing plaintiff to propel into the metal screen in the squad car. City also did not waive governmental immunity by its voluntary settlement with plaintiff since the city had a liability policy and none of the conditions of waiver, as provided by G.S. 160A-485(a), were met. Clayton v. Branson, 170 N.C. App. 438, 613 S.E.2d 259, 2005 N.C. App. LEXIS 1070 (2005), cert. denied, — N.C. —, 625 S.E.2d 785 (2005).

City Engaging in Proprietary Function Not Immune. — City which operated a natural gas supply utility was engaged in a proprietary function and, therefore, was not immune from liability for any torts which were proximately caused by it in providing this service. Gregory v. City of Kings Mt., 117 N.C. App. 99, 450 S.E.2d 349 (1994).

Waiver of Immunity by Local Agency. — Since cities and counties can waive their immunity by purchasing liability insurance, local agencies of the state such as a county ABC Board can likewise waive their immunity by purchasing such insurance. McNeill v. Durham County ABC Bd., 87 N.C. App. 50, 359 S.E.2d 500 (1987), modified on other grounds, 322 N.C. 425, 368 S.E.2d 619, rehearing denied, 322 N.C. 838, 371 S.E.2d 278 (1988).

Immunity Not Waived Without Purchase of Insurance. — In the operation of a chemical fogging machine on a street or highway for the purpose of destroying insects, a municipality acts in a governmental capacity in the interest of the public health, and it may not be held liable in tort for injuries resulting therefrom unless it waives its immunity by procuring liability insurance, even though the operation of the machine renders a street or highway hazardous to traffic, since the exception to governmental immunity in failing to keep its streets in a reasonable safe condition relates solely to the maintenance and repair of its streets. Clark v. Scheld, 253 N.C. 732, 117 S.E.2d 838 (1961).

This section provides that the only way a city may waive its governmental immunity is by the purchase of liability insurance. Action by the city under G.S. 160A-167 does not waive immunity. Blackwelder v. City of Winston-Salem, 332 N.C. 319, 420 S.E.2d 432 (1992).

Waiver of Immunity with Purchase of Insurance. — Where a municipal corporation procured liability insurance on a vehicle used in the operation of a chemical fogging machine, it waived its governmental immunity for the negligent operation of the vehicle to the extent of the amount of the liability insurance. White v. Mote, 270 N.C. 544, 155 S.E.2d 75 (1967).

In the absence of some affirmative action by a municipality, the purchase of liability insurance will constitute a waiver of its governmental immunity to the extent of the insurance policy so obtained. Galligan v. Town of Chapel Hill, 276 N.C. 172, 171 S.E.2d 427 (1970).

A city waives its immunity from civil liability in tort by purchasing liability insurance. However, immunity is waived only to the extent that the city is indemnified by the insurance contract. Gordon v. Hartford Accident & Indem.

Co., 576 F. Supp. 203 (W.D.N.C. 1983), aff'd, 740 F.2d 961 (4th Cir. 1984).

Where plaintiffs sufficiently alleged waiver of governmental immunity by alleging that defendants maintained liability insurance, the trial court did not err in denying defendants motion to dismiss. Anderson ex rel. Jerome v. Town of Andrews, 127 N.C. App. 599, 492 S.E.2d 385 (1997).

Partial Immunity. — Where city was indemnified for claims in excess of $500,000 through its participation in a local government risk pool any claims for less than that amount were not indemnified because there was a $500,000 deductible for which the city was solely responsibile. Therefore, for claims of $500,000 or less the city retained its immunity. Wall v. City of Raleigh, 121 N.C. App. 351, 465 S.E.2d 551 (1996).

Waiver of Immunity When Engaging in Governmental Function. — Where a municipality engages in a governmental function, governmental immunity is applicable, and a city may waive its immunity from civil tort liability by purchasing liability insurance. Gregory v. City of Kings Mt., 117 N.C. App. 99, 450 S.E.2d 349 (1994).

Waiver of Immunity Does Not Extend to Punitive Damages. — In an action in which a photojournalist asserted claims for false arrest and assault and battery, a city was immune from state law claims for punitive damages because there existed a limited waiver of governmental immunity found in G.S. 160A-485 after a municipality purchased liability insurance did not extend to punitive damages. Harrison v. Chalmers, 551 F. Supp. 2d 432, 2008 U.S. Dist. LEXIS 38218 (M.D.N.C. Mar. 7, 2008).

Housing authority provided a governmental function and was entitled to rely on doctrine of governmental immunity as it related to a personal injury suit brought against it; G.S. 160A-485(a) did not control whether or not the housing authority had legal capacity to waive its immunity by buying insurance, but authority could have accepted liability to the extent of insurance purchased, and the case was therefore remanded since the appellate court was unable to discern whether the trial court's denial of the housing authority's motion to dismiss was premised upon the housing authority's insurance coverage. Evans v. Hous. Auth., 359 N.C. 50, 602 S.E.2d 668, 2004 N.C. LEXIS 1125 (2004).

Requirement That Risk Shift. — By forming and operating a risk acceptance management corporation the city has not purchased liability insurance, which is the only way, other than by joining a risk pool, that it can waive governmental immunity. Blackwelder v. City of Winston-Salem, 332 N.C. 319, 420 S.E.2d 432 (1992).

Local Government Risk Pool May Exist as to Some Damages While Not to Others. — The City along with two police officers in their official capacities were entitled to partial summary judgment on the grounds of governmental immunity for damages of $ 600,000 or less, and for damages greater than $ 7,000,000 where the City was insured above $ 7,000.000 and where the plaintiff, mistaken for a hit-and-run car operator, failed to show that a fund in which the City participated constituted a local government risk pool. Schlossberg v. Goins, 141 N.C. App. 436, 540 S.E.2d 49, 2000 N.C. App. LEXIS 1296 (2000).

City's Individual Operation of Risk Acceptance Management Corporation Did Not Constitute Risk Pool. — Where the city did not join with any other local government unit in the operation of risk acceptance management corporation, it was not participating in a risk pool. Blackwelder v. City of Winston-Salem, 332 N.C. 319, 420 S.E.2d 432 (1992).

And Its Government Immunity Was Not Waived. — City, by organizing risk acceptance management corporation, for the payment of tort claims of $1,000,000 or less against the city, did not waive its governmental immunity for those claims. Blackwelder v. City of Winston-Salem, 332 N.C. 319, 420 S.E.2d 432 (1992).

Summary judgment evidence showed a city did not waive its sovereign immunity, under G.S. 160A-485(a), by purchasing liability insurance or by participating in a local government risk pool, because the city's affidavit stated it had no liability insurance policy in effect at the relevant time, and it was not alleged the city participated in a local government risk pool. Wilkerson v. Norfolk S. Ry., 151 N.C. App. 332, 566 S.E.2d 104, 2002 N.C. App. LEXIS 744 (2002).

New Resolution Against Waiver of Immunity Not Required Each Time Liability Insurance Acquired or Renewed. — To require a town to adopt a new resolution against waiver of immunity each time it renews a liability insurance policy or acquires a new liability policy would place an unnecessary and useless burden upon the town and impose a condition not provided for in former G.S. 160-191.1 nor contemplated by the General Assembly. Galligan v. Town of Chapel Hill, 276 N.C. 172, 171 S.E.2d 427 (1970).

A waiver of governmental immunity does not create a cause of action, etc. where none previously existed. Coleman v. Cooper, 89 N.C. App. 188, 366 S.E.2d 2, cert. denied, 322 N.C. 834, 371 S.E.2d 275 (1988).

Where the public duty doctrine precluded plaintiff from producing an essential element of her negligence claim, i.e., that plaintiff was owed a duty by the defendant/city, the city's purchase of liability insurance did not create a cause of action where none previously existed. Cucina v. City of Jacksonville, 2000 N.C. App. LEXIS 310 (N.C. App. Apr. 4, 2000).

A city, while performing a governmental function in the maintenance of a sewer system within its municipal jurisdiction, may not be held liable for any damage arising out of the governmental activity unless it expressly waives its immunity pursuant to this section. Roach v. City of Lenoir, 44 N.C. App. 608, 261 S.E.2d 299 (1980).

Risk Management Corporation. — City did not waive its immunity by organizing a corporation, Risk Management Corporation ("RAMCO"), for the purpose of handling liability claims of $1,000,000.00 or less against the city. Hickman ex rel. Womble v. Fuqua, 108 N.C. App. 80, 422 S.E.2d 449 (1992), cert. denied, 333 N.C. 462, 427 S.E.2d 621 (1993).

Free Sports Instruction. — When a municipality provides free sports instruction, it is acting in a governmental capacity. Hickman ex rel. Womble v. Fuqua, 108 N.C. App. 80, 422 S.E.2d 449 (1992), cert. denied, 333 N.C. 462, 427 S.E.2d 621 (1993).

Extent of Immunity Under Former Law. — Prior to the 1975 amendment, a waiver was authorized only in actions involving the operation of motor vehicles. The waiver did not cover maintenance of playground equipment. Rich v. City of Goldsboro, 282 N.C. 383, 192 S.E.2d 824 (1972).

Former G.S. 160-191.1 did not authorize or empower a municipality to waive its governmental immunity for injuries to a person proximately caused by its operation of a public library. Seibold v. City of Kinston, 268 N.C. 615, 151 S.E.2d 654 (1966).

Municipal Corporation Held Unable to Avoid Liability Under Former Provisions. — If a municipal corporation, having secured liability insurance, injured plaintiff by actionable negligence in the operation of its truck and fogging machine in exercising its legal right to destroy mosquitoes, it could not completely avoid liability to him by reason of the provisions of former G.S. 160-191.1 to 160-191.5. Moore v. Town of Plymouth, 249 N.C. 423, 106 S.E.2d 695 (1959).

Murder of Child Abuse Victims by Father After His Indictment. — Where police officer knew of prior acts of violence committed by father towards child victims, but the children had indicated to him that they were not afraid of their father, and the record was devoid of any evidence which would tend to show that officer ever told plaintiff or her intestates that any kind of protection would be afforded them or that there was any special relationship between the police and plaintiff's intestates, the only connection between the officer and the two young victims being that which arose as a result of the officer's interviews prior to their father's indictment for sexually abusing them, there was no duty on the part of the police department which would give rise to liability involving the city when the father murdered the children. Coleman v. Cooper, 89 N.C. App. 188, 366 S.E.2d 2, cert. denied, 322 N.C. 834, 371 S.E.2d 275 (1988).

In action for defamatory statements allegedly made by police officers, any claim by plaintiff against defendant city was barred by governmental immunity, because defendant city's liability insurance did not cover claims based on the malicious conduct of defendant city's law enforcement employees. However, the individual defendants did not have the benefit of governmental immunity under the circumstances. Shuping v. Barber, 89 N.C. App. 242, 365 S.E.2d 712 (1988).

Insolvency of Insurer Does Not Negate Waiver. — To hold that a waiver of immunity is negated within the meaning of this section by the insured's carrier becoming insolvent would, for no sensible reason, deprive worthy claimants of the legal redress and insurance purchasing municipalities of the indemnification that the statute was enacted to provide. McDonald v. Village of Pinehurst, 91 N.C. App. 633, 372 S.E.2d 733 (1988).

If there had been a waiver under this section it would not have been negated by the insolvency of municipality's insurance carrier, even though by purchasing liability insurance a municipality waives its immunity only to the extent that it is "indemnified by the insurance contract from tort liability," since in this State, behind every licensed liability insurance company that becomes insolvent is an agency created by G.S. 58-48-25 that to some extent and under certain conditions, takes over the insolvent's obligations to indemnify its insureds by paying legally entitled claimants. McDonald v. Village of Pinehurst, 91 N.C. App. 633, 372 S.E.2d 733 (1988).

Allegations of Waiver Required. — If plaintiff does not allege a waiver of immunity by the purchase of insurance, the plaintiff has failed to state a claim against governmental unit or officer or employee. Morrison-Tiffin v. Hampton, 117 N.C. App. 494, 451 S.E.2d 650, appeal dismissed and cert. denied, 339 N.C. 739, 454 S.E.2d 654 (1995).

The purchase of liability insurance must be alleged in order for a complaint to set forth a claim against a governmental entity or its officers or employees in their official capacities. Houpe v. City of Statesville, 128 N.C. App. 334, 497 S.E.2d 82 (1998), cert. denied, 348 N.C. 72, 505 S.E.2d 871 (1998).

Defendant/town and its employee were entitled to immunity from plaintiffs' suit for negligence where woman, who was injured by a garbage truck, and her husband failed to allege the waiver of liability through the purchase of insurance, and the pleadings failed to state clearly in which capacity, individually or officially, the employee was being sued. Reid v. Town of Madison, 137 N.C. App. 168, 527 S.E.2d 87, 2000 N.C. App. LEXIS 260 (2000).

Superior Court Jurisdiction. — Where sovereign immunity is waived by the purchase of liability insurance, subject matter jurisdiction is statutorily vested in the superior court. Meyer v. Walls, 122 N.C. App. 507, 471 S.E.2d 422 (1996), aff'd in part and rev'd in part, 347 N.C. 97, 489 S.E.2d 880 (1997).

Governmental Immunity Not for Public Officer. — Where a municipality waived its sovereign immunity by purchasing liability insurance, public officers were not entitled to the defense of governmental immunity, at least as to the extent of coverage purchased by the municipality. Moore v. Evans, 124 N.C. App. 35, 476 S.E.2d 415 (1996).

Illustrative Cases. — Plaintiffs' allegation that town had valid and enforceable liability insurance covering the full dollar amount of claims asserted against it was sufficient to withstand the defense of governmental immunity. Davis v. Messer, 119 N.C. App. 44, 457 S.E.2d 902 (1995), overruled on other grounds, Willis v. Town of Beaufort, 544 S.E.2d 600 (N.C. Ct. App. 2001).

Where city was a participant in a local government risk pool on the date of employee's death it thereby waived the right to assert governmental immunity in bar to plaintiff's claim. Lyles v. City of Charlotte, 120 N.C. App. 96, 461 S.E.2d 347 (1995).

When police officer's horse stepped on plaintiff's foot, and the officer was assigned to patrol fair in her capacity as a member of the Special Operations Division, Mounted Patrol Unit, and was responding to a fellow officer's radio call for assistance, the city and officer, in her official capacity, were immune from suit under the doctrine of governmental immunity for damages of $250,000 or less; however, to the extent plaintiff's claim exceeded $250,000, the city and officer were not entitled to the defense of governmental immunity. Jones v. Kearns, 120 N.C. App. 301, 462 S.E.2d 245 (1995).

The city did not waive governmental immunity by participating in a local government risk pool because the "Fund" in which the city participated: (1) failed to cover the plaintiffs' claims, (2) required reimbursement, (3) two members of the fund were not "local governments," (4) no notice was given to the commissioner of insurance that the participating entities intended to organize and operate a risk pool pursuant to statute, and (5) the "Fund" did not contain a provision for a system or program of loss control as required by G.S. 58-23-5. Dobrowolska v. Wall, 138 N.C. App. 1, 530 S.E.2d 590, 2000 N.C. App. LEXIS 539 (2000).

City did not waive its governmental immunity to plaintiffs' negligence claim through its purchase of excess liability insurance because the excess liability insurance did not apply unless and until the city had a legal obligation to pay the $3 million self-insured amount. Pettiford v. City of Greensboro, 556 F. Supp. 2d 512, 2008 U.S. Dist. LEXIS 43157 (M.D.N.C. 2008).

City did not waive its governmental immunity to plaintiffs' negligence claim through its participation in a local government excess liability fund because the fund failed to meet the statutory requirements of a local government risk pool; two members of the fund were not local governments, no notice was given to the Commissioner of Insurance that the participating entities intended to organize and operate a risk pool, the fund did not contain a provision for a system or program of loss control, and the city had to repay the entire amount for claims between $100,000 and $3 million. Pettiford v. City of Greensboro, 556 F. Supp. 2d 512, 2008 U.S. Dist. LEXIS 43157 (M.D.N.C. 2008).

Applied in Fowler v. Valencourt, 108 N.C. App. 106, 423 S.E.2d 785 (1992); Barnett v. Karpinos, 119 N.C. App. 719, 460 S.E.2d 208 (1995); Stafford v. Baker, 129 N.C. App. 576, 502 S.E.2d 1 (1998); Spruill v. Lake Phelps Volunteer Fire Dep't, Inc., 132 N.C. App. 104, 510 S.E.2d 405 (1999); Dash v. Walton, — F. Supp. 2d —, 2002 U.S. Dist. LEXIS 19545 (M.D.N.C. May 17, 2002).

Cited in Edwards v. Akion, 52 N.C. App. 688, 279 S.E.2d 894 (1981); Wiggins v. City of Monroe, 73 N.C. App. 44, 326 S.E.2d 39 (1985); Jackson v. Housing Auth., 316 N.C. 259, 341 S.E.2d 523 (1986); Lynn v. Overlook Dev., 98 N.C. App. 75, 389 S.E.2d 609 (1990); Lonon v. Talbert, 103 N.C. App. 686, 407 S.E.2d 276 (1991); Combs v. Town of Belhaven, 106 N.C. App. 71, 415 S.E.2d 91 (1992); Taylor v. Ashburn, 112 N.C. App. 604, 436 S.E.2d 276 (1993); Mullins v. Friend, 116 N.C. App. 676, 449 S.E.2d 227 (1994); Wilhelm v. City of Fayetteville, 121 N.C. App. 87, 464 S.E.2d 299 (1995); White v. Town of Chapel Hill, 899 F. Supp. 1428 (M.D.N.C. 1995); Lyles v. City of Charlotte, 344 N.C. 676, 477 S.E.2d 150 (1996); Young v. Woodall, 343 N.C. 459, 471 S.E.2d 357 (1996); Tise v. Yates Constr. Co., 345 N.C. 456, 480 S.E.2d 677 (1997); Mellon v. Prosser, 126 N.C. App. 620, 486 S.E.2d 439 (1997); Williams v. Holsclaw, 128 N.C. App. 205, 495 S.E.2d 166 (1998); Lovelace v. City of Shelby, 351 N.C. 458, 526 S.E.2d 652, 2000 N.C. LEXIS 237 (2000); Cucina v. City of Jacksonville, 138 N.C. App. 99, 530 S.E.2d 353, 2000 N.C. App. LEXIS 547 (2000); Hyatt v. Town of Lake Lure, 225 F. Supp. 2d 647, 2002 U.S. Dist. LEXIS 16862 (W.D.N.C. 2002); Myers v. McGrady, 360 N.C. 460, 628 S.E.2d 761, 2006 N.C. LEXIS 47 (2006).

§§ 160A-485.1 through 160A-485.4: Reserved for future codification purposes.

§ 160A-485.5. Waiver of immunity for large cities through State Tort Claims Act.

(a) Any city with a population of 500,000 or more according to the most recent decennial federal census is authorized to waive its immunity from civil liability in tort by passage of a resolution expressing the intent of the city to waive its sovereign immunity pursuant to Article 31 of Chapter 143 of the General Statutes, as modified by subsection (b) of this section, and subject to the limitations set forth by subsection (c) of this section. Any resolution passed pursuant to this section shall apply to all claims arising on or after the passage of the resolution, until repealed.

(b) The following modifications of Article 31 of Chapter 143 of the General Statutes shall apply to the waiver of sovereign immunity described by subsection (a) of this section:

(1) Jurisdiction for tort claims against the city shall be vested in the Superior Court Division of the General Court of Justice of the county where the city is principally located, and, except as otherwise provided in this section, tort claims against a city shall be governed by the North Carolina Rules of Civil Procedure. The city shall be solely responsible for the expenses of its legal representation in connection with claims asserted against it, and for payment of the amount for which it is found liable under this section. Therefore, G.S. 143-291, 143-291.1, 143-291.2, 143-291.3, 143-292, 143-293, 143-295, 143-295.1, 143-296, 143-297, 143-298, 143-299.4, and 143-300 shall not apply to claims under this section.

(2) Appeals to the Court of Appeals from a decision of the Superior Court Division shall be treated in the same manner as an appeal from a decision of the Industrial Commission under G.S. 143-294.

(3) The limitation on claims set forth in G.S. 143-299; the burden of proof and defense set forth in G.S. 143-299.1; notwithstanding G.S. 143-299.1A(c), the defense set forth in G.S. 143-299.1A; and the limitation on payments set forth in G.S. 143-299.2 shall apply to claims filed with the Superior Court Division under this section.

(c) If a city waives its immunity pursuant to subsection (a) of this section, G.S. 160A-485 shall not apply to that city. The city may purchase liability insurance or adopt a resolution creating a self-funded reserve to insure liability for negligence of any officer, employee, involuntary servant or agent of the city while acting within the scope of his office, employment, service, agency or authority, under circumstances where the city, if a private person, would be liable to the claimant in accordance with the laws of North Carolina.

(d) No document or exhibit that relates to or alleges facts as to the city's insurance against liability shall be read, exhibited, or mentioned in the presence of the trial jury in the trial of any claim brought pursuant to this section, nor shall the plaintiff, plaintiff's counsel, or anyone testifying on the plaintiff's behalf directly or indirectly convey to the jury any inference that the city's potential liability is covered by insurance. No judgment may be entered against the city unless the plaintiff waives the plaintiff's right to a jury trial on all issues of law or fact relating to insurance coverage. All issues relating to insurance coverage shall be heard and determined by the judge without resort to a jury. The jury shall be absent during all motions, arguments, testimony, or announcement of findings of fact or conclusions of law with respect to insurance coverage. The city may waive its right to have issues concerning insurance coverage determined by the judge without a jury and may request a jury trial on these issues. (2009-519, s. 1.)

Editor's Note. — Session Laws 2009-519, s. 2 made this section effective on October 1, 2009.

§ 160A-486. Estimates of population.

When a newly incorporated municipality is not included in the most recent federal census of population but otherwise qualifies for distribution of State-collected funds allocated wholly or partially on the basis of current population estimates, the municipality shall be entitled to participate in the distribution of these funds by reporting all information designated by the Office of State Budget and Management. An estimate of this city's population will be made by the Office of State Budget and Management in accordance with procedures designated by that office. The estimate will be certified to State departments and agencies charged with the responsibility of distributing funds to local governments along with the current population estimates for all other municipalities. (1953, c. 79; 1969, c. 873; 1971, c. 698, s. 1; 1979, 2nd Sess., c. 1137, s. 46; 2000-140, s. 93.1(a); 2001-424, s. 12.2(b).)

§ 160A-487. City and county financial support for rescue squads.

Each city and county is authorized to appropriate funds to rescue squads or teams to enable them to purchase and maintain rescue equipment and to finance the operation of the rescue squad either within or outside the boundaries of the city or county. (1959, c. 989; 1971, c. 698, s. 1.)

Local Modification. — City of Jacksonville: 1979, 2nd Sess., c. 1113.

Cross References. — As to power of counties to take action under this section, see G.S. 153A-445.

§ 160A-488. Museums and arts programs.

(a) Any city or county is authorized to establish and support museums, art galleries, or arts centers, so long as the facility is open to the public.

(b) Any city or county is authorized to establish and support arts programs and facilities. As used in this section, "arts" refers to the performing arts, visual arts, and literary arts and includes dance, drama, music, painting, drawing, sculpture, printmaking, crafts, photography, film, video, architecture, design and literature, when part of a performing, visual or literary arts program.

(c) Any city or county may contract with any other governmental agency, or with any public or nonprofit private association, corporation or organization to establish and support museums, art galleries, arts centers, arts facilities, and arts programs and may appropriate funds to any such governmental agency, or to any such public or nonprofit private association, corporation or organization for the purpose of establishing and supporting such museums, galleries, centers, facilities and programs.

(d) As used in this section, "support" includes, but is not limited to: acquisition, construction, and renovation of buildings, including acquisition of land and other property therefor; purchase of paintings and other works of art; acquisition, lease, or purchase of materials and equipment; compensation of personnel; and all operating and maintenance expenses of the program or facility.

(e) In the event funds appropriated for the purposes of this section are turned over to any agency or organization other than the city or county for expenditure, no such expenditure shall be made until the city or county has approved it, and all such expenditures shall be accounted for by the agency or organization at the end of the fiscal year for which they were appropriated.

(f) For the purposes set forth in this section, a city or county may appropriate funds not otherwise limited as to use by law. (1955, c. 1338; 1961, c. 309; 1965, c. 1019; 1971, c. 698, s. 1; 1975, c. 664, s. 17; 1979, 2nd Sess., c. 1201.)

Cross References. — As to levy of taxes by counties and cities to support arts programs and museums, see G.S. 153A-149 and 160A-209, respectively. As to power of counties to take action under this section, see G.S. 153A-445.

§ 160A-489. Auditoriums, coliseums, and convention centers.

Any city is authorized to establish and support public auditoriums, coliseums, and convention centers. As used in this section, "support" includes but is not limited to: acquisition, construction, and renovation of buildings and acquisition of the necessary land and other property therefor; purchase of equipment; compensation of personnel; and all operating and maintenance expenses of the facility. For the purposes set forth in this section, a city may appropriate funds not otherwise limited as to use by law. (1971, c. 698, s. 1; 1975, c. 664, s. 18.)

Local Modification. — New Hanover and the municipalities in New Hanover: 2002-138, s. 6; City of Wilmington: 1981, c. 595.

CASE NOTES

This section does not confer implied authority to engage in the restaurant business on any municipal corporation or other governmental unit of a county. Smith v. County of Mecklenburg, 280 N.C. 497, 187 S.E.2d 67 (1972).

§ 160A-490. Photographic reproduction of records.

(a) General Statutes 153A-436 shall apply to cities. When a county officer is designated by title in that Article, the designation shall be construed to mean the appropriate city officer, and the city council shall perform powers and duties conferred and imposed on the board of county commissioners.

(b) The provisions of subsection (a) of this section shall apply to records stored on any form of permanent, computer-readable media, such as a CD-ROM, if the medium is not subject to erasure or alteration. Nonerasable, computer-readable storage media shall not be used for preservation duplicates, as defined in G.S. 132-8.2, or for the preservation of permanently valuable records as provided in G.S. 121-5(d), except to the extent expressly approved by the Department of Cultural Resources pursuant to standards and conditions established by the Department. (1955, c. 451; 1971, c. 698, s. 1; 1979, 2nd Sess., c. 1247, s. 41; 1999-131, s. 5; 1999-456, s. 47(e).)

§ 160A-491. Powers in connection with beach erosion.

[All cities shall have the power] to levy taxes and appropriate tax or nontax funds for the acquisition, construction, reconstruction, extension, maintenance, improvement, or enlargement of groins, jetties, dikes, moles, walls, sand dunes, vegetation, or other types of works or improvements which are designed for the control of beach erosion or for protection from hurricane floods and for the preservation or restoration of facilities or natural features which afford protection to the beaches or other land areas of the municipalities or to the life and property thereon. (1971, c. 896, s. 5; c. 1159, s. 2.)

Editor's Note. — This section was originally codified as subdivision (48) of G.S. 160-200. It was transferred to its present position by Session Laws 1971, c. 896, s. 5.

§ 160A-492. Human relations, community action and manpower development programs.

The governing body of any city, town, or county is hereby authorized to undertake, and to expend tax or nontax funds for, human relations, community action and manpower development programs. In undertaking and engaging in such programs, the governing body may enter into contracts with and accept loans and grants from the State or federal governments. The governing body may appoint such human relations, community action and manpower development committees or boards and citizens' committees, as it may deem necessary in carrying out such programs and activities, and may authorize the employment of personnel by such committees or boards, and may establish their duties, responsibilities, and powers. The cities and counties may jointly undertake any program or activity which they are authorized to undertake by this section. The expenses of undertaking and engaging in the human relations, community action and manpower development programs and activities authorized by this section are necessary expenses for which funds derived from taxation may be expended without the necessity of prior approval of the voters.

For the purposes of this section, a "human relations program" is one devoted to (i) the study of problems in the area of human relations, (ii) the promotion of equality of opportunity for all citizens, (iii) the promotion of understanding, respect and goodwill among all citizens, (iv) the provision of channels of communication among the races, (v) dispute resolution, (vi) encouraging the employment of qualified people without regard to race, or (vii) encouraging youth to become better trained and qualified for employment. (1971, c. 896, s. 11; c. 1207, ss. 1, 2; 1973, c. 641; 1989 (Reg. Sess., 1990), c. 1062, s. 1.)

Cross References. — As to power of counties to take action under this section, see G.S. 153A-445.

Editor's Note. — This section was originally codified as subdivision (51) of G.S. 160-200. It was transferred to its present position by Session Laws 1971, c. 896, s. 11.

§ 160A-493. Animal shelters.

A city may establish, equip, operate, and maintain an animal shelter or may contribute to the support of an animal shelter, and for these purposes may appropriate funds not otherwise limited as to use by law. The animal shelters shall meet the same standards as animal shelters regulated by the Department of Agriculture pursuant to its authority under Chapter 19A of the General Statutes. (1973, c. 426, s. 73.1; 2004-199, s. 39(b).)

§ 160A-494. Drug abuse programs.

Any city may provide for the prevention and treatment of narcotic, barbituric and other types of drug abuse and addiction through education, medication, medical care, hospitalization, and outpatient housing, and may appropriate the necessary funds therefor. (1973, c. 608.)

§ 160A-495. Appropriations for establishment, etc., of local government center in Raleigh.

Counties, cities and towns are hereby authorized to appropriate money for payment to their respective instrumentalities, the North Carolina Association of County Commissioners and the North Carolina League of Municipalities for the purpose of financing the cost, in whole or in part, of purchasing, constructing, equipping, maintaining and operating a local government center in the City of Raleigh to serve as permanent headquarters for said organizations. (1973, c. 1131.)

§ 160A-496. Incorporation of local acts into charter.

(a) A city may from time to time require the city attorney to present to the council any local acts relating to the property, affairs, and government of the city and not part of the city's charter which the city attorney recommends be incorporated into the charter. In his recommendations, the city attorney may include suggestions for renumbering or rearranging the provisions of the charter and other local acts, for providing catchlines, and for any other modifications in arrangement or form that do not change the provisions themselves of the charter or local acts and that may be necessary to effect an orderly incorporation of local acts into the charter.

(b) After considering the recommendations of the attorney, the council may by ordinance direct the incorporation of any such local acts into the charter. The city clerk shall file a certified true copy of the ordinance with the Secretary of State and with the Legislative Library.

(c) For purposes of this section, "charter" means that local act of the General Assembly or action of the Municipal Board of Control incorporating a city or a later local act that includes provisions expressly denominated the city's "charter," plus any other local acts inserted therein pursuant to this section or a comparable provision of a local act. (1975, c. 156; 1985 (Reg. Sess., 1986), c. 935, s. 3; 1989, c. 191, s. 3.)

§ 160A-497. Senior citizens programs.

Any city or county may undertake programs for the assistance and care of its senior citizens including but not limited to programs for in-home services, food service, counseling, recreation and transportation, and may appropriate funds for such programs. Any city council or county may contract with any other governmental agency, or with any public or private association, corporation or organization in undertaking senior citizens programs, and may appropriate funds to any such governmental agency, or to any such public or private association, corporation or organization for the purpose of carrying out such programs. In the event funds appropriated for the purposes of this section are turned over to any agency or organization other than the city or county for expenditure, no such expenditure shall be made until the city or county has approved it, and all such expenditures shall be accounted for by the agency or organization at the end of the fiscal year for which they were appropriated. For purposes of this section, the words "senior citizens" shall mean citizens of a city or county who are at least 60 years of age. (1977, c. 187, s. 1; c. 647, ss. 1, 2; 1979, 2nd Sess., c. 1094, ss. 4, 5.)

Editor's Note. — Session Laws 1979, 2nd Sess., c. 1094, which inserted references to counties in this section, provided in s. 6: "This act is effective upon ratification. All contracts which would be permissible under this act which were entered into on or after April 20, 1979, are hereby validated." The act was ratified on June 17, 1980.

The preamble to Session Laws 1979, 2nd Sess., c. 1094, cited as the reason for the enactment the case of Hughey v. Cloninger, 297 N.C. 86, 253 S.E.2d 898 (1979), requiring statutory authority for third party contracts.

§ 160A-498. Railroad corridor preservation.

A city or county may acquire property, by purchase or gift, to preserve a railroad corridor established by the Department of Transportation. A city or county that acquires property to preserve a railroad corridor may lease the property or use the property for interim compatible uses until the property is used for a railroad. (1989, c. 600, s. 9.)

§ 160A-499. Reimbursement agreements.

(a) A city may enter into reimbursement agreements with private developers and property owners for the design and construction of municipal infrastructure that is included on the city's Capital Improvement Plan and serves the developer or property owner. For the purpose of this act, municipal infrastructure includes, without limitation, water mains, sanitary sewer lines, lift stations, stormwater lines, streets, curb and gutter, sidewalks, traffic control devices, and other associated facilities.

(b) A city shall enact ordinances setting forth procedures and terms under which such agreements may be approved.

(c) A city may provide for such reimbursements to be paid from any lawful source.

(d) Reimbursement agreements authorized by this section shall not be subject to Article 8 of Chapter 143 of the General Statutes, except as provided by this subsection. A developer or property owner who is party to a reimbursement agreement authorized under this section shall solicit bids in accordance with Article 8 of Chapter 143 of the General Statutes when awarding contracts for work that would have required competitive bidding if the contract had been awarded by the city. (2005-426, s. 8(a).)

Editor's Note. — Session Laws 2005-426, s. 11, made this section effective January 1, 2006.

Session Laws 2005-41, ss. 1-6, effective May 16, 2005, enacts similar reimbursement agreement provisions for certain municipalities. Session Laws 2005-41, s. 6, provides: "This act applies only to the Towns of Apex, Broadway, Cary, Goldston, Holly Springs, Pittsboro, and Siler City, to the City of Sanford, to all municipalities located wholly or partially within Cabarrus County, and to Cabarrus, Chatham, Durham, and Lee Counties, but as to the Town of Broadway only applies as to municipal infrastructure located in Lee County."

§ 160A-499.2. Fair housing ordinances in certain municipalities.

(a) A municipality shall have the power to adopt ordinances prohibiting discrimination on the basis of race, color, sex, religion, handicap, familial status, or national origin in real estate transactions. The ordinances may regulate or prohibit any act, practice, activity, or procedure related, directly or indirectly, to the sale or rental of public or private housing, which affects or may tend to affect the availability or desirability of housing on an equal basis to all persons; may provide that violations constitute a criminal offense; may subject the offender to civil penalties; and may provide that the municipality may enforce the ordinances by application to the Superior Court Division of the General Court of Justice for appropriate legal and equitable remedies, including mandatory and prohibitory injunctions and orders of abatement, attorneys' fees, and punitive damages, and the court shall have jurisdiction to grant the remedies.

(b) A municipality also shall have the power to amend any ordinance adopted pursuant to the provisions contained in subsection (a) of this section to ensure that the ordinance remains substantially equivalent to the federal Fair Housing Act (41 U.S.C. §§ 3601, et seq.). Any ordinance enacted pursuant to this section prohibiting discrimination on the basis of familial status shall not apply to housing for older persons, as defined in the federal Fair Housing Act (41 U.S.C. §§ 3601, et seq.).

(c) Any ordinance enacted pursuant to this section may provide for exemption from its coverage:

(1) The rental of a housing accommodation in a building containing accommodations for not more than four families living independently of each other if the lessor or a member of his family resides in one of those accommodations.

(2) The rental of a room or rooms in a housing accommodation by an individual if he or a member of his family resides there.

(3) With respect to discrimination based on sex, the rental or leasing of housing accommodations in single-sex dormitory property.

(4) With respect to discrimination based on religion to housing accommodations owned and operated for other than a commercial purpose by a religious organization, association, or society, or any nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization, association, or society, the sale, rental, or occupancy of the housing accommodation being limited or preference being given to persons of the same religion, unless membership in the religion is restricted because of race, color, national origin, or sex.

(5) Any person, otherwise subject to its provisions, who adopts and carries out a plan to eliminate present effects of past discriminatory practices or to assure equal opportunity in real estate transactions, if the plan is part of a conciliation agreement entered into by that person under the provisions of the ordinance.

(d) A municipality may create or designate a committee to assume the duty and responsibility of enforcing ordinances adopted pursuant to this section. The committee may be granted any authority deemed necessary by the city council for the proper enforcement of any fair housing ordinance, including the power to:

(1) Promulgate rules for the receipt, initiation, investigation, and conciliation of complaints of violations of the ordinance.

(2) Require answers to interrogatories, the production of documents and things, and the entry upon land and premises in the possession of a party to a complaint alleging a violation of the ordinance; compel the attendance of witnesses at hearings; administer oaths; and examine witnesses under oath or affirmation.

(3) Apply to the Superior Court Division of the General Court of Justice, upon the failure of any person to respond to or comply with a lawful interrogatory, request for production of documents and things, request to enter upon land and premises, or subpoena, for an order requiring the person to respond or comply.

(4) Upon finding reasonable cause to believe that a violation of the ordinance has occurred, to petition the Superior Court Division of the General Court of Justice for appropriate civil relief on behalf of the aggrieved person or persons.

(e) A municipality may provide that neither complaints filed with any committee pursuant to the ordinance nor the results of the committee's investigations, discovery, or attempts at conciliation, in whatever form prepared and preserved, shall be subject to inspection, examination, or copying under the provisions of what is now Chapter 132 of the General Statutes.

(f) A municipality may provide that the statutory provisions relating to meetings of governmental bodies, presently embodied in Article 33C of Chapter 143 of the General Statutes, shall not apply to the activity of any committee authorized to enforce the ordinance to the extent that the committee is receiving a complaint or conducting an investigation, discovery, or conciliation pertaining to a complaint filed pursuant to the ordinance.

(g) This section applies only to municipalities that have a permanent population of 90,000 or more according to the most recent decennial census and that are the location of a recurring special accommodation event requiring temporary accommodations for at least 50,000 people. For purposes of this section, the term "recurring special accommodation event" means a trade show or other event of less than 11 days' duration that has been held in the municipality at least once a year for at least 10 years. (2007-475, ss. 1, 2.)

Editor's Note. — Session Laws 2007-475, s. 2, was codified as subsection (g) of this section at the direction of the Revisor of Statutes. Session Laws 2007-475, s. 3, made this section effective August 29, 2007.

ARTICLE 22.

Urban Redevelopment Law.

§ 160A-500. Short title.

This Article shall be known and may be cited as the "Urban Redevelopment Law." (1951, c. 1095, s. 1; 1973, c. 426, s. 75.)

Local Modification. — (As to Article 22) Town of Carrboro: 1987, c. 476, s. 1; (As to Article 22) Troy Redevelopment Commission: 2002-83, s. 1.

Editor's Note. — Sections 160A-500 through 160A-505 and 160A-506 through 160A-526 were originally codified as G.S. 160-454 through 160-474.2. They were transferred to their present position by Session Laws 1973, c. 426, s. 75.

Legal Periodicals. — For comment on the public purpose doctrine, see 3 Wake Forest Intra. L. Rev. 37 (1967).

For survey of 1978 administrative law, see 57 N.C.L. Rev. 831 (1979).

CASE NOTES

Constitutionality of Article. — The Urban Redevelopment Law does not confer any illegal delegation of legislative power in violation of N.C. Const., Art. II, § 1. Redevelopment Comm'n v. Security Nat'l Bank, 252 N.C. 595, 114 S.E.2d 688 (1960); Horton v. Redevelopment Comm'n, 259 N.C. 605, 131 S.E.2d 464 (1963).

The Urban Redevelopment Law is a constitutional delegation of power by the State to municipal corporations. Horton v. Redevelopment Comm'n, 259 N.C. 605, 131 S.E.2d 464 (1963).

The constitutionality of this Article has been upheld by the Supreme Court. Horton v. Redevelopment Comm'n, 262 N.C. 306, 137 S.E.2d 115 (1964).

Condemnation of blighted and slum areas within a municipality for redevelopment under safeguards to prevent such areas from reverting to slum areas is in the interest of the public health, safety, morals and welfare, and therefore such condemnation is for a public use and is not a taking of private property in violation of N.C. Const., Art. I, § 1 or G.S. 19. Redevelopment Comm'n v. Security Nat'l Bank, 252 N.C. 595, 114 S.E.2d 688 (1960).

Redevelopment Expenses Not "Necessary Expenses" Under Former Constitutional Provision. — The expenses incurred, or to be incurred, by a municipality in putting into effect an urban redevelopment plan, pursuant to the authority vested in it by the Urban Redevelopment Law, were not "necessary expenses" for which taxes might be levied and bonds issued without a vote of the people under former Art. VII, § 6, Const. 1868, as amended in 1962. Horton v. Redevelopment Comm'n, 259 N.C. 605, 131 S.E.2d 464 (1963).

Purpose of Article. — The ultimate result which the Urban Redevelopment Law seeks to achieve is to eliminate the injurious consequences caused by a blighted area in a municipality and to substitute for them a use of the area which it is hoped will render impossible future blight and its injurious consequences. This is, in its broad purpose, a preventive measure. Horton v. Redevelopment Comm'n, 259 N.C. 605, 131 S.E.2d 464 (1963).

Wisdom of Article a Legislative Question. — It may be that the urban redevelopment project may prove eventually to be a disappointment, and is ill advised, but the wisdom of the enactment is a legislative and not a judicial question. Horton v. Redevelopment Comm'n, 259 N.C. 605, 131 S.E.2d 464 (1963).

A redevelopment commission is a municipal corporation for the purpose of tax exemption. Redevelopment Comm'n v. Guilford County, 274 N.C. 585, 164 S.E.2d 476 (1968).

In an action brought by a redevelopment commission against city and county to restrain collection of ad valorem taxes upon real property held by the commission, where the commissioner's allegations showed the acquisition of the property with intent to use it for a public purpose, a definite plan evolved for its use for the public, and an actual public use of the property, the Court of Appeals erred in holding, as a matter of law, that such income-producing property held and acquired for redevelopment purposes was not exempt from taxation because it produced income. Redevelopment Comm'n v. Guilford County, 274 N.C. 585, 164 S.E.2d 476 (1968).

Definite Guide Prescribed for Creation of Redevelopment Commission. — The General Assembly has prescribed a definite and adequate guide, and the governing body of the municipality in creating or not creating a redevelopment commission cannot act in its absolute or unguided discretion. Redevelopment Comm'n v. Security Nat'l Bank, 252 N.C. 595, 114 S.E.2d 688 (1960).

Sufficiency of Condemnation Petition. — A petition to condemn land for urban renewal was sufficient under the Rules of Civil Procedure to state a claim for relief, where it gave notice of the nature and basis of the petitioners' claim and the type of case brought, and alleged generally the occurrence or performance of the conditions precedent required by Chapter 160, Article 37 (now Chapter 160A, Article 11), and Chapter 40A, Article 3. Redevelopment Comm'n v. Grimes, 277 N.C. 634, 178 S.E.2d 345 (1971).

Affirmative Allegation of Compliance with Statutory Requirements Necessary. — In order to invoke power of condemnation, the redevelopment commission must affirmatively allege compliance with the statutory requirements. Redevelopment Comm'n v. Grimes, 277 N.C. 634, 178 S.E.2d 345 (1971).

Applied in Gastonia Redevelopment Comm'n v. Coxco, Inc., 21 N.C. App. 335, 204 S.E.2d 211 (1974); Redevelopment Comm'n v. Ford, 67 N.C. App. 470, 313 S.E.2d 211 (1984); Redevelopment Comm'n v. Agapion, 129 N.C. App. 346, 499 S.E.2d 474 (1998).

§ 160A-501. Findings and declaration of policy.

It is hereby determined and declared as a matter of legislative finding:

(1) That there exist in urban communities in this State blighted areas as defined herein.

(2) That such areas are economic or social liabilities, inimical and injurious to the public health, safety, morals and welfare of the residents of the State, harmful to the social and economic well-being of the entire communities in which they exist, depreciating values therein, reducing tax revenues, and thereby depreciating further the general community-wide values.

(3) That the existence of such areas contributes substantially and increasingly to the spread of disease and crime, necessitating excessive and disproportionate expenditures of public funds for the preservation of the public health and safety, for crime prevention, correction, prosecution, punishment and the treatment of juvenile delinquency and for the maintenance of adequate police, fire and accident protection and other public services and facilities, constitutes an economic and social liability, substantially impairs or arrests the sound growth of communities.

(4) That the foregoing conditions are beyond remedy or control entirely by regulatory processes in the exercise of the police power and cannot be effectively dealt with by private enterprise under existing law without the additional aids herein granted.

(5) That the acquisition, preparation, sale, sound replanning, and redevelopment of such areas in accordance with sound and approved plans for their redevelopment will promote the public health, safety, convenience and welfare.

Therefore, it is hereby declared to be the policy of the State of North Carolina to promote the health, safety, and welfare of the inhabitants thereof by the creation of bodies corporate and politic to be known as redevelopment commissions, which shall exist and operate for the public purposes of acquiring and replanning such areas and of holding or disposing of them in such manner that they shall become available for economically and socially sound redevelopment. Such purposes are hereby declared to be public uses for which public money may be spent, and private property may be acquired by the exercise of the power of eminent domain. (1951, c. 1095, s. 2; 1973, c. 426, s. 75.)

Legal Periodicals. — For comment, "'Don't Know What a Slide Rule Is For': The Need for a Precise Definition of Public Purpose in North Carolina in the Wake of Kelo v. City of New London," see 28 Campbell L. Rev. 291 (2006).

CASE NOTES

Cited in Redevelopment Comm'n v. Security Nat'l Bank, 252 N.C. 595, 114 S.E.2d 688 (1960); Southern Bell Tel. & Tel. Co. v. Housing Auth., 38 N.C. App. 172, 247 S.E.2d 663 (1978).

§ 160A-502. Additional findings and declaration of policy.

It is further determined and declared as a matter of legislative finding:

(1) That the cities of North Carolina constitute important assets for the State and its citizens; that the preservation of the cities and of urban life against physical, social, and other hazards is vital to the safety, health, and welfare of the citizens of the State, and sound urban development in the future is essential to the continued economic development of North Carolina, and that the creation, existence, and growth of substandard areas present substantial hazards to the cities of the State, to urban life, and to sound future urban development.

(2) That blight exists in commercial and industrial areas as well as in residential areas, in the form of dilapidated, deteriorated, poorly ventilated, obsolete, overcrowded, unsanitary, or unsafe buildings, inadequate and unsafe streets, inadequate lots, and other conditions detrimental to the sound growth of the community; that the presence of such conditions tends to depress the value of neighboring properties, to impair the tax base of the community, and to inhibit private efforts to rehabilitate or improve other structures in the area; and that the acquisition, preparation, sale, sound replanning and redevelopment of such areas in accordance with sound and approved plans will promote the public health, safety, convenience and welfare.

(3) That not only is it in the interest of the public health, safety, convenience and welfare to eliminate existing substandard areas of all types, but it is also in the public interest and less costly to the community to prevent the creation of new blighted areas or the expansion of existing blighted areas; that vigorous enforcement of municipal and State building standards, sound planning of new community facilities, public acquisition of dilapidated, obsolescent buildings, and other municipal action can aid in preventing the creation of new blighted areas or the expansion of existing blighted areas; and that rehabilitation, conservation, and reconditioning of areas in accordance with sound and approved plans, where, in the

absence of such action, there is a clear and present danger that the area will become blighted, will protect and promote the public health, safety, convenience and welfare.

Therefore it is hereby declared to be the policy of the State of North Carolina to protect and promote the health, safety, and welfare of the inhabitants of its urban areas by authorizing redevelopment commissions to undertake nonresidential redevelopment in accord with sound and approved plans and to undertake the rehabilitation, conservation, and reconditioning of areas where, in the absence of such action, there is a clear and present danger that the area will become blighted. (1961, c. 837, s. 1; 1973, c. 426, s. 75.)

CASE NOTES

Cited in Redevelopment Comm'n v. Agapion, 129 N.C. App. 346, 499 S.E.2d 474 (1998).

§ 160A-503. Definitions.

The following terms where used in this Article, shall have the following meanings, except where the context clearly indicates a different meaning:

(1) "Area of operation" — The area within the territorial boundaries of the city or county for which a particular commission is created.

(2) "Blighted area" shall mean an area in which there is a predominance of buildings or improvements (or which is predominantly residential in character), and which, by reason of dilapidation, deterioration, age or obsolescence, inadequate provision for ventilation, light, air, sanitation, or open spaces, high density of population and overcrowding, unsanitary or unsafe conditions, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, substantially impairs the sound growth of the community, is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency and crime, and is detrimental to the public health, safety, morals or welfare; provided, no area shall be considered a blighted area within the meaning of this Article, unless it is determined by the planning commission that at least two thirds of the number of buildings within the area are of the character described in this subdivision and substantially contribute to the conditions making such area a blighted area; provided that if the power of eminent domain shall be exercised under the provisions of this Article, it may only be exercised to take a blighted parcel as defined in subdivision (2a) of this section, and the property owner or owners or persons having an interest in property shall be entitled to be represented by counsel of their own selection and their reasonable counsel fees fixed by the court, taxed as a part of the costs and paid by the petitioners.

(2a) "Blighted parcel" shall mean a parcel on which there is a predominance of buildings or improvements (or which is predominantly residential in character), and which, by reason of dilapidation, deterioration, age or obsolescence, inadequate provision for ventilation, light, air, sanitation, or open spaces, high density of population and overcrowding, unsanitary or unsafe conditions, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, substantially impairs the sound growth of the community, is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency and crime, and is detrimental to the public health, safety, morals or welfare; provided, no parcel shall be considered a blighted parcel nor subject to the power of eminent domain, within the meaning of this Article, unless it is determined by the planning commission that the parcel is blighted.

(3) "Bonds" — Any bonds, interim certificates, notes, debentures or other obligations of a commission issued pursuant to this Article.

(4) "City" — Any city or town. "The city" shall mean the particular city for which a particular commission is created.

(5) "Commission" or "redevelopment commission" — A public body and a body corporate and politic created and organized in accordance with the provisions of this Article.

(6) "Field of operation" — The area within the territorial boundaries of the city for which a particular commission is created.

(7) "Governing body" — In the case of a city or town, the city council or other legislative body. The board of county commissioners.

(8) "Government" — Includes the State and federal governments or any subdivision, agency or instrumentality corporate or otherwise of either of them.

(9) "Municipality" — Any incorporated city or town, or any county.

(10) "Nonresidential redevelopment area" shall mean an area in which there is a predominance of buildings or improvements, whose use is predominantly nonresidential, and which, by reason of:

a. Dilapidation, deterioration, age or obsolescence of buildings and other structures,
b. Inadequate provisions for ventilation, light, air, sanitation or open spaces,
c. Defective or inadequate street layout,
d. Faulty lot layout in relation to size, adequacy, accessibility, or usefulness,
e. Tax or special assessment delinquency exceeding the fair value of the property,
f. Unsanitary or unsafe conditions,
g. The existence of conditions which endanger life or property by fire and other causes, or
h. Any combination of such factors
  1. Substantially impairs the sound growth of the community,
  2. Has seriously adverse effects on surrounding development, and
  3. Is detrimental to the public health, safety, morals or welfare;

provided, no such area shall be considered a nonresidential redevelopment area nor subject to the power of eminent domain, within the meaning of this Article, unless it is determined by the planning commission that at least one half of the number of buildings within the area are of the character described in this subdivision and substantially contribute to the conditions making such area a nonresidential redevelopment area; provided that if the power of eminent domain shall be exercised under the provisions of this Article, the property owner or owners or persons having an interest in property shall be entitled to be represented by counsel of their own selection and their reasonable counsel fees fixed by the court, taxed as a part of the costs and paid by the petitioners.

(11) "Obligee of the commission" or "obligee" — Any bondholder, trustee or trustees for any bondholders, any lessor demising property to a commission used in connection with a redevelopment project, or any assignees of such lessor's interest, or any part thereof, and the federal government, when it is a party to any contract with a commission.

(12) "Planning commission" — Any planning commission established by ordinance for a municipality of this State. "The planning commission"

shall mean the particular planning commission of the city or town in which a particular commission operates.

(13) "Real property" — Lands, lands under water, structures and any and all easements, franchises and incorporeal hereditaments and every estate and right therein, legal and equitable, including terms for years and liens by way of judgment, mortgage or otherwise.

(14) "Redeveloper" — Any individual, partnership or public or private corporation that shall enter or propose to enter into a contract with a commission for the redevelopment of an area under the provisions of this Article.

(15) "Redevelopment" — The acquisition, replanning, clearance, rehabilitation or rebuilding of an area for residential, recreational, commercial, industrial or other purposes, including the provision of streets, utilities, parks, recreational areas and other open spaces; provided, without limiting the generality thereof, the term "redevelopment" may include a program of repair and rehabilitation of buildings and other improvements, and may include the exercise of any powers under this Article with respect to the area for which such program is undertaken.

(16) "Redevelopment area" — Any area which a planning commission may find to be
a. A blighted area because of the conditions enumerated in subdivision (2) of this section;
b. A nonresidential redevelopment area because of conditions enumerated in subdivision (10) of this section;
c. A rehabilitation, conservation, and reconditioning area within the meaning of subdivision (21) of this section;
d. Any combination thereof, so as to require redevelopment under the provisions of this Article.

(17) "Redevelopment contract" — A contract between a commission and a redeveloper for the redevelopment of an area under the provisions of this Article.

(18) "Redevelopment plan" — A plan for the redevelopment of a redevelopment area made by a "commission" in accordance with the provisions of this Article.

(19) "Redevelopment project" shall mean any work or undertaking:
a. To acquire blighted or nonresidential redevelopment areas or portions thereof, or individual tracts in rehabilitation, conservation, and reconditioning areas, including lands, structures, or improvements, the acquisition of which is necessary or incidental to the proper clearance, development, or redevelopment of such areas or to the prevention of the spread or recurrence of conditions of blight;
b. To clear any such areas by demolition or removal of existing buildings, structures, streets, utilities or other improvements thereon and to install, construct, or reconstruct streets, utilities, and site improvements essential to the preparation of sites for uses in accordance with the redevelopment plan;
c. To sell land in such areas for residential, recreational, commercial, industrial or other use or for the public use to the highest bidder as herein set out or to retain such land for public use, in accordance with the redevelopment plan;
d. To carry out plans for a program of voluntary or compulsory repair, rehabilitation, or reconditioning of buildings or other improvements in such areas; including the making of loans therefor; and
e. To engage in programs of assistance and financing, including the making of loans, for rehabilitation, repair, construction, acquisi-

tion, or reconditioning of residential units and commercial and industrial facilities in a redevelopment area.

The term "redevelopment project" may also include the preparation of a redevelopment plan, the planning, survey and other work incident to a redevelopment project, and the preparation of all plans and arrangements for carrying out a redevelopment project.

(20) "Redevelopment proposal" — A proposal, including supporting data and the form of a redevelopment contract for the redevelopment of all or any part of a redevelopment area.

(21) "Rehabilitation, conservation, and reconditioning area" shall mean any area which the planning commission shall find, by reason of factors listed in subdivision (2) or subdivision (10), to be subject to a clear and present danger that, in the absence of municipal action to rehabilitate, conserve, and recondition the area, it will become in the reasonably foreseeable future a blighted area or a nonresidential redevelopment area as defined herein. In such an area, no individual tract, building, or improvement shall be subject to the power of eminent domain, within the meaning of this Article, unless it is of the character described in subdivision (2) or subdivision (10) and substantially contributes to the conditions endangering the area; provided that if the power of eminent domain shall be exercised under the provisions of this Article, the respondent or respondents shall be entitled to be represented by counsel of their own selection and their reasonable counsel fees fixed by the court, taxed as part of the costs and paid by the petitioners. (1951, c. 1095, s. 3; 1957, c. 502, ss. 1-3; 1961, c. 837, ss. 2, 3, 4, 6; 1967, c. 1249; 1969, c. 1208, s. 1; 1973, c. 426, s. 75; 1981, c. 907, ss. 1, 2; 1985, c. 665, s. 6; 2006-224, ss. 2.1, 2.2; 2006-259, s. 47.)

Editor's Note. — Session Laws 2006-259, s. 47, provides: "If House Bill 1965, 2005 Regular Session (Session Laws 2006-224), becomes law, every reference in that act to July 1, 2006, is changed to August 15, 2006."

CASE NOTES

Meaning of "Municipality" or "Municipal Corporation". — The term "municipality" or "municipal corporation" has been defined as any incorporated city, town or village, or county. Sides v. Cabarrus Mem. Hosp., 22 N.C. App. 117, 205 S.E.2d 784 (1974), modified and aff'd, 287 N.C. 14, 213 S.E.2d 297 (1975).

A municipal corporation, city or town, is an agency created by the State to assist in the civil government of a designated territory and the people embraced within these limits. Sides v. Cabarrus Mem. Hosp., 22 N.C. App. 117, 205 S.E.2d 784 (1974), modified and aff'd, 287 N.C. 14, 213 S.E.2d 297 (1975).

The term "municipal corporation" should not be construed narrowly to include only cities, towns, counties and school districts; in its broader sense the term includes all public corporations exercising governmental functions within constitutional limitations. Sides v. Cabarrus Mem. Hosp., 22 N.C. App. 117, 205 S.E.2d 784 (1974), modified and aff'd, 287 N.C. 14, 213 S.E.2d 297 (1975).

A municipal corporation must have a public purpose and be invested with a governmental function. Sides v. Cabarrus Mem. Hosp., 22 N.C. App. 117, 205 S.E.2d 784 (1974), modified and aff'd, 287 N.C. 14, 213 S.E.2d 297 (1975).

Time for Consideration of Evidence of Condition of Condemned Property. — In its review of a redevelopment commission's determination that a property is blighted, the trial court should consider evidence relating to the condition of the condemned property at the time the commission's plan is approved by the city council. Redevelopment Comm'n v. Agapion, 129 N.C. App. 346, 499 S.E.2d 474 (1998).

Condemnation of Less Than All Property in Blighted Area. — Where an area was certified as a blighted area by the planning board, it was with the discretion of the redevelopment commission to condemn two vacant lots within the area without condemning all other lots therein. Redevelopment Comm'n v. Johnson, 129 N.C. App. 630, 500 S.E.2d 118 (1998).

Areas which are "blighted" cannot be enlarged to include areas which are not in fact "blighted." Any other conclusion would vest a redevelopment commission with authority which the legislature has expressly denied it. Horton v. Redevelopment Comm'n, 264 N.C. 1, 140 S.E.2d 728 (1965).

The legislature never intended to permit a planning commission or a redevelopment commission to include within the boundaries of a "blighted area" an area not meeting the statutory definition, even though the area might qualify as a nonresidential area, or as a rehabilitation, conservation and reconditioning area. Horton v. Redevelopment Comm'n, 264 N.C. 1, 140 S.E.2d 728 (1965).

But Conditions May Be Corrected in Redevelopment Area Embracing Blighted and Other Defined Areas. — A planning commission may correct objectionable conditions within a redevelopment area consisting of a blighted area, a nonresidential redevelopment area, and a rehabilitation, conservation and reconditioning area. Horton v. Redevelopment Comm'n, 264 N.C. 1, 140 S.E.2d 728 (1965).

What Property in Rehabilitation, Conservation and Reconditioning Area Subject to Eminent Domain. — In a "rehabilitation, conservation and reconditioning area," no individual tract, building or improvement shall be subject to the power of eminent domain, within the meaning of this Article, unless it is "blighted" property and substantially contributes to the condition endangering the area. Horton v. Redevelopment Comm'n, 262 N.C. 306, 137 S.E.2d 115 (1964).

Power of Housing Authority to Close Public Streets. — Although the City of Raleigh did not delegate its police power to close public streets to the Housing Authority of Raleigh, the authority did not lack that power, since it had power to take public streets by eminent domain with the city's consent, and to carry out redevelopment projects, which included removal of existing streets, utilities or other improvements. Southern Bell Tel. & Tel. Co. v. Housing Auth., 38 N.C. App. 172, 247 S.E.2d 663 (1978), cert. denied, 296 N.C. 414 (1979).

Counsel Fees Provision of Subdivision (10) Helps Equalize Bargaining Power. — Provision of subdivision (10) providing that the commission pay counsel fees for the property owner when it is necessary to condemn his property, grants more freedom to the property owner to contest condemnation proceedings, as it permits him to receive the award for his property, even after legal action, without having it reduced by the payment of attorneys' fees. It helps to equalize the bargaining power of the property owner and the commission and prevent, insofar as possible, any undue economic pressures. Redevelopment Comm'n v. Hyder, 20 N.C. App. 241, 201 S.E.2d 236 (1973).

Control over the amount of the attorneys' fees allowed is found in the requirement that such counsel fees are to be fixed by the court and are to be reasonable in amount. Redevelopment Comm'n v. Hyder, 20 N.C. App. 241, 201 S.E.2d 236 (1973).

Allowance of attorneys' fees under subdivision (10)h3 is by the court, and is not affected by the existence of contracts for fees between counsel and their landowner clients. Redevelopment Comm'n v. Hyder, 20 N.C. App. 241, 201 S.E.2d 236 (1973).

Determination of Reasonable Counsel Fees. — Reasonable counsel fees in subdivision (10)h3 may be determined in part by the amount of the verdict obtained in the condemnation proceeding, in the light of the proposals made to the property owner prior to his employment of an attorney. Redevelopment Comm'n v. Hyder, 20 N.C. App. 241, 201 S.E.2d 236 (1973).

The results obtained by an attorney are a legitimate consideration in determining the amount of his fee. Redevelopment Comm'n v. Hyder, 20 N.C. App. 241, 201 S.E.2d 236 (1973).

Payment of Fee Must Be Commensurate with Services Performed. — There is no uncertainty under subdivision (10)h3 about the payment of an attorney fee commensurate with the services performed. Redevelopment Comm'n v. Hyder, 20 N.C. App. 241, 201 S.E.2d 236 (1973).

Award Is Not Contingent Fee. — When a statute, such as this section, provides for attorney fees to be awarded as a part of the costs to be paid by the governmental authority which is appropriating property, such award is not a contingent fee, but an amount equal to the actual reasonable value of the attorney's services. Redevelopment Comm'n v. Hyder, 20 N.C. App. 241, 201 S.E.2d 236 (1973).

Whether there was any recovery or not, counsel for the property owner is entitled to a reasonable fee, and it should not be set upon the basis of a contingency which did not exist. Redevelopment Comm'n v. Hyder, 20 N.C. App. 241, 201 S.E.2d 236 (1973).

The element of risk in connection with a contingent fee justifies a much larger fee when litigation is successfully terminated, but in eminent domain takings under subdivision (10)h3, there is no such risk, and the court must take this lack of risk into account. Redevelopment Comm'n v. Hyder, 20 N.C. App. 241, 201 S.E.2d 236 (1973).

A trial court erred in dismissing an action to condemn land for urban renewal where there was no finding that the redevelopment commission failed to comply with the statutory procedures prerequisite to an exercise of the power of eminent domain by it, and there was no allegation, proof, or finding that the redevelopment commission arbitrarily abused its discretion or acted in bad faith in selecting the area in question. The court's findings that the property of respondents did not lie within a blighted area or within a nonresidential redevelopment area as defined in this section was an insufficient basis for dismissal of the action. Redevelopment Comm'n v. Grimes, 277 N.C. 634, 178 S.E.2d 345 (1971).

Applied in Greensboro v. Wall, 247 N.C. 516, 101 S.E.2d 413 (1958).

Cited in Housing Auth. v. Farabee, 17 N.C. App. 431, 194 S.E.2d 553 (1973); Campbell v. First Baptist Church, 39 N.C. App. 117, 250 S.E.2d 68 (1978); Housing Auth. v. Clinard, 67 N.C. App. 192, 312 S.E.2d 524 (1984).

OPINIONS OF ATTORNEY GENERAL

Attorneys' fees are not recoverable unless a condemnation action is filed. See opinion of Attorney General to Mr. William I. Cochran, Jr., Executive Director, Redevelopment Commission of the City of Washington, 40 N.C.A.G. 637 (1969), issued under former G.S. 160-456(21).

Attorneys' fees are recoverable where a condemnation action is filed and the case is subsequently terminated by consent judgment. See opinion of Attorney General to Mr. William I. Cochran, Jr., Executive Director, Redevelopment Commission of the City of Washington, 40 N.C.A.G. 637 (1969), issued under former G.S. 160-456(21).

§ 160A-504. Formation of commissions.

(a) Each municipality, as defined herein, is hereby authorized to create separate and distinct bodies corporate and politic to be known as the redevelopment commission of the municipality by the passage by the governing body of such municipality of an ordinance or resolution creating a commission to function within the territorial limits of said municipality. Notice of the intent to consider the passage of such a resolution or ordinance shall be published at least 10 days prior to the meeting.

(b) The governing body of a municipality shall not adopt a resolution pursuant to subsection (a) above unless it finds:

(1) That blighted areas (as herein defined) exist in such municipality, and

(2) That the redevelopment of such areas is necessary in the interest of the public health, safety, morals or welfare of the residents of such municipality.

(c) The governing body shall cause a certified copy of such ordinance or resolution to be filed in the office of the Secretary of State; upon receipt of the said certificate the Secretary of State shall issue a certificate of incorporation.

(d) In any suit, action or proceeding involving or relating to the validity or enforcement of any contract or act of a commission, a copy of the certificate of incorporation duly certified by the Secretary of State shall be admissible in evidence and shall be conclusive proof of the legal establishment of the commission. (1951, c. 1095, s. 4; 1973, c. 426, s. 75.)

CASE NOTES

Applied in Redevelopment Comm'n v. Grimes, 277 N.C. 634, 178 S.E.2d 345 (1971).

§ 160A-505. Alternative organization.

(a) In lieu of creating a redevelopment commission as authorized herein, the governing body of any municipality may, if it deems wise, either designate a housing authority created under the provisions of Chapter 157 of the General Statutes to exercise the powers, duties, and responsibilities of a redevelopment commission as prescribed herein, or undertake to exercise such powers, duties, and responsibilities itself. Any such designation shall be by passage of a resolution adopted in accordance with the procedure and pursuant to the findings specified in G.S. 160A-504(a) and (b). In the event a governing body designates itself to perform the powers, duties, and responsibilities of a redevelopment commission under this subsection, or exercises those powers, duties, and responsibilities pursuant to G.S. 153A-376 or G.S. 160A-456, then where any act or proceeding is required to be done, recommended, or approved both by a redevelopment commission and by the municipal governing body, then the performance, recommendation, or approval thereof once by the municipal governing body shall be sufficient to make such performance, recommendation, or approval valid and legal. In the event a municipal governing body designates itself to exercise the powers, duties, and responsibilities of a redevelopment commission, it may assign the administration of redevelopment policies, programs and plans to any existing or new department of the municipality.

(b) The governing body of any municipality which has prior to July 1, 1969, created, or which may hereafter create, a redevelopment commission may, in its discretion, by resolution abolish such redevelopment commission, such abolition to be effective on a day set in such resolution not less than 90 days after its adoption. Upon the adoption of such a resolution, the redevelopment commission of the municipality is hereby authorized and directed to take such actions and to execute such documents as will carry into effect the provisions and the intent of the resolution, and as will effectively transfer its authority, responsibilities, obligations, personnel, and property, both real and personal, to the municipality. Any municipality which abolishes a redevelopment commission pursuant to this subsection may, at any time subsequent to such abolition or concurrently therewith, exercise the authority granted by subsection (a) of this section.

On the day set in the resolution of the governing body:

(1) The redevelopment commission shall cease to exist as a body politic and corporate and as a public body;

(2) All property, real and personal and mixed, belonging to the redevelopment commission shall vest in, belong to, and be the property of the municipality;

(3) All judgments, liens, rights of liens, and causes of action of any nature in favor of the redevelopment commission shall remain, vest in, and inure to the benefit of the municipality;

(4) All rentals, taxes, assessments, and any other funds, charges or fees, owing to the redevelopment commission shall be owed to and collected by the municipality;

(5) Any actions, suits, and proceedings pending against, or having been instituted by the redevelopment commission shall not be abated by such abolition, but all such actions, suits, and proceedings shall be continued and completed in the same manner as if abolition had not occurred, and the municipality shall be a party to all such actions, suits, and proceedings in the place and stead of the redevelopment commission and shall pay or cause to be paid any judgment rendered against the redevelopment commission in any such actions, suits, or proceedings, and no new process need be served in any such action, suit, or proceeding;

(6) All obligations of the redevelopment commission, including outstanding indebtedness, shall be assumed by the municipality, and all such obligations and outstanding indebtedness shall be constituted obligations and indebtedness of the municipality;

(7) All ordinances, rules, regulations and policies of the redevelopment commission shall continue in full force and effect until repealed or amended by the governing body of the municipality.

(c) Where the governing body of any municipality has in its discretion, by resolution, abolished a redevelopment commission pursuant to subsection (b) above, the governing body of such municipality may, at any time subsequent to the passage of a resolution abolishing a redevelopment commission, or concurrently therewith, by the passage of a resolution adopted in accordance with the procedures and pursuant to the findings specified in G.S. 160A-504(a) and (b), designate an existing housing authority created pursuant to Chapter 157 of the General Statutes to exercise the powers, duties, and responsibilities of a redevelopment commission. Where the governing body of any municipality designates, pursuant to this subsection, an existing housing authority created pursuant to Chapter 157 of the General Statutes to exercise the powers, duties, and responsibilities of a redevelopment commission, on the day set in the resolution of the governing body passed pursuant to subsection (b) of this section, or pursuant to subsection (c) of this section:

(1) The redevelopment commission shall cease to exist as a body politic and corporate and as a public body;

(2) All property, real and personal and mixed, belonging to the redevelopment commission or to the municipality as hereinabove provided in subsections (a) or (b), shall vest in, belong to, and be the property of the existing housing authority of the municipality;

(3) All judgments, liens, rights of liens, and causes of action of any nature in favor of the redevelopment commission or in favor of the municipality as hereinabove provided in subsections (a) or (b), shall remain, vest in, and inure to the benefit of the existing housing authority of the municipality;

(4) All rentals, taxes, assessments, and any other funds, charges or fees owing to the redevelopment commission, or owing to the municipality as hereinabove provided in subsections (a) or (b), shall be owed to and collected by the existing housing authority of the municipality;

(5) Any actions, suits, and proceedings pending against or having been instituted by the redevelopment commission, or the municipality, or to which the municipality has become a party, as hereinabove provided in subsections (a) or (b), shall not be abated by such abolition but all such actions, suits, and proceedings shall be continued and completed in the same manner as if abolition had not occurred, and the existing housing authority of the municipality shall be a party to all such actions, suits, and proceedings in the place and stead of the redevelopment commission, or the municipality, and shall pay or cause to be paid any judgments rendered in such actions, suits, or proceedings, and no new processes need be served in such action, suit, or proceeding;

(6) All obligations of the redevelopment commission, or the municipality as hereinabove provided in subsections (a) or (b), including outstanding indebtedness, shall be assumed by the existing housing authority of the municipality; and all such obligations and outstanding indebtedness shall be constituted obligations and indebtedness of the existing housing authority of the municipality.

(7) All ordinances, rules, regulations, and policies of the redevelopment commission, or of the municipality as hereinabove provided in subsections (a) or (b), shall continue in full force and effect until repealed and amended by the existing housing authority of the municipality.

(d) A housing authority designated by the governing body of any municipality to exercise the powers, duties and responsibilities of a redevelopment commission shall, when exercising the same, do so in accordance with Article 22 of Chapter 160A of the General Statutes. Otherwise the housing authority shall continue to exercise the powers, duties and responsibilities of a housing authority in accordance with Chapter 157 of the General Statutes. (1969, c. 1217, s. 1; 1971, c. 116, ss. 1, 2; 1973, c. 426, s. 75; 1981 (Reg. Sess., 1982), c. 1276, s. 13; 2003-403, s. 16.)

Editor's Note. — An amendment to subsection (a) of this section by Session Laws 1993, c. 497, s. 16, was made effective upon certification of approval of an amendment to Article V of the Constitution of North Carolina relating to the authority of any county, city or town to borrow money, without the need of voter approval, and issue financing bonds to be used to finance public activities associated with private economic development projects. This amendment was submitted to the people on November 2, 1993 and was defeated. The amendment to subsection (a) of this section, therefore, never took effect.

An earlier amendment to this section in Session Laws 1981 (Reg. Sess., 1982), c. 1276, s. 13, was made effective on certification of approval of a state constitutional amendment authorizing the enactment of laws dealing with transactions of the type contemplated by the act. Such an amendment was proposed by Session Laws 1981 (Reg. Sess., 1982), c. 1247, was submitted to the people on November 2, 1982, and was defeated. The amendment to this section, therefore, did not go into effect.

Session Laws 2003-403, s. 22, provides that Session Laws 2003-403, being necessary for the prosperity and welfare of North Carolina and its inhabitants, shall be liberally construed to effect its purposes.

Session Laws 2003-403, s. 23, is a severability clause.

Session Laws 2003-403, ss. 24 and 25, provide: "The amendment set out in Section 1 of this act shall be submitted to the qualified voters of the State at the statewide general election in November 2004, which election shall be conducted under the laws then governing elections in the State. Ballots, voting systems, or both may be used in accordance with Chapter 163 of the General Statutes. The question to be used in the voting systems and ballots shall be:

"[ ] FOR [ ] AGAINST

"Constitutional amendment to promote local economic and community development projects by (i) permitting the General Assembly to enact general laws giving counties, cities, and towns the power to finance public improvements associated with qualified private economic and community improvements within development districts, as long as the financing is secured by the additional tax revenues resulting from the enhanced property value within the development district and is not secured by a pledge of the local government's faith and credit or general taxing authority, which financing is not subject to a referendum; and (ii) permitting the owners of property in the development district to agree to a minimum tax value for their property, which is binding on future owners as long as the development district is in existence.

"If a majority of votes cast on the question are in favor of the amendment set out in Section 1 of this act, the State Board of Elections shall certify the amendment to the Secretary of State. The amendment set out in Section 1 of this act and the amendments set out in Sections 2 through 21 of this act become effective upon this certification. The Secretary of State shall enroll the amendment so certified among the permanent records of that office. If a majority of votes cast on the question are not in favor of the amendment set out in Section 1 of this act, that amendment and the amendments set out in Sections 2 through 21 of this act do not go into effect."

The constitutional amendment adding N.C. Const. Art. V, § 14, as proposed in Session Laws 2003-403, s. 1, was adopted by vote of the people at the general election held on November 2, 2004.

CASE NOTES

Cited in Southern Bell Tel. & Tel. Co. v. Housing Auth., 38 N.C. App. 172, 247 S.E.2d 663 (1978).

§ 160A-505.1. Commission budgeting and accounting systems as a part of municipality budgeting and accounting systems.

The governing body of a municipality may by resolution provide that the budgeting and accounting systems of the municipality's redevelopment commission or, if the municipality's housing authority is exercising the powers, duties, and responsibilities of a redevelopment commission, the budgeting and accounting systems of the housing authority, shall be an integral part of the budgeting and accounting systems of the municipality. If such a resolution is adopted:

(1) For purposes of the Local Government Budget and Fiscal Control Act, the commission or authority shall not be considered a "public authority," as that phrase is defined in G.S. 159-7(b), but rather shall be considered a department or agency of the municipality. The operations of the commission or authority shall be budgeted and accounted for as if the operations were those of a public enterprise of the municipality.

(2) The budget of the commission or authority shall be prepared and submitted in the same manner and according to the same procedures as are the budgets of other departments and agencies of the municipality; and the budget ordinance of the municipality shall provide for the operations of the commission or authority.

(3) The budget officer and finance officer of the municipality shall administer and control that portion of the municipality's budget ordinance relating to the operations of the commission or authority. (1971, c. 780, s. 37.2; 1973, c. 474, s. 30.)

§ 160A-506. Creation of a county redevelopment commission.

If the board of county commissioners of a county by resolution declares that blighted areas do exist in said county, and the redevelopment of such areas is necessary in the interest of public health, safety, morals, or welfare of the residents of such county, the county commissioners of said county are hereby authorized to create a separate and distinct body corporate and politic to be known as the redevelopment commission of said county by passing a resolution to create such a commission to function in the territorial limits of said county. Provided, however, that notice of the intent to consider passage of such a resolution or ordinance shall be published at least 10 days prior to the meeting of the board of county commissioners for such purposes, and further provided that the redevelopment commission shall not function in an area where such a commission exists or in the corporate limits of a municipality without resolution of agreement by said municipality.

All of the provisions of Article 22, Chapter 160A of the General Statutes, shall be applicable to county redevelopment commissions, including the formation, appointment, tenure, compensation, organization, interest and powers as specified therein. (1969, c. 1208, s. 2; 1973, c. 426, s. 75.)

§ 160A-507. Creation of a regional redevelopment commission.

If the board of county commissioners of two or more contiguous counties by resolution declare that blighted areas do exist in said counties and the redevelopment of such areas is necessary in the interest of public health, morals, or welfare of the residents of such counties, the county commissioners of said counties are hereby authorized to create a separate and distinct body corporate and politic to be known as the regional redevelopment commission by the passage of a resolution by each county to create such a commission to function in the territorial limits of the counties; provided, however, that notice of the intent to consider passage of such a resolution or ordinance shall be published at least 10 days prior to the meeting of the board of county commissioners for such purposes, and further provided that the redevelopment commission shall not function in an area where such a commission exists or in the corporate limits of a municipality without resolution of agreement by the municipality.

The board of county commissioners of each county included in the regional redevelopment commission shall appoint one person as a commissioner and such a person may be appointed at or after the time of the adoption of the resolution creating the redevelopment commission. The board of county commissioners shall have the authority to appoint successors or to remove persons for misconduct who are appointed by them. Each commissioner to the redevelopment commission shall serve for a five-year term except that initial appointments may be for less time in order to establish a fair donation system of appointments. In the event that a regional redevelopment commission shall have an even number of counties, the Governor of North Carolina shall appoint a member to the commission from the area to be served. The appointed members as commissioners shall constitute the regional redevelopment commission and certification of appointment shall be filed with the Secretary of State as part of the application for charter.

All provisions of the "Urban Redevelopment Law" as defined in Article 22 of Chapter 160A of the General Statutes, shall apply to the creation and operation of a regional redevelopment commission, and where reference is made to municipality, it shall be interpreted to apply to the area served by the regional redevelopment commission. (1969, c. 1208, s. 3; 1973, c. 426, s. 75.)

§ 160A-507.1. Creation of a joint county-city redevelopment commission.

A county and one or more cities within the county are hereby authorized to create a separate and distinct body corporate and politic to be known as the joint redevelopment commission by the passage of a resolution by the board of county commissioners and the governing body of one or more cities within the county creating such a commission to function within the territorial limits of such participating units of government; provided, however, that notice of the intent to consider passage of such a resolution or ordinance shall be published at least 10 days prior to the meeting of the affected governing boards for such purposes, and further provided that a joint redevelopment commission created hereunder shall have authority to operate in an area where there presently exists a redevelopment commission upon the approval of the municipality or county concerned. The governing body of each participating local government shall appoint one or more commissioners as such governing bodies shall determine; such persons may be appointed at or after the time of adoption of the resolution creating the joint redevelopment commission. The appointing authority shall have the authority to appoint successors or to remove persons for misfeasance, malfeasance or nonfeasance who are appointed by them. Each commissioner shall serve for a term designated by the governing bodies of not less than one nor more than five years. The appointed members as commissioners shall constitute the joint redevelopment commission and certification of appointment shall be filed with the Secretary of State as part of the application for charter.

All provisions of the "Urban Redevelopment Law" as defined in Article 22 of Chapter 160A of the General Statutes shall apply to the creation and operation of a joint redevelopment commission and where reference is made to municipality, it shall be interpreted to apply to the units of government creating a joint redevelopment commission. (1975, c. 407.)

§ 160A-508. Appointment and qualifications of members of commission.

Upon certification of a resolution declaring the need for a commission to operate in a city or town, the mayor and governing board thereof, respectively, shall appoint, as members of the commission, not less than five nor more than nine citizens who shall be residents of the city or town in which the commission is to operate. The governing body may at any time by resolution or ordinance increase or decrease the membership of a commission, within the limitations herein prescribed. (1951, c. 1095, s. 5; 1971, c. 362, ss. 6, 7; 1973, c. 426, s. 75.)

Local Modification. — City of Sanford: 1973, c. 990.

§ 160A-509. Tenure and compensation of members of commission.

The mayor and governing body shall designate overlapping terms of not less than one nor more than five years for the members who are first appointed. Thereafter, the term of office shall be five years. A member shall hold office until his successor has been appointed and qualified. Vacancies for the unexpired terms shall be promptly filled by the mayor and governing body. A member shall receive such compensation, if any, as the municipal governing board may provide for this service, and shall be entitled within the budget appropriation to the necessary expenses, including traveling expenses, incurred in the discharge of his duties. (1951, c. 1095, s. 6; 1967, c. 932, s. 4; 1971, c. 362, s. 8; 1973, c. 426, s. 75.)

§ 160A-510. Organization of commission.

The members of a commission shall select from among themselves a chairman, a vice-chairman, and such other officers as the commission may determine. A commission may employ a secretary, its own counsel, and such technical experts, and such other agents and employees, permanent or temporary, as it may require, and may determine the qualifications and fix the compensation of such persons. A majority of the members shall constitute a quorum for its meeting. Members shall not be liable personally on the bonds or other obligations of the commission, and the rights of creditors shall be solely against such commission. A commission may delegate to one or more of its members, agents or employees such of its powers as it shall deem necessary to carry out the purposes of this Article, subject always to the supervision and control of the commission. For inefficiency or neglect of duty or misconduct in office, a commissioner of a commission may be removed by the governing body, but a commissioner shall be removed only after a hearing and after he shall have been given a copy of the charges at least 10 days prior to such hearing and have had an opportunity to be heard in person or by counsel. (1951, c. 1095, s. 7; 1971, c. 362, s. 9; 1973, c. 426, s. 75.)

§ 160A-511. Interest of members or employees.

No member or employee of a commission shall acquire any interest, direct or indirect, in any redevelopment project or in any property included or planned to be included in any redevelopment area, or in any area which he may have reason to believe may be certified to be a redevelopment area, nor shall he have any interest, direct or indirect, in any contract or proposed contract for materials or services to be furnished or used by a commission, or in any contract with a redeveloper or prospective redeveloper relating, directly or indirectly, to any redevelopment project, except that a member or employee of a commission may acquire property in a residential redevelopment area from a person or entity other than the commission after the residential redevelopment plan for that area is adopted if:

(1) The primary purpose of acquisition is to occupy the property as his principal residence;
(2) The redevelopment plan does not provide for acquisition of such property by the commission; and
(3) Prior to acquiring title to the property, the member or employee shall have disclosed in writing to the commission and to the local governing body his intent to acquire the property and to occupy the property as his principal residence.

Except as authorized herein, the acquisition of any such interest in a redevelopment project or in any such property or contract shall constitute misconduct in office. If any member or employee of a commission shall have already owned or controlled within the preceding two years any interest, direct or indirect, in any property later included or planned to be included in any redevelopment project, under the jurisdiction of the commission, or has any such interest in any contract for material or services to be furnished or used in connection with any redevelopment project, he shall disclose the same in writing to the commission and to the local governing body. Any disclosure required herein shall be entered in writing upon the minute books of the commission. Failure to make disclosure shall constitute misconduct in office. (1951, c. 1095, s. 8; 1973, c. 426, s. 75; 1977, 2nd Sess., c. 1139.)

Local Modification. — City of Charlotte: 1983 (Reg. Sess., 1984), c. 964.

OPINIONS OF ATTORNEY GENERAL

As to applicability to member's lease of building in redevelopment project, see opinion of Attorney General to Mr. Miles B. Fowler, 42 N.C.A.G. 197 (1973).

§ 160A-512. Powers of commission.

A commission shall constitute a public body, corporate and politic, exercising public and essential governmental powers, which powers shall include all powers necessary or appropriate to carry out and effectuate the purposes and provisions of this Article, including the following powers in addition to those herein otherwise granted:

(1) To procure from the planning commission the designation of areas in need of redevelopment and its recommendation for such redevelopment;
(2) To cooperate with any government or municipality as herein defined;
(3) To act as agent of the State or federal government or any of its instrumentalities or agencies for the public purposes set out in this Article;
(4) To prepare or cause to be prepared and recommend redevelopment plans to the governing body of the municipality and to undertake and carry out "redevelopment projects" within its area of operation;
(5) Subject to the provisions of G.S. 160A-514(b) to arrange or contract for the furnishing or repair, by any person or agency, public or private, of services, privileges, works, streets, roads, public utilities or other facilities for or in connection with a redevelopment project; and (notwithstanding anything to the contrary contained in this Article or any other provision of law), to agree to any conditions that it may deem reasonable and appropriate attached to federal financial assistance and imposed pursuant to federal law relating to the determination of prevailing salaries or wages or compliance with labor standards, in the undertaking or carrying out of a redevelopment project,

and to include in any contract let in connection with such a project, provisions to fulfill such of said conditions as it may deem reasonable and appropriate;

(6) Within its area of operation, to purchase, obtain options upon, acquire by gift, grant, bequest, devise, eminent domain or otherwise, any real or personal property or any interest therein, together with any improvements thereon, necessary or incidental to a redevelopment project, except that eminent domain may only be used to take a blighted parcel; to hold, improve, clear or prepare for redevelopment any such property, and subject to the provisions of G.S. 160A-514, and with the approval of the local governing body sell, exchange, transfer, assign, subdivide, retain for its own use, mortgage, pledge, hypothecate or otherwise encumber or dispose of any real or personal property or any interest therein, either as an entirety to a single "redeveloper" or in parts to several redevelopers; provided that the commission finds that the sale or other transfer of any such part will not be prejudicial to the sale of other parts of the redevelopment area, nor in any other way prejudicial to the realization of the redevelopment plan approved by the governing body; to enter into contracts, either before or after the real property that is the subject of the contract is acquired by the Commission (although disposition of the property is still subject to G.S. 160A-514), with "redevelopers" of property containing covenants, restrictions, and conditions regarding the use of such property for residential, commercial, industrial, recreational purposes or for public purposes in accordance with the redevelopment plan and such other covenants, restrictions and conditions as the commission may deem necessary to prevent a recurrence of blighted areas or to effectuate the purposes of this Article; to make any of the covenants, restrictions or conditions of the foregoing contracts covenants running with the land, and to provide appropriate remedies for any breach of any such covenants or conditions, including the right to terminate such contracts and any interest in the property created pursuant thereto; to borrow money and issue bonds therefor and provide security for bonds; to insure or provide for the insurance of any real or personal property or operations of the commission against any risks or hazards, including the power to pay premiums on any such insurance; and to enter into any contracts necessary to effectuate the purposes of this Article;

(7) To invest any funds held in reserves or sinking funds or any funds not required for immediate disbursements, in such investments as may be lawful for guardians, executors, administrators or other fiduciaries under the laws of this State; to redeem its bonds at the redemption price established therein or to purchase its bonds at less than redemption price, all bonds so redeemed or purchased to be cancelled;

(8) To borrow money and to apply for and accept advances, loans evidenced by bonds, grants, contributions and any other form of financial assistance from the federal government, the State, county, municipality or other public body or from any sources, public or private for the purposes of this Article, to give such security as may be required and to enter into and carry out contracts in connection therewith; and, notwithstanding the provisions of any other law, may include in any contract for financial assistance with the federal government for a redevelopment project such conditions imposed pursuant to federal law as the commission may deem reasonable and appropriate and which are not inconsistent with the purposes of this Article;

(9) Acting through one or more commissioners or other persons designated by the commission, to conduct examinations and investigations

and to hear testimony and take proof under oath at public or private hearings on any matter material for its information; to administer oaths, issue subpoenas requiring the attendance of witnesses or the production of books and papers;

(10) Within its area of operation, to make or have made all surveys, studies and plans (but not including the preparation of a general plan for the community) necessary to the carrying out of the purposes of this Article and in connection therewith to enter into or upon any land, building, or improvement thereon for such purposes and to make soundings, test borings, surveys, appraisals and other preliminary studies and investigations necessary to carry out its powers but such entry shall constitute no cause of action for trespass in favor of the owner of such land, building, or improvement except for injuries resulting from negligence, wantonness or malice; and to contract or cooperate with any and all persons or agencies public or private, in the making and carrying out of such surveys, appraisals, studies and plans.

A redevelopment commission is hereby specifically authorized to make (i) plans for carrying out a program of voluntary repair and rehabilitation of buildings and improvements and (ii) plans for the enforcement of laws, codes, and regulations relating to the use of land and the use and occupancy of buildings and improvements, and to the compulsory repair, rehabilitation, demolition, or removal of buildings and improvements. The redevelopment commission is further authorized to develop, test and report methods and techniques, and carry out demonstrations and other activities, for the prevention and elimination of slums and urban blight.

(11) To make such expenditures as may be necessary to carry out the purposes of this Article; and to make expenditures from funds obtained from the federal government;

(12) To sue and be sued;

(13) To adopt a seal;

(14) To have perpetual succession;

(15) To make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the commission; and any contract or instrument when signed by the chairman or vice-chairman and secretary or assistant secretary, or, treasurer or assistant treasurer of the commission shall be held to have been properly executed for and on its behalf;

(16) To make and from time to time amend and repeal bylaws, rules, regulations and resolutions;

(17) To make available to the government or municipality or any appropriate agency, board or commission, the recommendations of the commission affecting any area in its field of operation or property therein, which it may deem likely to promote the public health, morals, safety or welfare;

(18) To perform redevelopment project undertakings and activities in one or more contiguous or noncontiguous redevelopment areas which are planned and carried out on the basis of annual increments. (1951, c. 1095, s. 9; 1961, c. 837, ss. 5, 7; 1969, c. 254, s. 1; 1973, c. 426, s. 75; 1981 (Reg. Sess., 1982), c. 1276, s. 14; 2003-403, s. 17; 2006-224, s. 2.3; 2006-259, s. 47.)

Editor's Note. — An amendment to subdivision (6) of this section by Session Laws 1993, c. 497, s. 17, was made effective upon certification of approval of an amendment to Article V of the Constitution of North Carolina relating to the authority of any county, city or town to borrow money, without the need of voter approval, and issue financing bonds to be used to finance public activities associated with private economic development projects. This amendment was submitted to the people on November 2, 1993 and was defeated. The amendment to subdivision (6) of this section, therefore, never took effect.

An earlier amendment to this section in Session Laws 1981 (Reg. Sess., 1982), c. 1276, s. 14, was made effective on certification of approval of a state constitutional amendment authorizing the enactment of laws dealing with transactions of the type contemplated by the act. Such an amendment was proposed by Session Laws 1981 (Reg. Sess., 1982), c. 1247, was submitted to the people on Nov. 2, 1982, and was defeated. The amendment to this section therefore, did not go into effect.

Section 160-59, referred to in the first version of subdivision (6) of this section, was repealed by Session Laws 1971, c. 698, s. 2. For present provisions as to sale of municipal property, see G.S. 160A-266 to 160A-276.

Session Laws 2003-403, s. 22, provides that Session Laws 2003-403, being necessary for the prosperity and welfare of North Carolina and its inhabitants, shall be liberally construed to effect its purposes.

Session Laws 2003-403, s. 23, is a severability clause.

Session Laws 2003-403, ss. 24 and 25, provide: "The amendment set out in Section 1 of this act shall be submitted to the qualified voters of the State at the statewide general election in November 2004, which election shall be conducted under the laws then governing elections in the State. Ballots, voting systems, or both may be used in accordance with Chapter 163 of the General Statutes. The question to be used in the voting systems and ballots shall be:

"[ ] FOR [ ] AGAINST

"Constitutional amendment to promote local economic and community development projects by (i) permitting the General Assembly to enact general laws giving counties, cities, and towns the power to finance public improvements associated with qualified private economic and community improvements within development districts, as long as the financing is secured by the additional tax revenues resulting from the enhanced property value within the development district and is not secured by a pledge of the local government's faith and credit or general taxing authority, which financing is not subject to a referendum; and (ii) permitting the owners of property in the development district to agree to a minimum tax value for their property, which is binding on future owners as long as the development district is in existence.

"If a majority of votes cast on the question are in favor of the amendment set out in Section 1 of this act, the State Board of Elections shall certify the amendment to the Secretary of State. The amendment set out in Section 1 of this act and the amendments set out in Sections 2 through 21 of this act become effective upon this certification. The Secretary of State shall enroll the amendment so certified among the permanent records of that office. If a majority of votes cast on the question are not in favor of the amendment set out in Section 1 of this act, that amendment and the amendments set out in Sections 2 through 21 of this act do not go into effect."

The constitutional amendment adding N.C. Const. Art. V, § 14, as proposed in Session Laws 2003-403, s. 1, was adopted by vote of the people at the general election held on November 2, 2004.

Session Laws 2006-259, s. 47, provides: "If House Bill 1965, 2005 Regular Session (Session Laws 2006-224), becomes law, every reference in that act to July 1, 2006, is changed to August 15, 2006."

Legal Periodicals. — For survey of 1978 administrative law, see 57 N.C.L. Rev. 831 (1979).

CASE NOTES

Strict Construction. — Statutes prescribing the procedure to condemn lands should be strictly construed. Redevelopment Comm'n v. Grimes, 8 N.C. App. 376, 174 S.E.2d 839 (1970), rev'd on other grounds, 277 N.C. 634, 178 S.E.2d 345 (1971).

Power of Housing Authority to Close Public Streets. — Although the City of Raleigh did not delegate its police power to close public streets to the Housing Authority of Raleigh, the authority did not lack that power since it had power to take public streets by eminent domain with the city's consent, and to carry out redevelopment projects, which included removal of existing streets, utilities or other improvements. Southern Bell Tel. & Tel. Co. v. Housing Auth., 38 N.C. App. 172, 247 S.E.2d 663 (1978), cert. denied, 296 N.C. 414 (1979).

Company's Costs of Relocating Telephone Lines Not "Necessary Expenditures." — Expenses incurred by a telephone company in relocating telephone lines from an area being redeveloped could not be held to be "necessary expenditures" within the meaning of subdivision (11), since at common law no reimbursement was required, and no expression of legislative intent that relocation expenses should be compensable can be found. Southern Bell Tel. & Tel. Co. v. Housing Auth., 38 N.C. App. 172, 247 S.E.2d 663 (1978), cert. denied, 296 N.C. 414 (1979).

Nor Otherwise Compensable. — The cost of relocating a telephone company's telephone lines from an area being redeveloped could not be reimbursed as a taking under eminent domain, as no property or interest of the telephone company was "taken." Southern Bell Tel. & Tel. Co. v. Housing Auth., 38 N.C. App. 172, 247 S.E.2d 663 (1978), cert. denied, 296 N.C. 414 (1979).

Selection as to Route, Quantity, etc., Is Largely Discretionary. — Where the general power to condemn exists, the right of selection as to route, quantity, etc., is left largely to the discretion of the company or corporation, and does not become the subject of judicial inquiry except on allegations of fact tending to show bad faith on the part of the company or corporation or an oppressive and manifest abuse of the discretion conferred upon them by the law. Redevelopment Comm'n v. Grimes, 277 N.C. 634, 178 S.E.2d 345 (1971).

Area to Be Redeveloped May Contain Vacant Lands or Inoffensive Structures. — The fact that some of the lands in an area to be redeveloped under redevelopment laws are vacant lands or contain structures in themselves inoffensive or innocuous does not invalidate the taking of the property, or invalidate the statute so permitting, according to the form of the contention in the particular case, usually on the ground that the action was justified as a necessary concomitant area, as compared to structure-by-structure rehabilitation. Redevelopment Comm'n v. Grimes, 277 N.C. 634, 178 S.E.2d 345 (1971).

Sufficiency of Condemnation Petition. — A petition to condemn land for urban renewal was sufficient under the Rules of Civil Procedure to state a claim for relief, where it gave notice of the nature and basis of the petitioners' claim and the type of case brought, and alleged generally the occurrence or performance of the conditions precedent required by Chapter 160, Article 37 (now Chapter 160A, Article 11), and Chapter 40A, Article 3. Redevelopment Comm'n v. Grimes, 277 N.C. 634, 178 S.E.2d 345 (1971).

Affirmative Allegation of Compliance with Statutory Requirements Necessary. — In order to invoke the power of condemnation, the redevelopment commission must affirmatively allege compliance with the statutory requirements. Redevelopment Comm'n v. Grimes, 277 N.C. 634, 178 S.E.2d 345 (1971).

Necessary Facts Must Be Alleged in Each Separate Proceeding. — If a redevelopment commission elects to institute a separate and distinct proceeding for each parcel of land taken, it must, in each instance, allege all the facts necessary to justify the taking. Redevelopment Comm'n v. Hagins, 258 N.C. 220, 128 S.E.2d 391 (1962).

Joinder of Owners of Different Tracts in One Proceeding. — Where it is sought to condemn several tracts of land belonging to different owners, all the owners may be joined in one proceeding, in the absence of any statutory provision to the contrary. Such a course is convenient, and can injure no one if damages are separately assessed to each owner. Redevelopment Comm'n v. Hagins, 258 N.C. 220, 128 S.E.2d 391 (1962).

Each owner is entitled to defend upon the ground his property does not qualify for the purpose intended, or that its selection was the result of arbitrary or capricious conduct on the part of the taking agency. Redevelopment Comm'n v. Hagins, 258 N.C. 220, 128 S.E.2d 391 (1962).

Determining Fair Market Value. — In determining the fair market value of property taken in condemnation, it is generally regarded as competent to show the value of the property within a reasonable time before and/or after the taking as bearing upon its value at the time of the appropriation. The rule is necessarily one of variableness in the time limits, depending upon the nature of the property, its location and surrounding circumstances, and whether the evidence offered fairly points to its value at the time in question. Wilson Redevelopment Comm'n v. Stewart, 3 N.C. App. 271, 164 S.E.2d 495 (1968).

The rule allowing evidence of value before or after the taking is analogous to the rule which allows evidence of the purchase price paid for property sometime prior to the date of taking. Wilson Redevelopment Comm'n v. Stewart, 3 N.C. App. 271, 164 S.E.2d 495 (1968).

In determining whether evidence of the value at sometime prior to the taking is admissible to show fair market value at the time of the taking, the inquiry is whether under all the circumstances that appraisal fairly points to the value of the property at the time of the taking. Wilson Redevelopment Comm'n v. Stewart, 3 N.C. App. 271, 164 S.E.2d 495 (1968).

Scope of Cross-Examination. — It would seem that the utmost freedom of cross-examination with reference to sales and sales prices in the vicinity should be accorded the landowner, subject to the right and duty of the presiding judge to exercise his sound discretion in controlling the nature and scope of the cross-examination in the interest of justice and in confining the testimony within the rules of competency, relevancy and materiality. It follows that the condemnor should be accorded similar freedom. Wilson Redevelopment Comm'n v. Stewart, 3 N.C. App. 271, 164 S.E.2d 495 (1968).

Sales prices of nearby property are admissible on cross-examination to test the witness' knowledge of values and for the purposes of impeachment. Wilson Redevelopment Comm'n

v. Stewart, 3 N.C. App. 271, 164 S.E.2d 495 (1968).

Role of Judicial Review Limited. — In determining whether a particular area may legally be selected for redevelopment, the role of judicial review is severely limited by the rule that the finding of the redevelopment authority, or similar administrative agency, that a particular area is "blighted," that redevelopment serves a "public use," or the like, is not generally reviewable, unless fraudulent or capricious, or, in some instances, unless the evidence against the finding is overwhelming. Redevelopment Comm'n v. Grimes, 277 N.C. 634, 178 S.E.2d 345 (1971).

A trial court erred in dismissing an action to condemn land for urban renewal where there was no finding that the redevelopment commission failed to comply with the statutory procedures prerequisite to an exercise of the power of eminent domain by it, and there was no allegation, proof or finding that the redevelopment commission arbitrarily abused its discretion or acted in bad faith in selecting the area in question. The court's findings that the property of respondents did not lie within a blighted area or a nonresidential redevelopment area, as defined in G.S. 160A-503, was an insufficient basis for dismissal of the action. Redevelopment Comm'n v. Grimes, 277 N.C. 634, 178 S.E.2d 345 (1971).

Applied in Campbell v. First Baptist Church, 298 N.C. 476, 259 S.E.2d 558 (1979); Redevelopment Comm'n v. Ford, 67 N.C. App. 470, 313 S.E.2d 211 (1984).

Cited in Campbell v. First Baptist Church, 39 N.C. App. 117, 250 S.E.2d 68 (1978).

§ 160A-513. Preparation and adoption of redevelopment plans.

(a) A commission shall prepare a redevelopment plan for any area certified by the planning commission to be a redevelopment area. A redevelopment plan shall be sufficiently complete to indicate its relationship to definite local objectives as to appropriate land uses, improved traffic, public transportation, public utilities, recreational and community facilities and other public improvements and the proposed land uses and building requirements in the redevelopment project area.

(b) The planning commission's certification of a redevelopment area shall be made in conformance with its comprehensive general plan, if any (which may include, inter alia, a plan of major traffic arteries and terminals and a land use plan and projected population densities) for the area.

(c) A commission shall not acquire real property for a development project unless the governing body of the community in which the redevelopment project area is located has approved the redevelopment plan, as hereinafter prescribed; provided, however, that the commission may acquire, through negotiation, specific pieces of property in the redevelopment area prior to the approval of such plan when the governing body finds that advance acquisition of such properties is in the public interest and specifically approves such action.

(d) The redevelopment commission's redevelopment plan shall include, without being limited to, the following:

(1) The boundaries of the area, with a map showing the existing uses of the real property therein;

(2) A land use plan of the area showing proposed uses following redevelopment;

(3) Standards of population densities, land coverage and building intensities in the proposed redevelopment;

(4) A preliminary site plan of the area;

(5) A statement of the proposed changes, if any, in zoning ordinances or maps;

(6) A statement of any proposed changes in street layouts or street levels;

(7) A statement of the estimated cost and method of financing redevelopment under the plan; provided, that where redevelopment activities are performed on the basis of annual increments, such statement to be sufficient shall set forth a schedule of the activities proposed to be

undertaken during the incremental period, together with a statement of the estimated cost and method of financing such scheduled activities only;

(8) A statement of such continuing controls as may be deemed necessary to effectuate the purposes of this Article;

(9) A statement of a feasible method proposed for the relocation of the families displaced.

(e) The commission shall hold a public hearing prior to its final determination of the redevelopment plan. Notice of such hearing shall be given once a week for two successive calendar weeks in a newspaper published in the municipality, or if there be no newspaper published in the municipality, by posting such notice at four public places in the municipality, said notice to be published the first time or posted not less than 15 days prior to the date fixed for said hearing.

(f) The commission shall submit the redevelopment plan to the planning commission for review. The planning commission, shall, within 45 days, certify to the redevelopment commission its recommendation on the redevelopment plan, either of approval, rejection or modification, and in the latter event, specify the changes recommended.

(g) Upon receipt of the planning commission's recommendation, or at the expiration of 45 days, if no recommendation is made by the planning commission, the commission shall submit to the governing body the redevelopment plan with the recommendation, if any, of the planning commission thereon. Prior to recommending a redevelopment plan to the governing body for approval, the commission shall consider whether the proposed land uses and building requirements in the redevelopment project area are designed with the general purpose of accomplishing, in conformance with the general plan, a coordinated, adjusted and harmonious development of the community and its environs, which will in accordance with present and future needs promote health, safety, morals, order, convenience, prosperity and the general welfare, as well as efficiency and economy in the process of development, including, among other things, adequate provision for traffic, vehicular parking, the promotion of safety from fire, panic and other dangers, adequate provision for light and air, the promotion of the healthful and convenient distribution of population, the provision of adequate transportation, water, sewerage and other public utilities, schools, parks, recreational and community facilities and other public requirements, the promotion of sound design and arrangements, the wise and efficient expenditure of public funds, the prevention of the recurrence of insanitary or unsafe dwelling accommodations, slums, or conditions or blight.

(h) The governing body, upon receipt of the redevelopment plan and the recommendation (if any) of the planning commission, shall hold a public hearing upon said plan. Notice of such hearing shall be given once a week for two successive weeks in a newspaper published in the municipality, or, if there be no newspaper published in the municipality, by posting such notice at four public places in the municipality, said notice to be published the first time or posted not less than 15 days prior to the date fixed for said hearing. The notice shall describe the redevelopment area by boundaries, in a manner designed to be understandable by the general public. The redevelopment plan, including such maps, plans, contracts, or other documents as form a part of it, together with the recommendation (if any) of the planning commission and supporting data, shall be available for public inspection at a location specified in the notice for at least 10 days prior to the hearing.

At the hearing the governing body shall afford an opportunity to all persons or agencies interested to be heard and shall receive, make known, and consider recommendations in writing with reference to the redevelopment plan.

(i) The governing body shall approve, amend, or reject the redevelopment plan as submitted.

(j) Subject to the proviso in subsection (c) of this section, upon approval by the governing body of the redevelopment plan, the commission is authorized to acquire property, to execute contracts for clearance and preparation of the land for resale, and to take other actions necessary to carry out the plan, in accordance with the provisions of this Article.

(k) A redevelopment plan may be modified at any time by the commission; provided that, if modified after the sale of real property in the redevelopment project area, the modification must be consented to by the redeveloper of such real property or his successor, or their successors in interest affected by the proposed modification. Where the proposed modification will substantially change the redevelopment plan as previously approved by the governing body the modification must similarly be approved by the governing body as provided above. (1951, c. 1095, s. 10; 1961, c. 837, s. 8; 1965, c. 808; 1969, c. 254, s. 2; 1973, c. 426, s. 75.)

CASE NOTES

Urban Redevelopment Plan Not a Necessary Expense Under Former Constitutional Provision. — An urban redevelopment plan was not a necessary expense of a municipality within the meaning of former Art. VII, § 6, Const. 1868, and therefore a municipality might be enjoined from spending ad valorem taxes or levying taxes and issuing bonds for an urban redevelopment project until and unless such project was approved by a majority of the qualified voters of the municipality; any provisions of former G.S. 160-466(b) and 160-470 authorizing a municipality to levy taxes and issue bonds for such purpose without a vote were unconstitutional. Horton v. Redevelopment Comm'n, 259 N.C. 605, 131 S.E.2d 464 (1963). (See now N.C. Const., Art. V, § 2.)

The adoption of the redevelopment plan is equivalent to a cease and desist order preventing any development, rental, or sale of the property within the area. Redevelopment Comm'n v. Hagins, 258 N.C. 220, 128 S.E.2d 391 (1962).

The procedures required by this section are designed to guard against arbitrary action by either the governing body of the community or the redevelopment commission, and thus afford protection to persons owning property in the affected area. Unless these procedures are strictly followed, a redevelopment commission has no authority to exercise the power of eminent domain. Redevelopment Comm'n v. Abeyounis, 1 N.C. App. 270, 161 S.E.2d 191 (1968).

Allegations Required in Stating Cause of Action for Condemnation. — A redevelopment commission, in order to state a cause of action for condemnation, must properly allege, inter alia, a redevelopment plan which complies with this section; compliance with the procedures for approval of the redevelopment plan; and approval of the plan by the governing body of the area in which the project is located. Redevelopment Comm'n v. Abeyounis, 1 N.C. App. 270, 161 S.E.2d 191 (1968).

In order to invoke the power of condemnation, the redevelopment commission must affirmatively allege compliance with the statutory requirements. Redevelopment Comm'n v. Grimes, 277 N.C. 634, 178 S.E.2d 345 (1971).

Plan Must Provide for Financing Acquisition of Redevelopment Area and Other Necessary Costs. — A redevelopment plan must, under subsection (d)(7) of this section, provide a method of financing of acquisition of the redevelopment area, and of all other costs necessary to prepare the area for redevelopment, which method must, of course, be legal and feasible. Horton v. Redevelopment Comm'n, 262 N.C. 306, 137 S.E.2d 115 (1964).

Plan to Finance Entire Area Is Required. — In order that property owners may be protected against threatened taking which is never consummated, the act wisely requires a showing that the acquiring agency has a lawful plan by which, among other things, it may lawfully finance the whole area. Redevelopment Comm'n v. Hagins, 258 N.C. 220, 128 S.E.2d 391 (1962).

Ability to finance the acquisition of one or two tracts is not a showing of a proper plan for financing the development, including the arrangements for relocating displaced families. Redevelopment Comm'n v. Hagins, 258 N.C. 220, 128 S.E.2d 391 (1962).

Cited in Horton v. Redevelopment Comm'n, 264 N.C. 1, 140 S.E.2d 728 (1965).

§ 160A-514. Required procedures for contracts, purchases and sales; powers of commission in carrying out redevelopment project.

(a) A commission may privately contract for engineering, legal, surveying, professional or other similar services without advertisement or bid.

(b) In entering and carrying out any contract for construction, demolition, moving of structures, or repair work or the purchase of apparatus, supplies, materials, or equipment, a commission shall comply with the provisions of Article 8 of Chapter 143 of the General Statutes. In construing such provisions, the commission shall be considered to be the governing board of a "subdivision of the State," and a contract for demolition or moving of structures, shall be treated in the same manner as a contract for construction or repair. Compliance with such provisions shall not be required, however, where the commission enters into contracts with the municipality which created it for the municipality to furnish any such services, work, apparatus, supplies, materials, or equipment; the making of these contracts without advertisement or bids is hereby specifically authorized. Advertisement or bids shall not be required for any contract for construction, demolition, moving of structures, or repair work, or for the purchase of apparatus, supplies, materials, or equipment, where such contract involves the expenditure of public money in an amount less than five hundred dollars ($500.00).

(c) A commission may sell, exchange, or otherwise transfer the fee or any lesser interest in real property in a redevelopment project area to any redeveloper for any public or private use that accords with the redevelopment plan, subject to such covenants, conditions and restrictions as the commission may deem to be in the public interest and in furtherance of the purposes of this Article. In the sale, exchange, or transfer of property, the commission shall exercise the authority and procedure set out in G.S. 160A-268, 160A-269, 160A-270, 160A-271, or 160A-279 for the disposition of property by a city council. Provided, however, that all sales, exchanges, or other transfers of real property from July 9, 1985, to December 31, 1987, in accordance with the provisions of this section prior to its revision on July 9, 1985, shall be and are valid in all respects.

(d) A commission may sell personal property having a value of less than five hundred dollars ($500.00) at private sale without advertisement and bids.

(e) In carrying out a redevelopment project, the commission may:

(1) With or without consideration and at private sale convey to the municipality in which the project is located such real property as, in accordance with the redevelopment plan, is to be laid out into streets, alleys, and public ways.

(2) With or without consideration, convey at private sale, grant, or dedicate easements and rights-of-way for public utilities, sewers, streets and other similar facilities, in accordance with the redevelopment plan.

(3) With or without consideration and at private sale convey to the municipality, county or other appropriate public body such real property as, in accordance with the redevelopment plan, is to be used for parks, schools, public buildings, facilities or other public purposes.

(4) In addition to other authority contained in this section, after a public hearing advertised in accordance with the provisions of G.S. 160A-513(e), and subject to the approval of the governing body of the municipality, convey to a nonprofit association or corporation organized and operated exclusively for educational, scientific, literary, cultural, charitable or religious purposes, no part of the net earnings of which inure to the benefit of any private shareholder or individual,

such real property as, in accordance with the redevelopment plan, is to be used for the purposes of such associations or corporations. Such conveyance shall be for such consideration as may be agreed upon by the commission and the association or corporation, which shall not be less than the fair value of the property agreed upon by a committee of three professional real estate appraisers currently practicing in the State, which committee shall be appointed by the commission. All conveyances made under the authority of this subsection shall contain restrictive covenants limiting the use of property so conveyed to the purposes for which the conveyance is made.

(f) After receiving the required approval of a sale from the governing body of the municipality, the commission may execute any required contracts, deeds, and other instruments and take all steps necessary to effectuate any such contract or sale. Any contract of sale between a commission and a redeveloper may contain, without being limited to, any or all of the following provisions:

(1) Plans prepared by the redeveloper or otherwise and such other documents as may be required to show the type, material, structure and general character of the proposed redevelopment;
(2) A statement of the use intended for each part of the proposed redevelopment;
(3) A guaranty of completion of the proposed redevelopment within specified time limits;
(4) The amount, if known, of the consideration to be paid;
(5) Adequate safeguards for proper maintenance of all parts of the proposed redevelopment;
(6) Such other continuing controls as may be deemed necessary to effectuate the purposes of this Article.

Any deed to a redeveloper in furtherance of a redevelopment contract shall be executed in the name of the commission, by its proper officers, and shall contain in addition to all other provisions, such conditions, restrictions and provisions as the commission may deem desirable to run with the land in order to effectuate the purposes of this Article.

(g) The commission may temporarily rent or lease, operate and maintain real property in a redevelopment project area, pending the disposition of the property for redevelopment, for such uses and purposes as may be deemed desirable even though not in conformity with the redevelopment plan. (1951, c. 1095, s. 11; 1961, c. 837, s. 9; 1963, c. 1212, ss. 1, 2; 1965, c. 679, s. 2; 1967, c. 24, s. 18; c. 932, s. 1; 1973, c. 426, s. 75; 1985, c. 665, ss. 1, 2; 1987, c. 364; 1989, c. 413; 2003-66, ss. 1, 2.)

Local Modification. — Craven and Duplin: 1963, c. 1212, s. 4; 1965, cc. 539, 818; Durham: 1971, c. 1060; 1973, c. 308; Edgecombe: 1963, c. 1212, s. 4; 1965, cc. 539, 818; Lee: 1971, c. 1060; 1973, c. 308; Lenoir: 1983, c. 207; Macon and Madison: 1963, c. 1212, s. 4; 1965, cc. 539, 818; Mecklenburg: 1971, c. 1060; 1973, c. 308; New Hanover: 1963, c. 1212, s. 4; 1965, cc. 539, 818; Robeson and Sampson: 1971, c. 1060; 1973, c. 308; Swain: 1963, c. 1212, s. 4; 1965, cc. 539, 818; Wayne: 1971, c. 1060; 1973, c. 308; Yancey: 1963, c. 1212, s. 4; 1965, cc. 539, 818; city of Asheboro: 1971, c. 1060; 1973, c. 308; cities of Charlotte and Durham: 1965, c. 1206; 1967, c. 815; city of Fayetteville: 1983, c. 235; city of Goldsboro: 1973, c. 346; 1983 (Reg. Sess., 1984), c. 947; 1985, c. 281; city of Kinston: 1981, c. 868; 1983, c. 207; city of New Bern: 1965, c. 1206; 1967, c. 815; 1971, c. 1060; 1973, c. 1104; city of Raleigh: 1973, c. 346; 1977, c. 76; city of Williamston: 1971, c. 1060; 1975, c. 470; city of Wilmington: 1979, 2nd Sess., c. 1321; 1981, c. 582; town of Chapel Hill: 1973, c. 346; 1975, c. 379; 1977, c. 76; town of Princeville: 1983, c. 265; town of Tarboro: 1973, c. 346; 1975, c. 379.

Session Laws 1977, c. 76, amended Session Laws 1973, c. 346, without making any reference to Session Laws 1975, c. 379, which made the 1973 act applicable to the town of Tarboro.

Legal Periodicals. — For survey of 1981 administrative law, see 60 N.C.L. Rev. 1165 (1982).

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Discretion of Commission. — Each subsection of this section confers upon a redevelopment commission the authority to perform certain acts necessary to carry out the redevelopment project, and the use of the word "may" merely denotes that the commission is not required to do each and every act authorized in this section. However, should a commission elect to exercise the authority conferred upon it by a particular subsection, then the procedural requirements "shall" be followed, under subsection (c) of this section. Thus, the use of the word "may" in subdivision (e)(4) of this section is not mandatory in the sense that it requires a commission to convey to a nonprofit association. Whether there shall be a conveyance is a matter in the discretion of the commission. However, once a commission decides to exercise its authority to so convey, that conveyance must be after a public hearing and "shall be for such consideration as may be agreed upon by the commission and the association or corporation." Campbell v. First Baptist Church, 298 N.C. 476, 259 S.E.2d 558 (1979).

For interpretation of subsections (c) and (d) of this section, see Porsh Bldrs., Inc. v. City of Winston-Salem, 61 N.C. App. 682, 301 S.E.2d 530, cert. denied, 308 N.C. 675, 304 S.E.2d 757 (1983).

"Exchanges" Within Rule Requiring Advertisement and Bids. — In light of the specifically outlined exceptions to the general rule, coupled with the specific inclusion of "exchanges" within the proviso of subsection (c) of this section, "exchanges" are within the general rule requiring advertisement and bids. Campbell v. First Baptist Church, 298 N.C. 476, 259 S.E.2d 558 (1979).

Treatment of "Exchanges". — An "exchange" is included within the provisions of subsection (d) of this section, unless the commission elects to treat it as a private sale and proceed under the provisions of subsection (e) of this section. Campbell v. First Baptist Church, 298 N.C. 476, 259 S.E.2d 558 (1979).

Exchange of Property with Church Covered by Subsection (d). — The "exchange" of property between a redevelopment commission and a "redeveloper" such as a church is nothing more than a "private sale" of real property to "a nonprofit association or corporation operated exclusively for educational, scientific, literary, cultural, charitable or religious purposes" as described in subsection (d) of this section, and such exchange must be in compliance with all of the requirements of subsection (d). Campbell v. First Baptist Church, 39 N.C. App. 117, 250 S.E.2d 68 (1978), aff'd, 298 N.C. 476, 259 S.E.2d 558 (1979).

Limits of Municipal Governing Body's Authority Under Subsection (d). — The provision of subsection (d) of this section, making sales of municipal redevelopment commission property subject to the approval of the governing body of the municipality, merely places final authority in the board to determine whether all submitted bids satisfy the zoning requirements of the district and are in general conformity with the redevelopment plan, and does not give the board authority to determine which bid "more nearly" complies with the redevelopment plan. Porsh Bldrs., Inc. v. City of Winston-Salem, 302 N.C. 550, 276 S.E.2d 443 (1981).

Acceptance of Highest Responsible Bid Required. — In selling the property of a municipal redevelopment commission to private developers, the municipal board of aldermen is required to accept the "highest responsible bid," if any, where that bid complies with the applicable zoning restrictions and the redevelopment plan for the property to be sold. Porsh Bldrs., Inc. v. City of Winston-Salem, 302 N.C. 550, 276 S.E.2d 443 (1981).

Criteria in Determining "Responsible" Bidder. — In this section, which provides for sale of municipal redevelopment commission property to the "highest responsible bidder," the term "responsible" was intended to give the municipality power to use its discretion only to the extent of determining whether a bidder had the resources and financial ability to complete the project set forth in his proposal for the development of the property; it does not allow the municipality to consider which bid best complies with the redevelopment plan. Porsh Bldrs., Inc. v. City of Winston-Salem, 302 N.C. 550, 276 S.E.2d 443 (1981).

Lower Bid "More Nearly" Complying with Plan May Not Be Accepted. — The provision of subsection (d) of this section giving the governing board of a municipality the power to reject all bids for redevelopment commission property does not impliedly authorize the board to reject the highest bid if a lower bid "more nearly" complies with the redevelopment plan. Porsh Bldrs., Inc. v. City of Winston-Salem, 302 N.C. 550, 276 S.E.2d 443 (1981).

Procedure for Conveyance to "Nonprofit Association or Corporation". — Before it can lawfully convey property to a "nonprofit association or corporation," a redevelopment commission must: (1) Hold a public hearing on the proposed conveyance after proper advertisement; (2) Get approval for the proposed conveyance from the governing body of the municipality; and (3) Agree with the proposed transferee on consideration for the conveyance which is not less than the fair value of the property as determined by a committee of three professional real estate appraisers. Campbell v. First Baptist Church, 39 N.C. App. 117, 250 S.E.2d 68 (1978), aff'd, 298 N.C. 476, 259 S.E.2d 558 (1979).

Public Purpose Not Negated by Sale to Private Redeveloper. — The fact that a municipal redevelopment commission may exchange, sell or transfer slum property condemned by it for redevelopment to private persons does not affect the question of whether the taking is for a public use, since the statute provides safeguards in the use and control of the land by the private developer to prevent the area from again becoming a blighted area, and the sale or transfer to the redeveloper is merely incidental or collateral to the primary purpose of clearing the slum area in the interest of the public health, safety, morals and welfare. Redevelopment Comm'n v. Security Nat'l Bank, 252 N.C. 595, 114 S.E.2d 688 (1960).

The condemnation of blighted and slum areas within a municipality and the sale or exchange thereof to any redeveloper for residential, recreational, commercial, industrial or other uses or for public use in accordance with the redevelopment plan, under safeguards to prevent such areas from reverting to slum areas, is in the interest of the public health, safety, morals and welfare, and therefore such condemnation is for a public purpose. Martin v. North Carolina Hous. Corp., 277 N.C. 29, 175 S.E.2d 665 (1970).

Applied in Campbell v. First Baptist Church, 19 N.C. App. 343, 199 S.E.2d 34 (1973); Campbell v. First Baptist Church, 51 N.C. App. 393, 276 S.E.2d 712 (1981); Redevelopment Comm'n v. Ford, 67 N.C. App. 470, 313 S.E.2d 211 (1984).

Cited in State ex rel. Utils. Comm'n v. Empire Power Co., 112 N.C. App. 265, 435 S.E.2d 553 (1993).

§ 160A-515. Eminent domain.

The commission may exercise the right of eminent domain in accordance with the provisions of Chapter 40A, but only where the property to be taken is a blighted parcel. (1951, c. 1095, s. 12; 1965, c. 679, s. 3; c. 1132; 1967, c. 932, ss. 2, 3; 1973, c. 426, s. 75; 1981, c. 919, s. 30; 2006-224, s. 2.4; 2006-259, s. 47.)

Editor's Note. — Session Laws 2006-259, s. 47, provides: "If House Bill 1965, 2005 Regular Session (Session Laws 2006-224), becomes law, every reference in that act to July 1, 2006, is changed to August 15, 2006."

Legal Periodicals. — For article urging revision and recodification of North Carolina's former eminent domain laws, see 45 N.C.L. Rev. 587 (1967).

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Strict Construction. — The exercise of the power of eminent domain is in derogation of common right, and all laws conferring such power must be strictly construed. Redevelopment Comm'n v. Abeyounis, 1 N.C. App. 270, 161 S.E.2d 191 (1968); Greensboro-High Point Airport Auth. v. Irvin, 2 N.C. App. 341, 163 S.E.2d 118 (1968).

Statutes prescribing the procedure to condemn lands should be strictly construed. Redevelopment Comm'n v. Grimes, 8 N.C. App. 376, 174 S.E.2d 839 (1970), rev'd on other grounds, 277 N.C. 634, 178 S.E.2d 345 (1971).

Power of Housing Authority to Close Public Streets. — Although the City of Raleigh did not delegate its police power to close public streets to the Housing Authority of Raleigh, the authority did not lack that power since it had power to take public streets by eminent domain with the city's consent, and to carry out redevelopment projects, which included removal of existing streets, utilities or other improvements. Southern Bell Tel. & Tel. Co. v. Housing Auth., 38 N.C. App. 172, 247 S.E.2d 663 (1978), cert. denied, 296 N.C. 414 (1979).

Procedure to Acquire Property When Redevelopment Corporation and Landowner Unable to Agree. — When a redevelopment corporation, possessing the power of eminent domain under G.S. 160A-512, was unable to agree with the owner for the purchase of property required for its purposes, the procedure to acquire the property was by a special proceeding as provided in former Chapter 40, Article 2, except as modified by this section. (See now Chapter 40A.) Redevelopment Comm'n v. Grimes, 8 N.C. App. 376, 174 S.E.2d 839 (1970), rev'd on other grounds, 277 N.C. 634, 178 S.E.2d 345 (1971).

As to necessity for condemnation petition to affirmatively show that statutory provisions have been complied with, see Redevelopment Comm'n v. Grimes, 8 N.C. App. 376, 174 S.E.2d 839 (1970), rev'd on other grounds, 277 N.C. 634, 178 S.E.2d 345 (1971).

Applied in City of Greensboro v. Wall, 247 N.C. 516, 101 S.E.2d 413 (1958); Redevelopment Comm'n v. Grimes, 277 N.C. 634, 178 S.E.2d 345 (1971).

OPINIONS OF ATTORNEY GENERAL

Attorneys' fees are not recoverable unless a condemnation action is filed. See opinion of Attorney General to Mr. William I. Cochran, Jr., Executive Director, Redevelopment Commission of the City of Washington, 40 N.C.A.G. 637 (1969), issued under former G.S. 160-456(21).

Attorneys' fees are recoverable where a condemnation action is filed and the case is subsequently terminated by consent judgment. See opinion of Attorney General to Mr. William I. Cochran, Jr., Executive Director, Redevelopment Commission of the City of Washington, 40 N.C.A.G. 637 (1969), issued under former G.S. 160-456(21).

§ 160A-515.1. Project development financing.

(a) Authorization. — A city may finance a redevelopment project and any related public improvements with the proceeds of project development financing debt instruments, issued pursuant to Article 6 of Chapter 159 of the General Statutes, together with any other revenues that are available to the city. Before it receives the approval of the Local Government Commission for issuance of project development financing debt instruments, the city's governing body must define a development financing district and adopt a development financing plan for the district. The city may act jointly with a county to finance a project, define a development financing district, and adopt a development financing plan for the district.

(b) Development Financing District. — A development financing district shall comprise all or portions of one or more redevelopment areas defined pursuant to this Article. The total land area within development financing districts in a city, including development financing districts created pursuant to G.S. 158-7.3, may not exceed five percent (5%) of the total land area of the city. For purposes of this section, land in a district created by a county that subsequently becomes part of a city does not count against the city's five-percent (5%) limit unless the city and the county have entered into an agreement pursuant to G.S. 159-107(e).

(c) Development Financing Plan. — The development financing plan must be compatible with the redevelopment plan or plans for the redevelopment area or areas included within the district. The development financing plan must include all of the following:

(1) A description of the boundaries of the development financing district.
(2) A description of the proposed development of the district, both public and private.
(3) The costs of the proposed public activities.
(4) The sources and amounts of funds to pay for the proposed public activities.
(5) The base valuation of the development financing district.
(6) The projected incremental valuation of the development financing district.
(7) The estimated duration of the development financing district.
(8) A description of how the proposed development of the district, both public and private, will benefit the residents and business owners of the district in terms of jobs, affordable housing, or services.
(9) A description of the appropriate ameliorative activities which will be undertaken if the proposed projects have a negative impact on residents or business owners of the district in terms of jobs, affordable housing, services, or displacement.
(10) A requirement that the initial users of any new manufacturing facilities that will be located in the district and that are included in

the plan will comply with the wage requirements in subsection (d) of this section.

(d) Wage Requirements. — A development financing plan shall include a requirement that the initial users of a new manufacturing facility to be located in the district and included in the plan must pay its employees an average weekly manufacturing wage that is either above the average manufacturing wage paid in the county in which the district will be located or not less than ten percent (10%) above the average weekly manufacturing wage paid in the State. The plan may include information on the wages to be paid by the initial users of a new manufacturing facility to its employees and any provisions necessary to implement the wage requirement. The issuing unit's governing body shall not adopt a plan until the Secretary of Commerce certifies that the Secretary has reviewed the average weekly manufacturing wage required by the plan to be paid to the employees of a new manufacturing facility and has found either (i) that the wages proposed by the initial users of a new manufacturing facility are in compliance with the amount required by this subsection or (ii) that the plan is exempt from the requirement of this subsection. The Secretary of Commerce may exempt a plan from the requirement of this subsection if the Secretary receives a resolution from the issuing unit's governing body requesting an exemption from the wage requirement and a letter from an appropriate State official, selected by the Secretary, finding that unemployment in the county in which the proposed district is to be located is especially severe. Upon the creation of the district, the unit of local government proposing the creation of the district shall take any lawful actions necessary to require compliance with the applicable wage requirement by the initial users of any new manufacturing facility included in the plan; however, failure to take such actions or obtain such compliance shall not affect the validity of any proceedings for the creation of the district, the existence of the district, or the validity of any debt instruments issued under Article 6 of Chapter 159 of the General Statutes. All findings and determinations made by the Secretary of Commerce under this subsection shall be binding and conclusive. For purposes of this section, the term "manufacturing facility" means any facility that is used in the manufacturing or production of tangible personal property, including the processing resulting in a change in the condition of the property.

(e) County Review. — Before adopting a plan for a development financing district, the city council shall send notice of the plan, by first-class mail, to the board of county commissioners of the county or counties in which the development financing district is located. The person mailing the notice shall certify that fact, and the date thereof, to the city council, and the certificate is conclusive in the absence of fraud. Unless the board of county commissioners (or either board, if the district is in two counties) by resolution disapproves the proposed plan within 28 days after the date the notice is mailed, the city council may proceed to adopt the plan.

(f) Environmental Review. — Before adopting a plan for development financing districts, the city council shall submit the plan to the Secretary of Environment and Natural Resources to review to determine if the construction and operation of any new manufacturing facility in the district will have a materially adverse effect on the environment and whether the company that will operate the facility has operated in substantial compliance with federal and State laws, regulations, and rules for the protection of the environment. If the Secretary finds that the new manufacturing facility will not have a materially adverse effect on the environment and that the company that will operate the facility has operated other facilities in compliance with environmental requirements, the Secretary shall approve the plan. In making the determination on environmental impact, the Secretary shall use the same criteria that apply to the determination under G.S. 159C-7 of whether an industrial project will have a materially adverse effect on the environment. The findings of the Secretary are conclusive and binding.

(g) Plan Adoption. — Before adopting a plan for a development financing district, the city council shall hold a public hearing on the plan. The council shall, no less than 30 days before the day of hearing, cause notice of the hearing to be mailed by first-class mail to all property owners and mailing addresses within the proposed development financing district. The council shall also, no more than 30 days and no less than 14 days before the day of the hearing, cause notice of the hearing to be published once in a newspaper of general circulation in the city. The notice shall state the time and place of the hearing, shall specify its purpose, and shall state that a copy of the proposed plan is available for public inspection in the office of the city clerk. At the public hearing, the council shall hear anyone who wishes to speak with respect to the proposed district and proposed plan. Unless a board of county commissioners or the Secretary of Environment and Natural Resources has disapproved the plan pursuant to subsection (e) or (f) of this section, the council may adopt the plan, with or without amendment, at any time after the public hearing. However, the plan and the district do not become effective until the city's application to issue project development financing debt instruments has been approved by the Local Government Commission, pursuant to Article 6 of Chapter 159 of the General Statutes.

(h) Plan Modification. — Subject to the limitations of this subsection, a city council may, after the effective date of the district, amend a development financing plan adopted for a development financing district. Before making any amendment, the city council shall follow the procedures and meet the requirements of subsections (d) through (g) of this section. The boundaries of the district may be enlarged only during the first five years after the effective date of the district and only if the area to be added has been or is about to be developed and the development is primarily attributable to development that has occurred within the district, as certified by the Local Government Commission. The boundaries of the district may be reduced at any time, but the city may agree with the holders of any project development financing debt instruments to restrict its power to reduce district boundaries.

(i) Plan Implementation. — In implementing a development financing plan, a city may act directly, through a redevelopment commission, through one or more contracts with private agencies, or by any combination of these. A private agency that enters into a contract with a city for the implementation of a development financing plan is subject to the provisions of Article 8 of Chapter 143 of the General Statutes only to the extent specified in the contract. (2003-403, s. 18; 2005-238, s. 12; 2006-211, s. 4.)

Editor's Note. — Session Laws 2003-403, s. 25, made this section effective upon certification of approval of amendment to Article V, § 14 of the Constitution of North Carolina, as proposed in Session Laws 2003-403, § 1.

A G.S. 160A-515.1 was enacted by Session Laws 1993, c. 497, s. 18, but was made effective upon certification of approval of an amendment to Article V of the Constitution of North Carolina relating to the authority of any county, city or town to borrow money, without the need of voter approval, and issue financing bonds to be used to finance public activities associated with private economic development projects. This amendment was submitted to the people on November 2, 1993 and was defeated. The section, therefore, never took effect.

An earlier G.S. 160A-515.1 was enacted by Session Laws 1981 (Reg. Sess., 1982), c. 1276, s. 15, but was made effective on certification of approval of an amendment to the state Constitution authorizing the enactment of general laws dealing with transactions of the type contemplated by the act. Such an amendment was proposed by Session Laws 1981 (Reg. Sess., 1982), c. 1247, was submitted to the people on November 2, 1982, and was defeated. The section, therefore, never took effect.

Session Laws 2003-403, s. 22, provides that Session Laws 2003-403, being necessary for the prosperity and welfare of North Carolina and its inhabitants, shall be liberally construed to effect its purposes.

Session Laws 2003-403, s. 23, is a severability clause.

Session Laws 2003-403, ss. 24 and 25, provide: "The amendment set out in Section 1 of this act shall be submitted to the qualified voters of the State at the statewide general election in November 2004, which election shall be conducted under the laws then governing elections in the State. Ballots, voting systems, or both may be used in accordance with Chapter 163 of the General Statutes. The question to be used in the voting systems and ballots shall be:

"[ ] FOR [ ] AGAINST

"Constitutional amendment to promote local economic and community development projects by (i) permitting the General Assembly to enact general laws giving counties, cities, and towns the power to finance public improvements associated with qualified private economic and community improvements within development districts, as long as the financing is secured by the additional tax revenues resulting from the enhanced property value within the development district and is not secured by a pledge of the local government's faith and credit or general taxing authority, which financing is not subject to a referendum; and (ii) permitting the owners of property in the development district to agree to a minimum tax value for their property, which is binding on future owners as long as the development district is in existence.

"If a majority of votes cast on the question are in favor of the amendment set out in Section 1 of this act, the State Board of Elections shall certify the amendment to the Secretary of State. The amendment set out in Section 1 of this act and the amendments set out in Sections 2 through 21 of this act become effective upon this certification. The Secretary of State shall enroll the amendment so certified among the permanent records of that office. If a majority of votes cast on the question are not in favor of the amendment set out in Section 1 of this act, that amendment and the amendments set out in Sections 2 through 21 of this act do not go into effect."

The constitutional amendment adding N.C. Const. Art. V, § 14, as proposed in Session Laws 2003-403, s. 1, was adopted by vote of the people at the general election held on November 2, 2004.

Session Laws 2005-238, s. 12, which added the last sentence in subsection (b), was effective August 1, 2005.

Session Laws 2005-238, s. 15, provides: "The General Assembly finds that the provisions of this act are necessary for the health and welfare of the State and as such finds that the act shall be construed liberally to effect its purposes."

Session Laws 2005-238, s. 16 is a severability clause.

Legal Periodicals. — For note, "Tax Increment Financing in North Carolina: The Myth of the Countermajoritarian Difficulty," see 83 N.C. L. Rev. 1526 (2005).

§ 160A-516. Issuance of bonds.

(a) The commission shall have power to issue bonds from time to time for any of its corporate purposes including the payment of principal and interest upon any advances for surveys and plans for redevelopment projects. The commission shall also have power to issue refunding bonds for the purpose of paying or retiring or in exchange for bonds previously issued by it. The commission may issue such types of bonds as it may determine, including (without limiting the generality of the foregoing) bonds on which the principal and interest are payable:

(1) Exclusively from the income, proceeds, and revenues of the redevelopment project financed with the proceeds of such bonds; or

(2) Exclusively from the income, proceeds, and revenues of any of its redevelopment projects whether or not they are financed in whole or in part with the proceeds of such bonds; provided, that any such bonds may be additionally secured by a pledge of any loan, grant or contributions, or parts thereof, from the federal government or other source, or a mortgage of any redevelopment project or projects of the commission.

(b) Neither the commissioners of a commission nor any person executing the bonds shall be liable personally on the bonds by reason of the issuance of the bonds. The bonds and other obligations of the commission (and the bonds and obligations shall so state on their face) shall not be a debt of the municipality, the county, or the State and neither the municipality, the county, nor the State shall be liable on the bonds, nor in any event shall the bonds or obligations be payable out of any funds or properties other than those of the commission acquired for the purpose of this Article. The bonds shall not constitute an indebtedness of the municipality within the meaning of any constitutional or statutory debt limitation or restriction. Bonds of a commission are declared to be issued for an essential public and governmental purpose and to be public instrumentalities. The bonds are exempt from all State, county, and municipal taxation or assessment, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, excluding inheritance and gift taxes, income taxes on the gain from the transfer of the bonds and notes, and franchise taxes. The interest on the bonds is not subject to taxation as income. Bonds may be issued by a commission under this Article notwithstanding any debt or other limitation prescribed in any statute. This Article without reference to other statutes of the State shall constitute full and complete authority for the authorization and issuance of bonds by the commission under this Article and this authorization and issuance shall not be subject to any conditions, restrictions, or limitations imposed by any other statute whether general, special, or local, except as provided in subsection (d) of this section.

(c) Bonds of the commission shall be authorized by its resolution and may be issued in one or more series and shall bear such date or dates, be payable upon demand or mature at such time or times, bear interest at such rate or rates, be in such denomination or denominations, be in such form either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption (with or without premium) as such resolution, its trust indenture or mortgage may provide.

(d) Bonds shall be sold by the redevelopment commission at either public or private sale upon such terms and in such manner, consistent with the provisions hereof, as the redevelopment commission may determine. Prior to the public sale of bonds hereunder, the redevelopment commission shall first cause a notice of the sale of the bonds to be published at least once at least 10 days before the date fixed for the receipt of bids for the bonds (i) in a newspaper having the largest or next largest circulation in the redevelopment commission's area of operation and (ii) in a publication that carries advertisements for the sale of State and municipal bonds published in the City of New York in the State of New York; provided, however, that in its discretion the redevelopment commission may cause any such notice of sale in the New York publication to be published as part of a consolidated notice of sale offering for sale the obligations of other public agencies in addition to the redevelopment commission's bonds, and provided, further, that any bonds may be sold by the redevelopment commission at private sale upon such terms and conditions as are mutually agreed upon between the commission and the purchaser. No bonds issued pursuant to this Article shall be sold at less than par and accrued interest. The provisions of the Local Government Finance Act shall not be applicable with respect to bonds sold or issued under this Article.

(e) In case any of the commissioners or officers of the commission whose signatures appear on any bonds or coupons shall cease to be such commissioners or officers before the delivery of such bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if such commissioners or officers had remained in office until such delivery. Any provisions of any law to the contrary notwithstanding, any bonds issued pursuant to this Article shall be fully negotiable.

(f) In any suit, action or proceedings involving the validity or enforceability of any bond of the commission or the security therefor, any such bond reciting in substance that it has been issued by the commission to aid in financing a redevelopment project, as herein defined, shall be conclusively deemed to have been issued for such purpose and such project shall be conclusively deemed to have been planned, located and carried out in accordance with the purposes and provisions of this Article.

(g) Bonds (including, without limitation, interim and long-term notes) may be issued or sold under this Article at private sale upon such terms and conditions as may be negotiated and mutually agreed upon by the commission and the purchaser (who may be the government or other public or private lender or purchaser). (1951, c. 1095, s. 13; 1961, c. 837, s. 10; 1971, c. 87, s. 3; 1973, c. 426, s. 75; 1981, c. 907, ss. 3, 4; 1995, c. 46, s. 20.)

Local Modification. — City of Fayetteville: 1981, c. 756; 1983, c. 235.

CASE NOTES

Constitutionality. — This section is not unconstitutional. Horton v. Redevelopment Comm'n, 262 N.C. 306, 137 S.E.2d 115 (1964).

Any provisions of subsection (d) of this section and G.S. 160A-520 to the effect that bonds may be sold and issued by a redevelopment commission for the purpose of carrying out the provisions of an urban redevelopment plan or project under the provisions of the Urban Redevelopment Law, or that any municipality located within the area of such a commission may appropriate funds to a redevelopment commission for the purpose of aiding such a commission in carrying out any of its powers and functions under the Urban Redevelopment Law, and that to obtain funds for this purpose, the municipality may levy taxes, and may in the manner prescribed by law issue and sell its bonds, without the approval of a vote of the qualified voters in the municipality, would be repugnant to the provisions of former Art. VII, § 6, Const. 1868, as amended in 1962. Horton v. Redevelopment Comm'n, 259 N.C. 605, 131 S.E.2d 464 (1963). (See now N.C. Const., Art. V, § 2.)

Subsection (d) of this section does nothing more than provide alternative methods for the sale of bonds issued by the commission, and further provides that no such bonds shall be sold at less than par and accrued interest. Horton v. Redevelopment Comm'n, 262 N.C. 306, 137 S.E.2d 115 (1964).

§ 160A-517. Powers in connection with issuance of bonds.

(a) In connection with the issuance of bonds or the incurring of obligations and in order to secure the payment of such bonds or obligations, the commission, in addition to its other powers, shall have power:

(1) To pledge all or any part of its gross or net rents, fees or revenues to which its right then exists or may thereafter come into existence;

(2) To mortgage all or any part of its real or personal property, then owned or thereafter acquired;

(3) To covenant against pledging all or any part of its rents, fees and revenues, or against mortgaging all or any part of its real or personal property, to which its right or title then exists or may thereafter come into existence or against permitting or suffering any lien on such revenues or property; to covenant with respect to limitations on its right to sell, lease or otherwise dispose of any redevelopment project or any part thereof; and to covenant as to what other, or additional debts or obligations may be incurred by it;

(4) To covenant as to the bonds to be issued and as to the issuance of such bonds in escrow or otherwise, and as to the use and disposition of the proceeds thereof; to provide for the replacement of lost, destroyed or mutilated bonds, to covenant against extending the time for the payment of its bonds or interest thereon; and to covenant for the redemption of the bonds and to provide the terms and conditions thereof;

(5) To covenant (subject to the limitations contained in this Article) as to the amount of revenues to be raised each year or other period of time by rents, fees and other revenues, and as to the use and disposition to be made thereof; to create or to authorize the creation of special funds for moneys held for operating costs, debt service, reserves, or other purposes, and to covenant as to the use and disposition of the moneys held in such funds;

(6) To prescribe the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto and the manner in which such consent may be given;

(7) To covenant as to the use, maintenance and replacement of any of or all of its real or personal property, the insurance to be carried thereon and the use and disposition of insurance moneys, and to warrant its title to such property;

(8) To covenant as to the rights, liabilities, powers and duties arising upon the breach by it of any covenants, conditions or obligations; and to covenant and prescribe as to events of default and terms and conditions upon which any or all of its bonds or obligations shall become or may be declared due before maturity and as to the terms and conditions upon which such declaration and its consequences may be waived;

(9) To vest in any obligees of the commissions the right to enforce the payment of the bonds or any covenants securing or relating to the bonds; to vest in any obligee or obligees holding a specified amount in bonds the right, in the event of a`default to take possession of and use, operate and manage any redevelopment project or any part thereof, title to which is in the commission, or any funds connected therewith, and to collect the rents and revenues arising therefrom and to dispose of such moneys in accordance with the agreement with such obligees; to provide for the powers and duties of such obligees and to limit the liabilities thereof, and to provide the terms and conditions upon which such obligees may enforce any covenant or rights securing or relating to the bonds; and

(10) To exercise all or any part or combination of the powers herein granted; to make such covenants (other than and in addition to the covenants herein expressly authorized) and to do any and all such acts and things as may be necessary or convenient or desirable in order to secure its bonds, or, in the absolute discretion of said commission, as will tend to make the bonds more marketable notwithstanding that such covenants, acts or things may not be enumerated herein.

(b) The commission shall have power by its resolution, trust indenture, mortgage lease or other contract to confer upon any obligee holding or representing a specified amount in bonds, the right (in addition to all rights that may otherwise be conferred), upon the happening of an event of default as defined in such resolution or instrument, by suit, action or proceeding in any court of competent jurisdiction:

(1) To cause possession of any redevelopment project or any part thereof title to which is in the commission, to be surrendered to any such obligee;

(2) To obtain the appointment of a receiver of any redevelopment project of said commission or any part thereof, title to which is in the commission and of the rents and profits therefrom. If such receiver be appointed, he may enter and take possession of, carry out, operate and maintain such project or any part therefrom and collect and receive all fees, rents, revenues, or other charges thereafter arising therefrom,

and shall keep such moneys in a separate account or accounts and apply the same in accordance with the obligations of said commission as the court shall direct; and

(3) To require said commission and the commissioners, officers, agents and employees thereof to account as if it and they were the trustees of an express trust. (1951, c. 1095, s. 14; 1973, c. 426, s. 75.)

§ 160A-518. Right of obligee.

An obligee of the commission shall have the right in addition to all other rights which may be conferred on such obligee, subject only to any contractual restrictions binding upon such obligee:

(1) By mandamus, suit, action or proceeding at law or in equity to compel said commission and the commissioners, officers, agents or employees thereof to perform each and every term, provision and covenant contained in any contract of said commission with or for the benefit of such obligee, and to require the carrying out of any or all such covenants and agreements of said commission and the fulfillment of all duties imposed upon said commission by this Article; and

(2) By suit, action or proceeding in equity, to enjoin any acts or things which may be unlawful, or the violation of any of the rights of such obligee of said commission. (1951, c. 1095, s. 15; 1973, c. 426, s. 75.)

§ 160A-519. Cooperation by public bodies.

(a) For the purpose of aiding and cooperating in the planning, undertaking or carrying out of a redevelopment project located within the area in which it is authorized to act, any public body may, upon such terms, with or without consideration, as it may determine:

(1) Dedicate, sell, convey or lease any of its interest in any property, or grant easements, licenses or any other rights or privileges therein to a commission;

(2) Cause parks, playgrounds, recreational, community, educational, water, sewer or drainage facilities, or any other works which it is otherwise empowered to undertake, to be furnished in connection with a redevelopment project;

(3) Furnish, dedicate, close, vacate, pave, install, grade, regrade, plan or replan streets, roads, sidewalks, ways or other places, which it is otherwise empowered to undertake;

(4) Plan or replan, zone or rezone any part of the redevelopment;

(5) Cause administrative and other services to be furnished to the commission of the character which the public body is otherwise empowered to undertake or furnish for the same or other purposes;

(6) Incur the entire expense of any public improvements made by such public body in exercising the powers granted in this section;

(7) Do any and all things necessary or convenient to aid and cooperate in the planning or carrying out of a redevelopment plan.

(b) Any sale, conveyance, or agreement provided for in this section may be made by a public body without public notice, advertisement or public bidding. (1951, c. 1095, s. 16; 1973, c. 426, s. 75.)

§ 160A-520. Grant of funds by community.

Any municipality located within the area of operation of a commission may appropriate funds to a commission for the purpose of aiding such commission in carrying out any of its powers and functions under this Article. To obtain funds for this purpose, the municipality may levy taxes and may in the manner prescribed by law issue and sell its bonds. (1951, c. 1095, s. 17; 1973, c. 426, s. 75.)

CASE NOTES

Constitutionality. — This section is not unconstitutional. Horton v. Redevelopment Comm'n, 262 N.C. 306, 137 S.E.2d 115 (1964).

Any provisions of this section to the effect that any municipality located within the area of a redevelopment commission may appropriate funds to a redevelopment commission for the purpose of aiding such a commission in carrying out any of its powers and functions under the Urban Redevelopment Law, and to obtain funds for this purpose may levy taxes, and may in the manner prescribed by law issue and sell its bonds, without approval of a vote of the qualified voters in the municipality, would be repugnant to the provisions of former Art. VII, § 6, Const. 1868, as amended in 1962. Horton v. Redevelopment Comm'n, 259 N.C. 605, 131 S.E.2d 464 (1963). (See now N.C. Const., Art. V, § 2.)

For What Purposes Tax May Be Levied. — Under this section, a municipality cannot legally levy a tax in connection with an urban redevelopment project for any purpose other than for streets, water, sewer and other such services as would constitute necessary expenses of the municipality, irrespective of whether or not a redevelopment project existed. Horton v. Redevelopment Comm'n, 262 N.C. 306, 137 S.E.2d 115 (1964).

For What Purposes Bonds May Be Issued Without Election. — A municipality cannot issue and sell its bonds except in the manner prescribed by law, and the law requires that bonds issued to finance a project which is for a public purpose but not a necessary expense must be approved by the voters of the municipality if such bonds are obligations of the municipality. Horton v. Redevelopment Comm'n, 262 N.C. 306, 137 S.E.2d 115 (1964).

OPINIONS OF ATTORNEY GENERAL

City May Appropriate Nontax Funds to Redevelopment Commission. — See opinion of Attorney General to Mr. Francis M. Coiner, Hendersonville City Attorney, 40 N.C.A.G. 506 (1970).

§ 160A-521. Records and reports.

(a) The books and records of a commission shall at all times be open and subject to inspection by the public.

(b) A copy of all bylaws and rules and regulations and amendments thereto adopted by it, from time to time, shall be filed with the city clerk and shall be open for public inspection.

(c) At least once each year a report of its activities for the preceding year and such other reports as may be required shall be made. Copies of such reports shall be filed with the mayor and governing body of the municipality. (1951, c. 1095, s. 18; 1973, c. 426, s. 75.)

§ 160A-522. Title of purchaser.

Any instrument executed by a commission and purporting to convey any right, title or interest in any property under this Article shall be conclusive evidence of compliance with the provisions of this Article insofar as title or other interest of any bona fide purchasers, lessees or transferees of such property is concerned. (1951, c. 1095, s. 19; 1973, c. 426, s. 75.)

CASE NOTES

This section is not available to revive an instrument that was void from its inception. Campbell v. First Baptist Church, 39 N.C. App. 117, 250 S.E.2d 68 (1978), aff'd, 298 N.C. 476, 259 S.E.2d 558 (1979).

§ 160A-523. Preparation of general plan by local governing body.

The governing body of any municipality or county, which is not otherwise authorized to create a planning commission with power to prepare a general plan for the development of the community, is hereby authorized and empowered to prepare such a general plan prior to the initiation and carrying out of a redevelopment project under this Article. (1951, c. 1095, s. 20; 1973, c. 426, s. 75.)

§ 160A-524. Inconsistent provisions.

Insofar as the provisions of this Article are inconsistent with the provisions of any other law, the provisions of this Article shall be controlling. (1951, c. 1095, s. 22; 1955, c. 1349; 1957, c. 502, s. 4; 1973, c. 426, s. 75.)

§ 160A-525. Certain actions and proceedings validated.

All proceedings, resolutions, ordinances, motions, notices, findings, determinations, and other actions of redevelopment commissions, incorporated cities and towns, governing bodies, and planning boards and commissions, had and taken prior to January 1, 1965, pursuant to or purporting to comply with the Urban Redevelopment Law (G.S. 160A-500 to 160A-526) and incident to the creation and organization of redevelopment commissions and appointment of members thereof, designation of redevelopment and project areas, findings and determinations respecting conditions in redevelopment and project areas, preparation, development, review, processing and approval of urban redevelopment projects and plans, including redevelopment plans, calling and holding of public hearings, and the time and manner of giving and publishing notices thereof, are hereby in all respects legalized, ratified, approved, validated and confirmed, and all such actions are declared to be valid and lawfully authorized; provided, however, that no such action shall be legalized, ratified, approved, validated or confirmed, under this section if they appertain to any redevelopment or project area, the acquisition or taking of any property in any such area, any urban redevelopment project or any redevelopment plan respecting which any decree or judgment has been rendered by the Supreme Court of North Carolina prior to May 25, 1965. (1963, c. 194; 1965, c. 680; 1973, c. 426, s. 75.)

§ 160A-526. Contracts and agreements validated.

All contracts or agreements of redevelopment commissions heretofore entered into with the federal government or its agencies, and with municipalities or others relating to financial assistance for redevelopment projects in which it was required that loans or advances shall bear an interest rate in excess of six per centum (6%) per annum, or in which a municipality or others had agreed to pay funds equal to the interest in excess of six per centum (6%) per annum are hereby validated, ratified, confirmed, approved and declared legal with respect to the payment of interest in excess of six per centum (6%), and all things done or performed in reference thereto. The redevelopment commissions are hereby authorized to assume the full obligation of the municipalities under the contracts or agreements with reference to interest in excess of six per centum (6%), and to reimburse any municipality which has made any interest payment under such contracts or agreements. (1971, c. 87, s. 4; 1973, c. 426, s. 75.)

§§ 160A-527 through 160A-534: Reserved for future codification purposes.

Article 23.

Municipal Service Districts.

§ 160A-535. Title; effective date.

This Article may be cited as "The Municipal Service District Act of 1973," and is enacted pursuant to Article V, Sec. 2(4) of the Constitution of North Carolina, effective July 1, 1973. (1973, c. 655, s. 1.)

§ 160A-536. Purposes for which districts may be established.

(a) Purposes. — The city council of any city may define any number of service districts in order to finance, provide, or maintain for the districts one or more of the following services, facilities, or functions in addition to or to a greater extent than those financed, provided or maintained for the entire city:

(1) Beach erosion control and flood and hurricane protection works.

(1a) **(For applicability see note)** Any service, facility, or function which the municipality may by law provide in the city, and including but not limited to placement of utility wiring underground, placement of period street lighting, placement of specially designed street signs and street furniture, landscaping, specialized street and sidewalk paving, and other appropriate improvements to the rights-of-way that generally preserve the character of an historic district; provided that this subdivision only applies to a service district which, at the time of its creation, had the same boundaries as an historic district created under Part 3A of Article 19 of this Chapter.

(2) Downtown revitalization projects.

(2a) Urban area revitalization projects.

(2b) Transit-oriented development projects.

(3) Drainage projects.

(3a) Sewage collection and disposal systems of all types, including septic tank systems or other on-site collection or disposal facilities or systems.

(3b) **(For applicability see note)** Lighting at interstate highway interchange ramps.

(4) Off-street parking facilities.

(5) Watershed improvement projects, including but not limited to watershed improvement projects as defined in General Statutes Chapter 139; drainage projects, including but not limited to the drainage projects provided for by General Statutes Chapter 156; and water resources development projects, including but not limited to the federal water resources development projects provided for by General Statutes Chapter 143, Article 21.

(b) Downtown Revitalization Defined. — As used in this section "downtown revitalization projects" include by way of illustration but not limitation improvements to water mains, sanitary sewer mains, storm sewer mains, electric power distribution lines, gas mains, street lighting, streets and sidewalks, including rights-of-way and easements therefor, the construction of pedestrian malls, bicycle paths, overhead pedestrian walkways, sidewalk canopies, and parking facilities both on-street and off-street, and other improvements intended to relieve traffic congestion in the central city, improve pedestrian and vehicular access thereto, reduce the incidence of crime therein, and generally to further the public health, safety, welfare, and convenience by promoting the economic health of the central city or downtown area. In addition, a downtown revitalization project may, in order to revitalize a downtown area and further the public health, safety, welfare, and convenience, include the provision of city services or functions in addition to or to a greater extent than those provided or maintained for the entire city. A downtown revitalization project may also include promotion and developmental activities (such as sponsoring festivals and markets in the downtown area, promoting business investment in the downtown area, helping to coordinate public and private actions in the downtown area, and developing and issuing publications on the downtown area) designed to improve the economic well-being of the downtown area and further the public health, safety, welfare, and convenience. Exercise of the authority granted by this Article to undertake downtown revitalization projects financed by a service district shall not prejudice the city's authority to undertake urban renewal projects in the same area.

(c) Urban Area Revitalization Defined. — As used in this section, the term "urban area revitalization projects" includes the provision within an urban area of any service or facility that may be provided in a downtown area as a downtown revitalization project under subdivision (a)(2) and subsection (b) of this section. As used in this section, the term "urban area" means an area that (i) is located within a city and (ii) meets one or more of the following conditions:

(1) It is the central business district of the city.
(2) It consists primarily of existing or redeveloping concentrations of industrial, retail, wholesale, office, or significant employment-generating uses, or any combination of these uses.
(3) It is located in or along a major transportation corridor and does not include any residential parcels that are not, at their closest point, within 150 feet of the major transportation corridor right-of-way or any nonresidentially zoned parcels that are not, at their closest point, within 1,500 feet of the major transportation corridor right-of-way.
(4) It has as its center and focus a major concentration of public or institutional uses, such as airports, seaports, colleges or universities, hospitals and health care facilities, or governmental facilities.

(c1) Transit-Oriented Development Defined. — As used in this section, the term "transit-oriented development" includes the provision within a public transit area of any service or facility listed in this subsection. A public transit area is an area within a one-fourth mile radius of any passenger stop or station located on a mass transit line. A mass transit line is a rail line along which a public transportation service operates or a busway or guideway dedicated to public transportation service. A busway is not a mass transit line if a majority of its length is also generally open to passenger cars and other private vehicles more than two days a week.

The following services and facilities are included in the definition of "transit-oriented development" if they are provided within a transit area:

(1) Any service or facility that may be provided in a downtown area as a downtown revitalization project under subdivision (a)(2) and subsection (b) of this section.
(2) Passenger stops and stations on a mass transit line.
(3) Parking facilities and structures associated with passenger stops and stations on a mass transit line.
(4) Any other service or facility, whether public or public-private, that the city may by law provide or participate in within the city, including retail, residential, and commercial facilities.

(d) Contracts. — A city may provide services, facilities, functions, or promotional and developmental activities in a service district with its own forces, through a contract with another governmental agency, through a contract with a private agency, or by any combination thereof. Any contracts entered into pursuant to this paragraph shall specify the purposes for which city moneys are to be used and shall require an appropriate accounting for those moneys at the end of each fiscal year or other appropriate period. (1973, c. 655, s. 1; 1977, c. 775, ss. 1, 2; 1979, c. 595, s. 2; 1985, c. 580; 1987, c. 621, s. 1; 1999-224, s. 1; 1999-388, s. 1; 2004-151, s. 1; 2004-203, s. 5(m); 2009-385, s. 1.)

Cross References. — As to authority of counties, cities and towns to enter into long-term contracts with private persons, firms or corporations for the disposal of solid waste, see G.S. 153A-299.1 through 153A-299.6. As to property taxes to provide for drainage projects or program, see G.S. 160A-209.

Editor's Note. — Session Laws 1977, c. 775, which added the present second and third sentences of the second paragraph (now subsection (b)) and added the third paragraph (now subsection (d)), provided in s. 5: "This act shall become effective upon ratification, but shall not apply to any district established prior to January 1, 1975."

Session Laws 1987, c. 621, which added subdivision (1a) (now subdivision (a)(1a)) of this section, in s. 4 provided: "This act shall apply only to those cities having a population in excess of 150,000 which are located in counties having two or more cities each of which has a population in excess of 60,000. This act shall also apply to those cities where, at the time of creation of the district, the city had a population of not less than 20,000 nor more than 25,000, was not a county seat, and was located in two counties one of which had eight incorporated municipalities. This act shall also apply to those cities where, at the time of creation of the district, the city is located in a county with a population of more than 100,000, which county has an area of less than 250 square miles."

Session Laws 1999-224, s. 2, provides that this act applies only to towns that, at the time the district is created, have a population of between 2,000 and 2,500 and are located in a county that has a land area of more than 946 square miles according to the 1990 federal census.

Effect of Amendments. — Session Laws 2009-385, s. 1, effective July 31, 2009, deleted "whose population exceeds 150,000 according to the most recent annual population statistics certified by the State Budget Officer" following "within a city" near the end of the introductory language of subsection (c).

§ 160A-537. Definition of service districts.

(a) Standards. — The city council of any city may by resolution define a service district upon finding that a proposed district is in need of one or more of the services, facilities, or functions listed in G.S. 160A-536 to a demonstrably greater extent than the remainder of the city.

(b) Report. — Before the public hearing required by subsection (c), the city council shall cause to be prepared a report containing:

(1) A map of the proposed district, showing its proposed boundaries;
(2) A statement showing that the proposed district meets the standards set out in subsection (a); and
(3) A plan for providing in the district one or more of the services listed in G.S. 160A-536.

The report shall be available for public inspection in the office of the city clerk for at least four weeks before the date of the public hearing.

(c) Hearing and Notice. — The city council shall hold a public hearing before adopting any resolution defining a new service district under this section. Notice of the hearing shall state the date, hour, and place of the hearing and its subject, and shall include a map of the proposed district and a statement that the report required by subsection (b) is available for public inspection in the office of the city clerk. The notice shall be published at least once not less than one week before the date of the hearing. In addition, it shall be mailed at least four weeks before the date of the hearing by any class of U.S. mail which is fully prepaid to the owners as shown by the county tax records as of the preceding January 1 (and at the address shown thereon) of all property located within the proposed district. The person designated by the council to mail the notice shall certify to the council that the mailing has been completed and his certificate is conclusive in the absence of fraud.

(d) Effective Date. — The resolution defining a service district shall take effect at the beginning of a fiscal year commencing after its passage, as determined by the city council, except that if the governing body in the resolution states that general obligation bonds are anticipated to be authorized for the project, it may make the resolution effective immediately upon its adoption, but no ad valorem tax may be levied for a partial fiscal year.

(e) In the case of a resolution defining a service district, which is adopted during the period beginning July 1, 1981, and ending July 31, 1981, and which district is for any purpose defined in G.S. 160A-536(1), the city council may make the resolution effective for the fiscal year beginning July 1, 1981. In any such case, the report under subsection (b) of this section need only have been available for public inspection for at least two weeks before the date of the public hearing, and the notice required by subsection (c) of this section need only have been mailed at least two weeks before the date of the hearing. (1973, c. 655, s. 1; 1981, c. 53, s. 1; c. 733, s. 1; 2006-162, s. 25.)

§ 160A-538. Extension of service districts.

(a) Standards. — The city council may by resolution annex territory to any service district upon finding that:

(1) The area to be annexed is contiguous to the district, with at least one eighth of the area's aggregate external boundary coincident with the existing boundary of the district;

(2) That the area to be annexed requires the services of the district.

(b) Annexation by Petition. — The city council may also by resolution extend by annexation the boundaries of any service district when one hundred percent (100%) of the real property owners of the area to be annexed have petitioned the council for annexation to the service district.

(c) Report. — Before the public hearing required by subsection (d), the council shall cause to be prepared a report containing:

(1) A map of the service district and the adjacent territory, showing the present and proposed boundaries of the district;

(2) A statement showing that the area to be annexed meets the standards and requirements of subsections (a) or (b); and

(3) A plan for extending services to the area to be annexed.

The report shall be available for public inspection in the office of the city clerk for at least two weeks before the date of the public hearing.

(d) Hearing and Notice. — The council shall hold a public hearing before adopting any resolution extending the boundaries of a service district. Notice of the hearing shall state the date, hour and place of the hearing and its subject, and shall include a statement that the report required by subsection (c) is available for inspection in the office of the city clerk. The notice shall be published at least once not less than one week before the date of the hearing. In addition, the notice shall be mailed at least four weeks before the date of the hearing to the owners as shown by the county tax records as of the preceding January 1 of all property located within the area to be annexed. The notice may be mailed by any class of U.S. mail which is fully prepaid. The person designated by the council to mail the notice shall certify to the council that the mailing has been completed, and his certificate shall be conclusive in the absence of fraud.

(e) Effective Date. — The resolution extending the boundaries of the district shall take effect at the beginning of a fiscal year commencing after its passage, as determined by the council.

(f) **(For applicability see note)** A service district which at the time of its creation had the same boundaries as an historic district created under Part 3A of Article 19 of this Chapter may only have its boundaries extended to include territory which has been added to the historic district. (1973, c. 655, s. 1; 1981, c. 53, s. 2; 1987, c. 621, s. 2.)

Editor's Note. — Session Laws 1987, c. 621, which added subsection (f) of this section, in s. 4 provided: "This act shall apply only to those cities having a population in excess of 150,000 which are located in counties having two or more cities each of which has a population in excess of 60,000. This act shall also apply to those cities where, at the time of creation of the district, the city had a population of not less than 20,000 nor more than 25,000, was not a county seat, and was located in two counties one of which had eight incorporated municipalities. This act shall also apply to those cities where, at the time of creation of the district, the city is located in a county with a population of more than 100,000, which county has an area of less than 250 square miles."

§ 160A-538.1. Reduction of service districts.

(a) Upon finding that there is no longer a need to include within a particular service district any certain tract or parcel of land, the city council may by resolution redefine a service district by removing therefrom any tract or parcel of land which it has determined need no longer be included in said district. The city council shall hold a public hearing before adopting a resolution removing any tract or parcel of land from a district. Notice of the hearing shall state the date, hour and place of the hearing, and its subject, and shall be published at least once not less than one week before the date of the hearing.

(b) The removal of any tract or parcel of land from any service district shall take effect at the end of a fiscal year following passage of the resolution, as determined by the city council.

(c) **(For applicability see note)** A service district which at the time of its creation had the same boundaries as an historic district created under Part 3A of Article 19 of this Chapter may only have its boundaries reduced to exclude territory which has been removed from the historic district. (1977, c. 775, s. 3; 1987, c. 621, s. 3.)

Editor's Note. — Session Laws 1977, c. 775, which enacted this section, in s. 5, provided that the act would not apply to any district established prior to January 1, 1975.

Session Laws 1987, c. 621, which added subsection (c) of this section, in s. 4 provided: "This act shall apply only to those cities having a population in excess of 150,000 which are located in counties having two or more cities each of which has a population in excess of 60,000. This act shall also apply to those cities where, at the time of creation of the district, the city had a population of not less than 20,000 nor more than 25,000, was not a county seat, and was located in two counties one of which had eight incorporated municipalities. This act shall also apply to those cities where, at the time of creation of the district, the city is located in a county with a population of more than 100,000, which county has an area of less than 250 square miles."

§ 160A-539. Consolidation of service districts.

(a) The city council may by resolution consolidate two or more service districts upon finding that:

(1) The districts are contiguous or are in a continuous boundary; and

(2) The services provided in each of the districts are substantially the same; or

(3) If the services provided are lower for one of the districts, there is a need to increase those services for that district to the level of that enjoyed by the other districts.

(b) Report. — Before the public hearing required by subsection (c), the city council shall cause to be prepared a report containing:

(1) A map of the districts to be consolidated;

(2) A statement showing the proposed consolidation meets the standards of subsection (a); and

(3) If necessary, a plan for increasing the services for one or more of the districts so that they are substantially the same throughout the consolidated district.

The report shall be available in the office of the city clerk for at least two weeks before the public hearing.

(c) Hearing and Notice. — The city council shall hold a public hearing before adopting any resolution consolidating service districts. Notice of the hearing shall state the date, hour, and place of the hearing and its subject, and shall include a statement that the report required by subsection (b) is available for inspection in the office of the city clerk. The notice shall be published at least once not less than one week before the date of the hearing. In addition, the notice shall be mailed at least four weeks before the hearing to the owners as shown by the county tax records as of the preceding January 1 of all property located within the consolidated district. The notice may be mailed by any class of U.S. mail which is fully prepaid. The person designated by the council to mail the notice shall certify to the council that the mailing has been completed, and his certificate shall be conclusive in the absence of fraud.

(d) Effective Date. — The consolidation of service districts shall take effect at the beginning of a fiscal year commencing after passage of the resolution of consolidation, as determined by the council. (1973, c. 655, s. 1; 1981, c. 53, s. 2.)

§ 160A-540. Required provision or maintenance of services.

(a) New District. — When a city defines a new service district, it shall provide, maintain, or let contracts for the services for which the residents of the district are being taxed within a reasonable time, not to exceed one year, after the effective date of the definition of the district.

(b) Extended District. — When a city annexes territory for a service district, it shall provide, maintain, or let contracts for the services provided or maintained throughout the district to the residents of the area annexed to the district within a reasonable time, not to exceed one year, after the effective date of the annexation.

(c) Consolidated District. — When a city consolidates two or more service districts, one of which has had provided or maintained a lower level of services, it shall increase the services within that district (or let contracts therefor) to a level comparable to those provided or maintained elsewhere in the consolidated district within a reasonable time, not to exceed one year, after the effective date of the consolidation. (1973, c. 655, s. 1.)

§ 160A-541. Abolition of service districts.

Upon finding that there is no longer a need for a particular service district, the city council may by resolution abolish that district. The council shall hold a public hearing before adopting a resolution abolishing a district. Notice of the hearing shall state the date, hour and place of the hearing, and its subject, and shall be published at least once not less than one week before the date of the hearing. The abolition of any service district shall take effect at the end of a fiscal year following passage of the resolution, as determined by the council. (1973, c. 655, s. 1.)

§ 160A-542. Taxes authorized; rate limitation.

A city may levy property taxes within defined service districts in addition to those levied throughout the city, in order to finance, provide or maintain for the district services provided therein in addition to or to a greater extent than those financed, provided or maintained for the entire city. In addition, a city may allocate to a service district any other revenues whose use is not otherwise restricted by law.

Property subject to taxation in a newly established district or in an area annexed to an existing district is that subject to taxation by the city as of the preceding January 1.

Property taxes may not be levied within any district established pursuant to this Article in excess of a rate on each one hundred dollar ($100.00) value of property subject to taxation which, when added to the rate levied city wide for purposes subject to the rate limitation, would exceed the rate limitation established in G.S. 160A-209(d), unless that portion of the rate in excess of this limitation is submitted to and approved by a majority of the qualified voters residing within the district. Any referendum held pursuant to this paragraph shall be held and conducted as provided in G.S. 160A-209.

This Article does not impair the authority of a city to levy special assessments pursuant to Article 10 of this Chapter for works authorized by G.S. 160A-491, and may be used in addition to that authority. (1973, c. 655, s. 1.)

§ 160A-543. Bonds authorized.

A city may incur debt under general`law to finance services, facilities or functions provided within a service district. If a proposed general obligation bond issue is required by law to be submitted to and approved by the voters of the city, and if the proceeds of the proposed bond issue are to be used in connection with a service that is or, if the bond issue is approved, will be provided only for one or more service districts or at a higher level in service districts than city wide, the proposed bond issue must be approved concurrently by a majority of those voting throughout the entire city and by a majority of the total of those voting in all of the affected or to be affected service districts. (1973, c. 655, s. 1; 2004-151, s. 4.)

§ 160A-544. Exclusion of personal property of public service corporations.

There shall be excluded from any service district and the provisions of this Article shall not apply to the personal property of any public service corporation as defined in G.S. 160A-243(c); provided that this section shall not apply to any service district in existence on January 1, 1977. (1977, c. 775, s. 4.)

Editor's Note. — Session Laws 1977, c. 775, which enacted this section, provided in s. 5 that the act would not apply to any district established prior to January 1, 1975.

Section 160A-243, referred to in this section, was repealed by Session Laws 1981, c. 919. See now G.S. 40A-5.

§§ 160A-545 through 160A-549: Reserved for future codification purposes.

ARTICLE 24.

Parking Authorities.

§ 160A-550. Short title.

This Article may be cited as the "Parking Authority Law." (1951, c. 779, s. 1; 1979, 2nd Sess., c. 1247, s. 44.)

Editor's Note. — This Article was formerly Article 38 of Chapter 160. It was transferred and renumbered Article 24 of Chapter 160A by Session Laws 1979, c. 1247.

§ 160A-551. Definitions.

As used or referred to in this Article, unless a different meaning clearly appears from the context:

(1) The term "authority" shall mean a public body and a body corporate and politic organized in accordance with this Article for the purposes, with the powers and subject to the restrictions hereinafter set forth;
(2) The term "bonds" shall mean bonds authorized by this Article;
(3) The term "city" shall mean the city that is, or is about to be, included in the territorial boundaries of an authority when created hereunder;
(4) The term "city clerk" shall mean the clerk of the city or the officer thereof charged with the duties customarily imposed on the clerk;
(5) The term "city council" shall mean the legislative body, council, board of commissioners, or other body charged with governing the city;
(6) The term "commissioner" shall mean one of the members of an authority, appointed in accordance with the provisions of this Article;
(7) The term "parking project" shall mean any area or place operated or to be operated by the authority for the parking or storing of motor and other vehicles, open to public use for a fee, and shall without limiting the foregoing, include all real and personal property, driveways, roads, approaches, structures, garages, meters, mechanical equipment, and all appurtenances and facilities either on, above or under the ground which are used or usable in connection with such parking or storing of such vehicles, including on-street parking meters if so provided by the governing authority;
(8) The term "real property" shall mean lands, structures, franchises, and interest in lands, and any and all things usually included within the said term, and includes not only fees simple absolute but also any and all lesser interests, such as easements, rights-of-way, uses, leases, licenses, and all other incorporeal hereditaments and every estate, interest or right, legal or equitable, including terms of years, and liens thereon by way of judgments, mortgages or otherwise, and also claims for damage to real estate. (1951, c. 779, s. 2; 1965, c. 998, s. 1; 1979, 2nd Sess., c. 1247, s. 44.)

§ 160A-552. Creation of authority.

The city council of any city may, upon its own initiative, and shall, upon petition of 25 or more residents of the city, hold a public hearing on the question whether or not it is necessary for the city to organize an authority under the provisions of this Article. Notice of the time, place and purpose of such hearing shall be given by publication in a newspaper of general circulation in the city, at least once, at least 10 days before such hearing. At such hearing, an opportunity to be heard shall be granted to all residents and taxpayers of the city and all other interested persons. If, after such hearing, the city council shall by resolution determine that it is necessary for the city to organize an authority under the provisions of this Article, the city council shall appoint, as hereinafter provided, five commissioners to act as an authority. Said commission shall be a public body and a body corporate and politic upon the completion of the taking of the following proceedings:

The commissioners shall present or cause to be presented to the Secretary of State of North Carolina a written application signed by them, which shall set forth

(1) A statement that the city council has, pursuant to this Article, and after a public hearing held as herein required, determined that it is necessary for the city to organize an authority under the provisions of this Article, and has appointed the signers of such application as commissioners of such an authority;
(2) A statement that the commissioners desire the authority to become a public body and a body corporate and politic under this Article;
(3) The name, address and term of office of each of the commissioners;
(4) The name which is proposed for the corporation; and
(5) The location and the principal office of the proposed corporation.

The application shall be accompanied by a copy, certified by the city clerk, of the resolution or resolutions of the city council making such determination and appointments. The application shall be subscribed and sworn to by each of said commissioners before an officer authorized by law to take and certify oaths, who shall certify upon the application that he personally knows said commissioners and knows them to be the persons appointed as stated in the application, and that each subscribed and swore thereto in the officer's presence. The Secretary of State shall examine the application and if he finds that the name proposed for the corporation is not identical with that of a person or any other corporation of this State or so nearly similar as to lead to confusion and uncertainty, he shall receive and file it and shall record it in an appropriate book of record in his office.

When the application has been made, filed and recorded, as herein provided, the authority shall constitute a public body and body corporate and politic under the name proposed in the application; and the Secretary of State shall make and issue a certificate of incorporation pursuant to this Article, under the seal of the State, and shall record the same with the application.

The boundaries of such authority shall be coterminous with those of such city.

In any suit, action or proceeding involving the validity or enforcement of or relating to any contract of the authority, the authority shall be conclusively deemed to have been established in accordance with the provisions of this Article upon proof of the issuance of the aforesaid certificate by the Secretary of State. A copy of such certificate, duly certified by the Secretary of State, shall be admissible in evidence in any such suit, action or proceeding, and shall be conclusive proof of the filing and contents thereof. (1951, c. 779, s. 3; 1979, 2nd Sess., c. 1247, s. 44.)

§ 160A-553. Appointment, removal, etc., of commissioners; quorum; chairman; vice-chairman, agents and employees.

An authority shall consist of five commissioners appointed by the city council, and the city council shall designate the first chairman. No commissioner shall be a city official.

The commissioners who are first appointed shall be designated by the city council to serve for terms of one, two, three, four and five years respectively from the date of their appointment. Thereafter, the term of office shall be five years. A commissioner shall hold office until his successor has been appointed by the city council and has qualified. Vacancies shall be filled by the city council for the unexpired term. Three commissioners shall constitute a quorum. A commissioner shall receive no compensation for his services, but he shall be entitled to reimbursement for his actual and necessary expenses incurred in the performance of his official duties.

When the office of the first chairman of the authority becomes vacant, the authority shall select a chairman from among its members. An authority shall select from among its members a vice-chairman, and it may employ a secretary (who shall be executive director), technical experts and such other officers, agents and employees, permanent or temporary, as it may require, and shall determine their qualifications, duties and compensation. An authority may, with the consent of the city council call upon the city attorney or chief law officer of the city for such legal services as it may require, or it may employ its own counsel and legal staff. An authority may delegate to one or more of its agents or employees such powers or duties as it may deem proper. The city council may remove any member of the authority for inefficiency, neglect of duty or misconduct in office, giving him a copy of the charges against him and an opportunity of being heard in person, or by counsel, in his defense upon not less than 10 days' notice. (1951, c. 779, s. 4; 1979, 2nd Sess., c. 1247, ss. 42, 44.)

Local Modification. — City of Greenville: 1989 (Reg. Sess., 1990), c. 912.

§ 160A-554. Duty of authority and commissioners.

The authority and its commissioners shall be under a statutory duty to comply or cause compliance strictly with all provisions of this Article and, in addition thereto, with each and every term, provision and covenant in any contract of the authority on its part to be kept or performed. (1951, c. 779, s. 5; 1979, 2nd Sess., c. 1247, s. 44.)

§ 160A-555. Interested commissioners or employees.

No commissioner or employee of an authority shall acquire any interest direct or indirect in any parking project or in any property included or planned to be included in any parking project, nor shall he have any interest direct or indirect in any contract or proposed contract for materials or services to be furnished or used in connection with any parking project. If any commissioner or employee of an authority owns or controls an interest direct or indirect in any property included or planned to be included in any parking project, he shall immediately disclose the same in writing to the authority and such disclosure shall be entered upon the minutes of the authority. Failure to so disclose such interest shall constitute misconduct in office. (1951, c. 779, s. 6; 1979, 2nd Sess., c. 1247, s. 44.)

§ 160A-556. Purpose and powers of the authority.

An authority incorporated under this Article shall constitute a public body and a body corporate and politic, exercising public powers as an agency or instrumentality of the city with which it is coterminous. The purpose of the authority shall be to relieve traffic congestion of the streets and public places in the city by means of parking facilities, and to that end to acquire, construct, improve, operate and maintain one or more parking projects in the city. To carry out said purpose, the authority shall have power:

(1) To sue and be sued;
(2) To have a seal and alter the same at pleasure;
(3) To acquire, hold and dispose of personal property for its corporate purposes, including the power to purchase prospective or tentative awards in connection with the condemnation of real property;
(4) To acquire by purchase or condemnation, and use real property necessary or convenient. All real property acquired by the authority by condemnation shall be acquired in the manner provided by law for the condemnation of land by the city;
(5) To make bylaws for the management and regulation of its affairs, and subject to agreements with bondholders, for the regulation of parking projects;
(6) To make contracts and leases, and to execute all instruments necessary or convenient;
(7) To construct such buildings, structures and facilities as may be necessary or convenient;
(8) To construct, reconstruct, improve, maintain and operate parking projects;
(9) To accept grants, loans or contributions from the United States, the State of North Carolina, or any agency or instrumentality of either of them, or the city, and to expend the proceeds for any purposes of the authority;
(10) To fix and collect rentals, fees and other charges for the use of parking projects or any of them subject to and in accordance with such agreements with bondholders as may be made as hereinafter provided;
(11) To do all things necessary or convenient to carry out the purpose of the authority and the powers expressly given to it by this Article;
(12) To issue revenue bonds under the Local Government Revenue Bond Act. (1951, c. 779, s. 7; 1965, c. 998, s. 2; 1971, c. 780, s. 18; 1979, 2nd Sess., c. 1247, s. 44.)

§ 160A-557. Conveyance of property by the city to the authority; acquisition of property by the city or by the authority.

(a) The city may convey, with or without consideration, to the authority real and personal property owned by the city for use by the authority as a parking project or projects or a part thereof. In case of real property so conveyed, the instrument of conveyance shall contain a provision for reversion of the property to the city upon the termination of the corporate existence of the authority or upon the termination of the use of the property for the corporate purpose of the authority. Such conveyance of property by the city to the authority may be made without regard to the provisions of other laws regulating sales of property by the city or requiring previous advertisement of sales of property by the city.

(b) The city may acquire by purchase or condemnation real property in the name of the city for the authority or for the widening of existing roads, streets, parkways, avenues or highways or for new roads, streets, parkways, avenues or highways to any of the parking projects, or partly for such purposes and partly for other city purposes, by purchase or condemnation in the manner provided by law for the acquisition of real property by the city. The city may close such streets, roads, parkways, avenues, or highways as may be necessary or convenient.

(c) Contracts may be entered into between the city and the authority providing for the property to be conveyed by the city to the authority, the additional property to be acquired by the city and so conveyed, the streets, roads, parkways, avenues and highways to be closed by the city, and the amounts, terms and conditions of payment to be made by the authority. Such contracts may contain covenants by the city as to the road, street, parkway, avenue and highway improvements to be made by the city, including provisions for the installation of parking meters in designated streets of the city and for the removal of such parking meters in the event that such parking meters are not found to be necessary or convenient. Any such contract may pledge all or any part of the revenues of on-street parking meters to the authority for a period of not to exceed the period during which bonds of the authority shall be outstanding; provided, that the total amount of such revenues which may be paid pursuant to such a pledge shall not exceed the total of the principal of and interest on such bonds which become due and payable during such period. Such contracts may also contain provisions limiting or prohibiting the construction and operation by the city or any agency thereof in designated areas of public parking facilities and parking meters whether or not a fee or charge is made therefor. Any such contracts between the city and the authority may be pledged by the authority to secure its bonds and may not be modified thereafter except as provided by the terms of the contracts or by the terms of the pledge. The city council may authorize such contracts on behalf of the city and no other authorization on the part of the city for such contracts shall be necessary.

(d) The authority may itself acquire real property for a parking project at the cost and expense of the authority by purchase or condemnation pursuant to the laws relating to the condemnation of land by the city.

(e) In case the authority shall acquire any real property which it shall determine is no longer required for a parking project, then, if such real property was acquired at the cost and expense of the city, the authority shall have power to convey it without consideration to the city, or, if such real property was acquired at the cost and expense of the authority, then the authority shall have power to sell, lease or otherwise dispose of said real property and shall retain and have the power to use the proceeds of sale, rentals or other moneys derived from the disposition thereof for its purposes. (1951, c. 779, s. 8; 1965, c. 998, s. 3; 1979, 2nd Sess., c. 1247, s. 44.)

§ 160A-558. Contracts.

The authority shall let contracts in the manner provided by law for contracts of the city. (1951, c. 779, s. 9; 1979, 2nd Sess., c. 1247, s. 44.)

§ 160A-559. Moneys of the authority.

All moneys of the authority shall be paid to the treasurer of the city as agent of the authority, who shall designate depositories and who shall not commingle such moneys with any other moneys. Such moneys shall be deposited in a separate bank account or accounts. The moneys in such accounts shall be paid out on checks of the treasurer on written requisition of the chairman of the authority or of such other person or persons as the authority may authorize to make such requisitions. All deposits of such moneys shall be secured in the manner provided by law for securing deposits of moneys of the city. The city accountant of the city and his legally authorized representatives are authorized and empowered from time to time to examine the accounts and books of the authority, including its receipts, disbursements, contracts, leases, sinking funds, investments and any other records and papers relating to its financial standing. The authority shall cause an annual audit of its accounts to be made by a certified public accountant or firm of certified public accountants, and shall cause a copy of the report of each such audit to be filed with the city clerk, who shall present the same to the city council. The authority shall have power, notwithstanding the provisions of this section to contract with the holders of any of its bonds as to the custody, collection, securing, investment and payment of any moneys of the authority or any moneys held in trust or otherwise for the payment of bonds or in any way to secure bonds, and to carry out any such contract notwithstanding that such contract may be inconsistent with the previous provisions of this section. Moneys held in trust or otherwise for the payment of bonds or in any way to secure bonds and deposits of such moneys may be secured in the same manner as moneys of the authority, and all banks and trust companies are authorized to give such security for such deposits. (1951, c. 779, s. 10; 1979, 2nd Sess., c. 1247, s. 44.)

§ 160A-560. Bonds legal investments for public officers and fiduciaries.

The bonds are hereby made securities in which all public officers and bodies of this State and all municipalities and municipal subdivisions, all insurance companies and associations and other persons carrying on an insurance business, all banks, bankers, trust companies, savings banks and savings associations, including savings and loan associations, investment companies and other persons carrying on a banking business and all other persons whatsoever, except as hereinafter provided, who are now or may hereafter be authorized to invest in bonds or other obligations of the State, may properly and legally invest funds including capital in their control or belonging to them; provided that, notwithstanding the provisions of any other general or special law to the contrary, such bonds shall not be eligible for the investment of funds, including capital, trusts, estates or guardianships under the control of individual administrators, guardians, executors, trustees and other individual fiduciaries. The bonds are also hereby made securities which may be deposited with and may be received by all public officers and bodies of this State and all municipalities and municipal subdivisions for any purpose for which the deposit of bonds or other obligations of this State is now or may hereafter be authorized. (1951, c. 779, s. 15; 1979, 2nd Sess., c. 1247, s. 44.)

§ 160A-561. Exemptions from taxation.

It is hereby found, determined and declared that the creation of the authority and the carrying out of its corporate purposes is in all respects for the benefit of the people of the State of North Carolina, for the improvement of their health, welfare and prosperity, and for the promotion of their traffic, and is a public purpose, and that the authority will be performing an essential governmental function in the exercise of the powers conferred upon it by this Article, and the State of North Carolina covenants with the holders of the bonds that the authority shall be required to pay no taxes or assessments upon any of the property acquired by it or under its jurisdiction, control, possession or supervision or upon its activities in the operation and maintenance of the project or any tolls, revenues or other income received by the authority and that the bonds of the authority and the income therefrom shall at all times be exempt from taxation, except for transfer and estate taxes. (1951, c. 779, s. 16; 1979, 2nd Sess., c. 1247, s. 44.)

§ 160A-562. Tax contract by the State.

The State of North Carolina covenants with the purchasers and with all subsequent holders and transferees of bonds issued by the authority pursuant to this Article, in consideration of the acceptance of and payment for the bonds, that the bonds of the authority issued pursuant to this Article and the income therefrom, and all moneys, funds and revenues pledged to pay or secure the payment of such bonds, shall at all times be free from taxation except for transfer and estate taxes. (1951, c. 779, s. 17; 1979, 2nd Sess., c. 1247, s. 44.)

§ 160A-563. Actions against the authority.

In every action against the authority for damages, for injuries to real or personal property, or for the destruction thereof, or for personal injuries or death, the complaint shall contain an allegation that at least 30 days have elapsed since the demand, claim or claims upon which such action is founded were presented to a member of the authority, or to its secretary, or to its chief executive officer and that the authority has neglected or refused to make an adjustment or payment thereof for 30 days after such presentment. (1951, c. 779, s. 19; 1979, 2nd Sess., c. 1247, s. 44.)

§ 160A-564. Termination of authority.

The city council shall have the authority to terminate the existence of the authority at any time. In the event of such termination, all property and assets of the authority shall automatically become the property of the city and the city shall succeed to all rights, obligations and liabilities of the authority. (1951, c. 779, s. 20; 1979, 2nd Sess., c. 1247, ss. 43, 44.)

§ 160A-565. Inconsistent provisions in other acts superseded.

Insofar as the provisions of this Article are inconsistent with the provisions of any other act, general or special, the provisions of this Article shall be controlling. This Article shall not repeal or modify any other act providing a different method of financing parking projects in cities, the powers conferred hereby being intended to be in addition to and not in substitution for the powers conferred by other acts. (1951, c. 779, s. 22; 1979, 2nd Sess., c. 1247, s. 44.)

§§ 160A-566 through 160A-574: Reserved for future codification purposes.

Article 25.

Public Transportation Authorities.

§ 160A-575. Title.

This Article shall be known and may be cited as the "North Carolina Public Transportation Authorities Act." (1977, c. 465; 1979, 2nd Sess., c. 1247, s. 45.)

Editor's Note. — This Article was formerly Article 38A of Chapter 160. It was recodified as Article 25 of Chapter 160A by Session Laws 1979, c. 1247.

OPINIONS OF ATTORNEY GENERAL

District health department has authority to operate public transit on fare paying basis, without establishment of a Transportation Authority. Section 62-260(a)(1) specifically exempts political subdivisions of this State from regulation by the North Carolina Utilities

Commission. See opinion of Attorney General to Mr. David D. King, Director of Division of Public Transportation, North Carolina Department of Transportation, 55 N.C.A.G. 76 (1986).

§ 160A-576. Definitions.

As used in this Article, unless the context otherwise requires:

(1) "Authority" means a body corporate and politic organized in accordance with the provisions of this Article for the purposes, with the powers and subject to the restrictions hereinafter set forth.

(2) "Governing body" means the board, commission, council or other body, by whatever name it may be known, in which the general legislative powers of the municipality are vested.

(3) "Municipality" means any county, city, or town of this State, and any other political subdivision, public corporation, authority, or district in this State, which is or may be authorized by law to acquire, establish, construct, enlarge, improve, maintain, own, and operate public transportation systems.

(4) "Municipality's chief administrative official" means the county manager, city manager, town manager, or other person, by whatever title he shall be known, in whom the responsibility for the municipality's administrative duties is vested.

(5) "Public transportation" means transportation of passengers whether or not for hire by any means of conveyance, including but not limited to a street railway, elevated railway or guideway, subway, motor vehicle or motor bus, either publicly or privately owned and operated, holding itself out to the general public for the transportation of persons within the territorial jurisdiction of the authority, including charter service.

(6) "Public transportation system" means, without limitation, a combination of real and personal property, structures, improvements, buildings, equipment, vehicle parking or other facilities, and rights-of-way, or any combination thereof, used or useful for the purposes of public transportation. (1977, c. 465; 1979, 2nd Sess., c. 1247, s. 45.)

§ 160A-577. Creation; membership.

A municipality may, by resolution or ordinance, create a transportation authority, hereinafter sometimes referred to as the "authority." It shall be a body corporate and politic. It shall consist of up to 11 members as determined by the governing body of the municipality.

Members of the authority shall reside within the territorial jurisdiction of the authority as hereinafter set out. They shall be appointed by the governing body of the municipality. The terms of the members shall be fixed by the governing body. Appointments to fill vacancies occurring during the regular terms shall be made by the governing body. The appointments of all members shall run until their successors are appointed and qualified.

The members of the authority shall elect a chairman and vice-chairman from the membership of the authority. They shall also elect a secretary who may, or may not, be a member of the authority.

A majority of the members shall constitute a quorum for the transaction of business and an affirmative vote of the majority of the members present at a meeting of the authority shall be required to constitute action of the authority. Members of the authority shall receive such compensation, if any, as may be fixed by the governing body of the municipality. (1977, c. 465; 1979, 2nd Sess., c. 1247, s. 45.)

§ 160A-578. Purpose of the authority.

The purpose of the authority shall be to provide for a safe, adequate and convenient public transportation system for the municipality creating the authority and for its immediate environs, through the granting of franchises, ownership and leasing of terminals, buses and other transportation facilities and equipment, and otherwise through the exercise of the powers and duties conferred upon it. (1977, c. 465; 1979, 2nd Sess., c. 1247, s. 45.)

§ 160A-579. General powers of the authority.

The general powers of the authority shall include any or all of the following:

(1) To sue and be sued;

(2) To have a seal;

(3) To make rules and regulations, not inconsistent with this Chapter, for its organization and internal management;

(4) To employ persons deemed necessary to carry out the management functions and duties assigned to them by the authority and to fix their compensation, within the limit of available funds;

(5) With the approval of the municipality's chief administrative official, to use officers, employees, agents and facilities of the municipality for such purposes and upon such terms as may be mutually agreeable;

(6) To retain and employ counsel, auditors, engineers and private consultants on an annual salary, contract basis, or otherwise for rendering professional or technical services and advice;

(7) To acquire, maintain and operate such lands, buildings, structures, facilities, and equipment as may be necessary or convenient for the operations of the authority and for the operation of a public transportation system;

(8) To make or enter into contracts, agreements, deeds, leases, conveyances or other instruments, including contracts and agreements with the United States and the State of North Carolina;

(9) To surrender to the municipality any property no longer required by the authority;

(10) To make plans, surveys and studies of public transportation facilities within the territorial jurisdiction of the authority and to prepare and make recommendations in regard thereto;

(11) To enter into and perform contracts with public transportation companies with respect to the operation of public passenger transportation;

(12) To issue certificates of public convenience and necessity; and to grant franchises and enter into franchise agreements and in all respects to regulate the operation of buses, taxicabs and other methods of public passenger transportation which originate and terminate within the territorial jurisdiction of the authority as fully as the municipality is now or hereafter empowered to do within the territorial jurisdiction of the municipality;

(13) To operate public transportation systems and to enter into and perform contracts to operate public transportation services and facilities and to own or lease property, facilities and equipment necessary or convenient therefor, and to rent, lease or otherwise sell the right to do so to any person, public or private; further, to the extent authorized by resolution or ordinance of the municipality to obtain grants, loans and assistance from the United States, the State, any public body, or any private source whatsoever;

(14) To enter into and perform contracts and agreements with other public transportation authorities pursuant to the provisions of G.S.

160A-460 through 160A-464 of Part 1 of Article 20 of Chapter 160A of the General Statutes; in addition, to enter into and perform contracts with other units of local government when specifically authorized by the governing body, pursuant to the provisions of G.S. 160A-460 through 160A-464 of Part 1 of Article 20 of Chapter 160A of the General Statutes;

(15) To do all things necessary or convenient to carry out its purpose and to exercise the powers granted to the authority. (1977, c. 465; 1979, 2nd Sess., c. 1247, s. 45.)

OPINIONS OF ATTORNEY GENERAL

A public transportation authority may borrow funds from private lending institutions. See opinion of Attorney General to Mr. David D. King, Director, Division of Public Transportation of the North Carolina Department of Transportation, 54 N.C.A.G. 8 (1984).

§ 160A-580. Authority of Utilities Commission not affected.

Except as otherwise provided herein, nothing in this Article shall be construed to limit or otherwise affect the power or authority of the North Carolina Utilities Commission or the right of appeal to the North Carolina Utilities Commission as provided by law. (1977, c. 465; 1979, 2nd Sess., c. 1247, s. 45.)

§ 160A-581. Territorial jurisdiction.

The jurisdiction of the authority shall extend to all local public passenger transportation operating within the municipality. Said jurisdiction shall also extend up to 30 miles outside of the corporate limits of the municipality where the municipality is a town or city, and up to five miles outside of the boundaries of the municipality where the municipality is a county or up to five miles outside of the combined boundaries of a group of counties. The authority shall not have jurisdiction over public transportation subject to the jurisdiction of and regulated by the I.C.C., nor shall it have jurisdiction over intrastate public transportation classified as common carriers of passengers by the North Carolina Utilities Commission. A public transportation authority shall not extend service into a political subdivision without the consent of the governing body of that political subdivision. A majority vote of the governing body shall constitute consent. (1977, c. 465; 1979, 2nd Sess., c. 1247, s. 45.)

§ 160A-582. Fiscal accountability.

The authority shall be fiscally accountable to the municipality, and the municipality's governing body shall have authority to examine all records and accounts of the authority at any time. (1977, c. 465; 1979, 2nd Sess., c. 1247, s. 45.)

§ 160A-583. Funds.

The establishment and operation of a transportation authority as herein authorized are governmental functions and constitute a public purpose, and the municipality is hereby authorized to appropriate funds to support the establishment and operation of the transit authority. The municipality may also dedicate, sell, convey, donate or lease any of its interest in any property to the authority. Further, the authority is hereby authorized to establish such license and regulatory fees and charges as it may deem appropriate, subject to the approval of the governing body of the municipality. If the governing body finds that the funds otherwise available are insufficient, it may call a special election without a petition and submit to the qualified voters of the municipality the question of whether or not a special tax shall be levied and/or bonds issued, specifying the maximum amount thereof, for the purpose of acquiring lands, buildings, equipment and facilities and for the operations of the transit authority. (1977, c. 465; 1979, 2nd Sess., c. 1247, s. 45.)

§ 160A-584. Effect on existing franchises and operations.

In the event a transportation authority is established under the authority of this Article, any existing franchises granted by the municipality shall continue in full force and effect until legally terminated; further, all ordinances and resolutions of the municipality regulating bus operations and taxicabs shall continue in full force and effect until superseded by regulations of the transportation authority. (1977, c. 465; 1979, 2nd Sess., c. 1247, s. 45.)

§ 160A-585. Termination.

The governing body of the municipality shall have the authority to terminate the existence of the authority at any time. In the event of such termination, all property and assets of the authority shall automatically become the property of the municipality and the municipality shall succeed to all rights, obligations and liabilities of the authority. (1977, c. 465; 1979, 2nd Sess., c. 1247, s. 45.)

§ 160A-586. Controlling provisions.

Insofar as the provisions of this Article are not consistent with the provisions of any other law, public or private, the provisions of this Article shall be controlling. (1977, c. 465; 1979, 2nd Sess., c. 1247, s. 45.)

§ 160A-587. Consolidation of public transportation authority and parking authority.

The municipality may, by resolution or ordinance, vest in a single body corporate and politic both the powers of a public transportation authority in accordance with the provisions of this Article and the powers of a parking authority in accordance with the provisions of Article 38 of Chapter 160 of the General Statutes. Notwithstanding the membership provisions of G.S. 160A-553, the members of a consolidated body created pursuant to this section shall be selected according to the provisions of G.S. 160A-577. (1977, c. 465; 1979, 2nd Sess., c. 1247, s. 45.)

Editor's Note. — Article 38 of Chapter 160, referred to in this section, was transferred by Session Laws 1979, 2nd Sess., c. 1247, s. 44 to G.S. 160A-550 through 160A-565.

§ 160A-588. Joint provision of services.

Two or more municipalities may cooperate in the exercise of any power granted by this Article according to the procedures and provisions of G.S. 160A-460 through 160A-464 of Part 1 of Article 20 of Chapter 160A of the General Statutes. Additional municipalities may join an existing transportation authority upon making satisfactory arrangements pursuant to the provisions of G.S. 160A-460 through 160A-464 of Part 1 of Article 20 of Chapter 160A of the General Statutes. (1977, c. 465; 1979, 2nd Sess., c. 1247, s. 45.)

§§ 160A-589 through 160A-599: Reserved for future codification purposes.

ARTICLE 26.

Regional Public Transportation Authority.

§ 160A-600. Title.

This Article shall be known and may be cited as the "Regional Public Transportation Authority Act." (1989, c. 740, s. 1.)

§ 160A-601. Definitions.

As used in this Article, unless the context otherwise requires:

(1) "Authority" means a Regional Public Transportation Authority as defined by subdivision (6) of this section.

(2) "Board of Trustees" means the governing board of the Authority, in which the general legislative powers of the Authority are vested.

(3) "Population" means the number of persons residing in respective areas as defined and enumerated in the most recent decennial federal census.

(4) "Public transportation" means transportation of passengers whether or not for hire by any means of conveyance, including but not limited to a street or elevated railway or guideway, subway, motor vehicle or motor bus, carpool or vanpool, either publicly or privately owned and operated, holding itself out to the general public for the transportation of persons within or working within the territorial jurisdiction of the Authority, excluding charter, tour, or sight-seeing service.

(5) "Public transportation system" means, without limitation, a combination of real and personal property, structures, improvements, buildings, equipment, vehicle parking or other facilities, railroads and railroad rights-of-way whether held in fee simple by quitclaim or easement, and rights-of-way, or any combination thereof, used or useful for the purposes of public transportation. "Public transportation system" however, does not include streets, roads, or highways except those for ingress and egress to vehicle parking.

(6) "Regional Public Transportation Authority," means a body corporate and politic organized in accordance with the provisions of this Article for the purposes, with the powers and subject to the restrictions hereinafter set forth.

(7) "Unit of local government" means any county, city, town or municipality of this State, and any other political subdivision, public corporation, Authority, or district in this State, which is or may be authorized by law to acquire, establish, construct, enlarge, improve, maintain, own, and operate public transportation systems.

(8) "Unit of local government's chief administrative official" means the county manager, city manager, town manager, or other person, by whatever title he shall be known, in whom the responsibility for the unit of local government's administrative duties is vested. (1989, c. 740, s. 1.)

CASE NOTES

Cited in McIver v. Smith, 134 N.C. App. 583, 518 S.E.2d 522 (1999).

§ 160A-602. Definition of territorial jurisdiction of Authority.

An authority may be created for any area of the State that, at the time of creation of the authority, meets the following criteria:

(1) The area consists of three counties:

(2) At least one of those counties contains at least part of a County Research and Production Service District established pursuant to Part 2 of Article 16 of Chapter 153A of the General Statutes; and

(3) The other two counties each:

  a. Contain at least one unit of local government that is designated by the Governor of the State of North Carolina as a recipient pursuant to Section 9 of the Urban Mass Transportation Act of 1964, as amended; and

  b. Are adjacent to at least one county that contains at least part of a County Research and Production Service District established pursuant to Part 2 of Article 16 of Chapter 153A of the General Statutes. (1989, c. 740, s. 1.)

§ 160A-603. Creation of Authority.

(a) The Boards of Commissioners of all three counties within an area for which an authority may be created as defined in G.S. 160A-602 may by resolution signify their determination to organize an authority under the provisions of this Article. Each of such resolutions shall be adopted after a public hearing thereon, notice of which hearing shall be given by publication at least once, not less than 10 days prior to the date fixed for such hearing, in a newspaper having a general circulation in the county. Such notice shall contain a brief statement of the substance of the proposed resolution, shall set forth the proposed articles of incorporation of the Authority and shall state the time and place of the public hearing to be held thereof. No county shall be required to make any other publication of such resolution under the provisions of any other law.

(b) Each such resolution shall include articles of incorporation which shall set forth:

(1) The name of the authority;

(2) A statement that such authority is organized under this Article; and

(3) The names of the three organizing counties.

(c) A certified copy of each of such resolutions signifying the determination to organize an authority under the provisions of this Article shall be filed with the Secretary of State, together with proof of publication of the notice of hearing on each of such resolutions. If the Secretary of State finds that the resolutions, including the articles of incorporation, conform to the provisions of this Article and that the notices of hearing were properly published, he shall file such resolutions and proofs of publication in his office and shall issue a certificate of incorporation under the seal of the State and shall record the same in an appropriate book of record in his office. The issuance of such certificate of incorporation by the Secretary of State shall constitute the Authority a public body and body politic and corporate of the State of North Carolina. Said certificate of incorporation shall be conclusive evidence of the fact that such authority has been duly created and established under the provisions of this Article.

(d) When the Authority has been duly organized and its officers elected as herein provided the secretary of the Authority shall certify to the Secretary of State the names and addresses of such officers as well as the address of the principal office of the Authority.

(e) The Authority may become a Designated Recipient pursuant to the Urban Mass Transportation Act of 1964, as amended. (1989, c. 740, s. 1.)

§ 160A-604. Territorial jurisdiction of the Authority.

(a) The territorial jurisdiction of any authority created pursuant to this Article shall be coterminous with the boundaries of the three counties that organized it.

(b) Except as provided by this Article, the jurisdiction of the Authority may include all local public passenger transportation operating within the territorial jurisdiction of the Authority, but the Authority may not take over the operation of any existing public transportation without the consent of the owner.

(c) The Authority shall not have jurisdiction over public transportation subject to the jurisdiction of and regulated by the Interstate Commerce Commission, nor shall it have jurisdiction over intrastate public transportation classified as common carriers of passengers by the North Carolina Utilities Commission. (1989, c. 740, s. 1.)

§ 160A-605. Membership; officers; compensation.

(a) The governing body of an authority is the Board of Trustees. The Board of Trustees shall consist of 13 members, appointed as follows:

- (1) The county with the greatest population shall be allocated five members to be appointed as follows:
  - a. Two by the board of commissioners of that county;
  - b. Two by the city council of the city containing the largest population within that county; and
  - c. One by the city council of the city containing the second largest population within that county;
- (2) The county with the next greatest population shall be allocated three members to be appointed as follows:
  - a. One by the board of commissioners of that county;
  - b. One by the city council of the city containing the largest population within that county; and
  - c. One jointly by that board of commissioners and city council, by procedures agreed on between them;
- (3) The county with the least population shall be allocated two members to be appointed as follows:
  - a. One by the board of commissioners of that county; and
  - b. One by the city council of the city containing the largest population within that county; and
- (4) Three members of the Board of Transportation appointed by the Secretary of Transportation, to serve as ex officio nonvoting members.

(b) Voting members of the Board of Trustees shall serve for terms of four years, provided that one-half of the initial appointments shall be for two-year terms, to be determined by lot at the first meeting of the Board of Trustees. Initial terms of office shall commence upon approval by the Secretary of State of the articles of incorporation. The members appointed by the Secretary of Transportation shall serve at his pleasure.

(c) An appointing authority may appoint one of its members to the Board of Trustees. Service on the Board of Trustees may be in addition to any other office which a person is entitled to hold. Each voting member of the Board of Trustees may hold elective public office as defined by G.S. 128-1.1(d).

(d) Members of the Board of Trustees shall reside within the territorial jurisdiction of the Authority as defined by G.S. 160A-604.

(e) The Board of Trustees shall annually elect from its membership a Chairperson, and a Vice-Chairperson, and shall annually elect a Secretary, and a Treasurer.

(f) Members of the Board of Trustees shall receive the sum of fifty dollars ($50.00) as compensation for attendance at each duly conducted meeting of the Authority. (1989, c. 740, s. 1.)

§ 160A-606. Voting; removal.

(a) Six members of the Board of Trustees shall constitute a quorum for the transaction of business. Except as provided by G.S. 160A-605(a)(4), each member shall have one vote.

(b) Each member of the Board of Trustees may be removed with or without cause by the appointer(s). If the appointment was made jointly by two boards, the removal must be concurred in by both.

(c) Appointments to fill vacancies shall be made for the remainder of the unexpired term by the respective appointer(s) charged with the responsibility for making such appointments pursuant to G.S. 160A-605. All members shall serve until their successors are appointed and qualified, unless removed from office. (1989, c. 740, s. 1.)

§ 160A-607. Advisory committees.

The Board of Trustees may provide for the selection of such advisory committees as it may find appropriate, which may or may not included members of the Board of Trustees. (1989, c. 740, s. 1.)

§ 160A-607.1. Special tax board.

(a) The special tax board of an authority shall be composed of two representatives from each of the counties organizing the authority appointed annually by the board of commissioners of each of those counties' members at the first regular meeting thereof in January, except that the initial members shall serve a term beginning on the date that the initial terms of the board of trustees of that authority begin under G.S. 160A-605(b), and ending on the last day of December of that year. Each member of the special tax board must be a member of the board of commissioners of the county by which he was appointed. Membership on the special tax board may be held in addition to the offices authorized by G.S. 128-1 or G.S. 128-1.1. Said representatives shall hold office from their appointment until their successors are appointed and qualified, except that when any member of the special tax board ceases for any reason to be a member of the board of commissioners of the county by which he was appointed, he shall simultaneously cease to be a member of said special tax board. Upon the occurrence of any vacancy on said special tax board, the vacancy shall be filled within 30 days after notice thereof by the board of commissioners of the county having a vacancy in its representation. Each member of the special tax board, before entering upon his duties, shall take and subscribe an oath or affirmation to support the Constitution and laws of the United States and of this State and to discharge faithfully the duties of his office; and a record of each such oath shall be filed in the minutes of the respective participating units of local government.

(b) The special tax board shall meet regularly at such places and on such dates as are determined by the special tax board. The initial meeting shall be called jointly by the chairmen of the boards of commissioners of the counties organizing the authority. Special meetings may be called by the chairman of the special tax board on his own initiative and shall be called by him upon request of two or more members of the board. All members shall be notified in writing at least 24 hours in advance of such meeting. A majority of the members of the special tax board shall constitute a quorum. No vacancy in the membership of the special tax board shall impair the right of a quorum to exercise all the rights and perform all the duties of the special tax board. No action, other than an action to recess or adjourn, shall be taken except upon a majority vote of the entire authorized membership of said special tax board. Each member, including the chairman, shall be entitled to vote on any question.

(c) The special tax board shall elect annually in January from among its members a chairman, vice-chairman, secretary and treasurer, except that initial officers shall be elected at the first meeting of the special tax board. (1989, c. 740, s. 1.)

§ 160A-608. Purpose of the Authority.

The purpose of the Authority shall be to finance, provide, operate, and maintain for a safe, clean, reliable, adequate, convenient, energy efficient, economically and environmentally sound public transportation system for the service area of the Authority through the granting of franchises, ownership and leasing of terminals, buses and other transportation facilities and equipment, and otherwise through the exercise of the powers and duties conferred upon it, in order to enhance mobility in the region and encourage sound growth patterns.

Such a service, facility, or function shall be financed, provided, operated, or maintained in the service area of the Authority either in addition to or to a greater or lesser extent than services, facilities, or functions are financed, provided, operated, or maintained for the entirety of the respective units of local government. (1989, c. 740, s. 1.)

§ 160A-609. Service area of the Authority.

The service area of the Authority shall be as determined by the Board of Trustees consistent with its purpose, but shall not exceed the territorial jurisdiction of the authority and any area it may provide service to under G.S. 160A-610. (1989, c. 740, s. 1.)

§ 160A-610. General powers of the Authority.

The general powers of the Authority shall include any or all of the following:

(1) To sue and be sued;

(2) To have a seal;

(3) To make rules and regulations, not inconsistent with this Chapter, for its organization and internal management;

(4) To employ persons deemed necessary to carry out the functions and duties assigned to them by the Authority and to fix their compensation, within the limit of available funds;

(5) With the approval of the unit of local government's chief administrative official, to use officers, employees, agents and facilities of the unit of local government for such purposes and upon such terms as may be mutually agreeable;

(6) To retain and employ counsel, auditors, engineers and private consultants on an annual salary, contract basis, or otherwise for rendering professional or technical services and advice;

(7) To acquire, lease as lessee with or without option to purchase, hold, own, and use any franchise, property, real or personal, tangible or

intangible, or any interest therein and to sell, lease as lessor with or without option to purchase, transfer (or dispose thereof) whenever the same is no longer required for purposes of the Authority, or exchange same for other property or rights which are useful for the Authority's purposes, including but not necessarily limited to parking facilities;

(7a) To enhance mobility within the region and promote sound growth patterns through joint transit development projects as generally described by Federal Transit Administration (FTA) policy at 62 Fed. Reg. 12266 (1997) and implementing guidelines in FTA Circular 9300.1A, Appendix B, as the policy and guidance may be amended; and, with respect to the planning, construction, and operation of joint transit development projects, upon the governing board's adoption of policies and procedures to ensure fair and open competition, to select developers or development teams in substantially the same manner as permitted by G.S. 143-129(h); and to enter into development agreements with public, private, or nonprofit entities to undertake the planning, construction, and operation of joint transit development projects.

(8) To acquire by gift, purchase, lease as lessee with or without option to purchase or otherwise to construct, improve, maintain, repair, operate or administer any component parts of a public transportation system or to contract for the maintenance, operation or administration thereof or to lease as lessor the same for maintenance, operation, or administration by private parties, including but not necessarily limited to parking facilities;

(9) To make or enter into contracts, agreements, deeds, leases with or without option to purchase, conveyances or other instruments, including contracts and agreements with the United States, the State of North Carolina, and units of local government;

(9a) To purchase or finance real or personal property in the manner provided for cities and counties under G.S. 160A-20;

(10) To surrender to the State of North Carolina any property no longer required by the Authority;

(11) To develop and make data, plans, information, surveys and studies of public transportation facilities within the territorial jurisdiction of the Authority, to prepare and make recommendations in regard thereto;

(12) To enter in a reasonable manner lands, waters or premises for the purpose of making surveys, soundings, drillings, and examinations whereby such entry shall not be deemed a trespass except that the Authority shall be liable for any actual and consequential damages resulting from such entries;

(13) To develop and carry out demonstration projects;

(14) To make, enter into, and perform contracts with private parties, and public transportation companies with respect to the management and operation of public passenger transportation;

(15) To make, enter into, and perform contracts with any public utility, railroad or transportation company for the joint use of property or rights, for the establishment of through routes, joint fares or transfer of passengers;

(16) To make, enter into, and perform agreements with governmental entities for payments to the Authority for the transportation of persons for whom the governmental entities desire transportation;

(17) With the consent of the unit of local government which would otherwise have jurisdiction to exercise the powers enumerated in this subdivision: to issue certificates of public convenience and necessity; and to grant franchises and enter into franchise agreements and in all

respects to regulate the operation of buses, taxicabs and other methods of public passenger transportation which originate and terminate within the territorial jurisdiction of the Authority as fully as the unit of local government is now or hereafter empowered to do within the territorial jurisdiction of the unit of local government;

(18) To operate public transportation systems and to enter into and perform contracts to operate public transportation services and facilities and to own or lease property, facilities and equipment necessary or convenient therefor, and to rent, lease or otherwise sell the right to do so to any person, public or private; further, to obtain grants, loans and assistance from the United States, the State of North Carolina, any public body, or any private source whatsoever, but may not operate or contract for the operation of public transportation systems outside the territorial jurisdiction of the Authority except as provided by subdivision (20) of this section;

(19) To enter into and perform contracts and agreements with other public transportation authorities, regional public transportation authorities or units of local government pursuant to the provisions of G.S. 160A-460 through 160A-464 (Part 1 of Article 20 of Chapter 160A of the General Statutes); further to enter into contracts and agreements with private transportation companies, but this subdivision does not authorize the operation of, or contracting for the operation of, service of a public transportation system outside the service area of the Authority;

(20) To operate public transportation systems extending service into any political subdivision of the State of North Carolina unless a particular unit of local government operating its own public transportation system or franchising the operation of a public transportation system by majority vote of its governing board, shall deny consent, but such service may not extend more than 10 miles outside of the territorial jurisdiction of the authority, except that vanpool and carpool service shall not be subject to that mileage limitation;

(21) Except as restricted by covenants in bonds, notes, or equipment trust certificates, to set in its sole discretion rates, fees and charges for use of its public transportation system;

(22) To do all things necessary or convenient to carry out its purpose and to exercise the powers granted to the Authority;

(23) To collect or contract for the collection of taxes which it is authorized by law to levy;

(24) To issue bonds or other obligations of the Authority as provided by law and apply the proceeds thereof to the financing of any public transportation system or any part thereof and to refund, whether or not in advance of maturity or the earliest redemption date, any such bonds or other obligations; and

(25) To contract for, or to provide and maintain, with respect to the facilities and property owned, leased with or without option to purchase, operated or under the control of the Authority, and within the territory thereof, a security force to protect persons and property, dispense unlawful or dangerous assemblages and assemblages which obstruct full and free passage, control pedestrian and vehicular traffic, and otherwise preserve and protect the public peace, health, and safety; for these purposes a member of such force shall be a peace officer and, as such, shall have authority equivalent to the authority of a police officer of the city or county in which said member of such force is discharging such duties.

(26) To contract for the purchase, lease, or other acquisition of any apparatus, supplies, materials, or equipment for public transit pur-

poses with any person or entity that, within the previous 60 months, after having completed a public formal bid process substantially similar to that required by Article 8 of Chapter 143 of the General Statutes or through the competitive proposal method provided in G.S. 143-129(h), has contracted to furnish the apparatus, supplies, materials, or equipment to any unit or agency approved in G.S. 143-129(g) if the person or entity is willing to furnish the items at the same or more favorable prices, terms, and conditions as those provided under the contract with the other unit or agency. Any purchase made under this section shall be approved by the Board of Trustees as provided in G.S. 143-129(g). (1989, c. 740, s. 1; 1998-70, s. 2; 2000-67, s. 25.6; 2003-197, s. 2.)

Editor's Note. — Session Laws 1989, c. 799, s. 10 provided: "A Regional Public Transportation Authority created pursuant to Article 26 of Chapter 160A of the General Statutes may, in addition to all other powers granted by G.S. 160A-610, and in furtherance of G.S. 160A-613, apply for a grant from the Department of Transportation to be funded from the funds for public transportation received from the North Carolina Highway Trust Fund if those funds are available. The Department of Transportation may allocate to a regional public transportation authority any funds appropriated for public transportation."

§ 160A-611. Authority of Utilities Commission not affected.

(a) Except as otherwise provided in this Article, nothing in this Article shall be construed to limit or otherwise affect the power or authority of the North Carolina Utilities Commission or the right of appeal to the North Carolina Utilities Commission as provided by law.

(b) The North Carolina Utilities Commission shall not have jurisdiction over rates, fees, charges, routes, and schedules of an Authority for service within its territorial jurisdiction. (1989, c. 740, s. 1.)

§ 160A-612. Fiscal accountability.

An Authority is a public authority subject to the provisions of Chapter 159 of the General Statutes. (1989, c. 740, s. 1.)

§ 160A-613. Funds.

(a) The establishment and operation of an Authority are governmental functions and constitute a public purpose, and the State of North Carolina and any unit of local government may appropriate funds to support the establishment and operation of the Authority. The State of North Carolina and any unit of local government may also dedicate, sell, convey, donate or lease any of their interests in any property to the Authority. An authority may apply for grants from the State of North Carolina, or from the United States or any department, agency, or instrumentality thereof. The Department of Transportation may allocate to an authority any funds appropriated for public transportation, or any funds whose use is not restricted by law.

(b) The Authority may levy an annual vehicle registration tax not to exceed five dollars ($5.00) per vehicle in accordance with G.S. 160A-623.

(c) Notwithstanding any provision of G.S. 159-18, the Board of Trustees may accumulate moneys from any source authorized by this Article or by Article 50 of Chapter 105 of the General Statutes in a capital reserve fund for any authorized purpose of the Authority. Notwithstanding any provision of G.S. 159-19 or G.S. 159-22, the Board of Trustees may, by amendment to the resolution establishing a capital reserve fund, withdraw moneys accumulated in a fund for noncapital purposes if the capital outlay purpose for which the fund was created is no longer viable, as determined by a majority of the Board of Trustees. Except as otherwise provided in this subsection, the provisions of Part 2 of Article 3 of Chapter 159 of the General Statutes shall control the establishment of capital reserve funds by the Authority. (1989, c. 740, s. 1; 1991, c. 666, s. 1; 2001-424, s. 27.28.)

§ 160A-613.1. Competition.

No equipment of the authority may be used for charter, tour, or sight-seeing service. (1989, c. 740, s. 1.)

§ 160A-614. Effect on existing franchises and operations.

Creation of the Authority shall not have an effect on any existing franchises granted by any unit of local government; such existing franchises shall continue in full force and effect until legally terminated; further, all ordinances and resolutions of the unit of local government regulating local public transportation systems, bus operations, and taxicabs shall continue in full force and effect now and in the future, unless superseded by regulations of the Authority; such superseding, if any, may occur only on the basis of prior mutual agreement between the Authority and the respective unit of local government. (1989, c. 740, s. 1.)

§ 160A-615. Termination.

The Board of Trustees may terminate the existence of the Authority at any time when it has no outstanding indebtedness. In the event of such termination, all property and assets of the Authority not otherwise encumbered shall automatically become the property of the State of North Carolina, and the State of North Carolina shall succeed to all rights, obligations, and liabilities of the Authority. (1989, c. 740, s. 1.)

§ 160A-616. Controlling provisions.

Insofar as the provisions of this Article are not consistent with the provisions of any other law, public or private, the provisions of this Article shall be controlling. (1989, c. 740, s. 1.)

§ 160A-617. Bonds and notes authorized.

In addition to the powers granted by this Article, the Authority may issue bonds and notes pursuant to the provisions of the Local Government Bond Act and the Local Government Revenue Bond Act for the purpose of financing public transportation systems or any part thereof and to refund such bonds and notes, whether or not in advance of their maturity or earliest redemption date. Any bond order must be approved by resolution adopted by the special tax board of the Authority and in the case of a bond order under the Local Government Bond Act also by the board of county commissioners of each county organizing the authority. To pay any bond or note issued under the Local Government Bond Act, the Authority may not pledge the levy of any ad valorem tax, but only a tax or taxes it is authorized to levy. (1989, c. 740, s. 1; 1989 (Reg. Sess., 1990), c. 1024, s. 41; 1991, c. 666, s. 5.)

§ 160A-618. Equipment trust certificates.

In addition to the powers here and before granted, the Authority shall have continuing power to purchase equipment, and in connection therewith execute agreements, leases with or without option to purchase, or equipment trust certificates. All money required to be paid by the Authority under the provisions of such agreements, leases with or without option to purchase, and equipment trust certificates shall be payable solely from the fares, fees, rentals, charges, revenues, and earnings of the Authority, monies derived from the sale of any surplus property of the Authority and gifts, grants, and contributions from any source whatever. Payment for such equipment or rentals therefore, may be made in installments; the deferred installments may be evidenced by equipment trust certificates payable solely from the aforesaid revenues or receipts and title to such equipment may or may not vest in the Authority until the equipment trust certificates are paid. (1989, c. 740, s. 1.)

§ 160A-619. Power of eminent domain.

(a) The Authority shall have continuing power to acquire, by gift, grant, devise, bequest, exchange, purchase, lease with or without option to purchase, or any other lawful method, including but not limited to the power of eminent domain, the fee or any lesser interest in real or personal property for use by the Authority.

(b) Exercise of the power of eminent domain by the Authority shall be in accordance with Chapter 40A of the General Statutes. (1989, c. 740, s. 1.)

§ 160A-620. Tax exemption.

The property of the Authority, both real and personal, its acts, activities and income shall be exempt from any tax or tax obligation; in the event of any lease of Authority property, or other arrangement which amounts to a leasehold interest, to a private party, this exemption shall not apply to the value of such leasehold interest nor shall it apply to the income of the lessee. Otherwise, however, for the purpose of taxation, when property of the Authority is leased to private parties solely for the purpose of the Authority, the acts and activities of the lessee shall be considered as the acts and activities of the Authority and the exemption. The interest on bonds or obligations issued by the Authority shall be exempt from State taxes. (1989, c. 740, s. 1.)

§ 160A-621. Removal and relocation of utility structures.

(a) The Authority shall have the power to require any public utility, railroad, or other public service corporation owning or operating any installations, structures, equipment, apparatus, appliances or facilities in, upon, under, over, across or along any ways on which the Authority has the right to own, construct, operate or maintain its public transportation system, to relocate such installation, structures, equipment, apparatus, appliances or facilities from their locations, or, in the sole discretion of the affected public utility, railroad, or other public service corporation, to remove such installations, structures, equipment, apparatus, appliances or facilities from their locations.

(b) If the owner or operator thereof fails or refuses to relocate them, the Authority may proceed to do so.

(b1) The Authority shall provide any necessary new locations and necessary real estate interests for such relocation, and for that purpose the power of eminent domain as provided in G.S. 160A-619 may be exercised provided the new locations shall not be in, on or above, a public highway; the Authority may also acquire the necessary new locations by purchase or otherwise.

(b2) Any affected public utility, railroad or other public service corporation shall be compensated for any real estate interest taken in a manner consistent with G.S. 160A-619, subject to the right of the Authority to reduce the compensation due by the value of any property exchanged under this section.

(b3) The method and procedures of a particular adjustment to the facilities of a public utility, railroad or other public service corporation shall be covered by an agreement between the Authority and the affected party or parties.

(c) The Authority shall reimburse the public utility, railroad or other public service corporation, for the cost of relocations or removals which shall be the entire amount paid or incurred by the utility properly attributable thereto after deducting the cost of any increase in the service capacity of the new installations, structures, equipment, apparatus, appliances or facilities and any salvage value derived from the old installations, structures, equipment, apparatus or appliances. (1989, c. 740, s. 1.)

§ 160A-622: Reserved for future codification purposes.

§ 160A-623. Regional Transportation Authority registration tax.

In accordance with Article 51 of Chapter 105 of the General Statutes, an Authority organized under this Article may levy an annual license tax upon any motor vehicle with a tax situs within its territorial jurisdiction as defined by G.S. 160A-602. A tax levied under this section before the enactment of Article 51 of Chapter 105 of the General Statutes is considered a tax levied under Article 51 of Chapter 105 of the General Statutes. (1991, c. 666, s. 2; 1993, c. 382, s. 1; c. 485, s. 28; 1993 (Reg. Sess., 1994), c. 761, s. 34; 1997-417, s. 5.)

§ 160A-624. Recommendation of additional revenue sources.

The Authority may make recommendations to the General Assembly concerning additional revenue sources, including, but not limited to:

(1) Annual vehicle registration fees;
(2) Ad valorem taxes;
(3) Local land transfer taxes;
(4) Drivers license fees;
(5) Sales taxes on automobile parts and accessories; and
(6) Motor fuels taxes.

Any additional revenue sources for an Authority must be approved by the General Assembly. (1991, c. 666, s. 4.)

§ 160A-625. Reports to the General Assembly.

The Authority shall annually submit to the General Assembly, on or before February 1, its annual operating report, including a report of its administrative expenditures, and its audited financial report. In odd-numbered years, the report shall be submitted to the Senate and House Transportation Committees. In even-numbered years, the report shall be submitted to the Joint Legislative Transportation Oversight Committee. (1993, c. 382, s. 2.)

§ 160A-626. Limitations on rail transportation liability.

(a) As used in this section:

(1) "Claim" means a claim, action, suit, or request for damages, whether compensatory, punitive, or otherwise, made by any person or entity against:
  a. The Authority, a railroad, or an operating rights railroad; or

b. An officer, director, trustee, employee, parent, subsidiary, or affiliated corporation as defined in G.S. 105-130.6, or agent of: the Authority, a railroad, or an operating rights railroad.

(2) "Operating rights railroad" means a railroad corporation or railroad company that, prior to January 1, 2001, was granted operating rights by a State-Owned Railroad Company or operated over the property of a State-Owned Railroad Company under a claim of right over or adjacent to facilities used by or on behalf of the Authority.

(3) "Passenger rail services" means the transportation of rail passengers by or on behalf of the Authority and all services performed by a railroad pursuant to a contract with the Authority in connection with the transportation of rail passengers, including, but not limited to, the operation of trains; the use of right of way, trackage, public or private roadway and rail crossings, equipment, or station areas or appurtenant facilities; the design, construction, reconstruction, operation, or maintenance of rail related equipment, tracks, and any appurtenant facilities; or the provision of access rights over or adjacent to lines owned by the Authority or a railroad, or otherwise occupied by the Authority or a railroad, pursuant to charter grant, fee simple deed, lease, easement, license, trackage rights, or other form of ownership or authorized use.

(4) "Railroad" means a railroad corporation or railroad company, including a State-Owned Railroad Company as defined in G.S. 124-11, that has entered into any contracts or operating agreements of any kind with the Authority concerning passenger rail services.

(b) Contracts Allocating Financial Responsibility Authorized. — The Authority may contract with any railroad to allocate financial responsibility for passenger rail services claims, including, but not limited to, the execution of indemnity agreements, notwithstanding any other statutory, common law, public policy, or other prohibition against same, and regardless of the nature of the claim or the conduct giving rise to such claim.

(c) Insurance Required. —

(1) If the Authority enters into any contract authorized by subsection (b) of this section, the contract shall require the Authority to secure and maintain, upon and after the commencement of the operation of trains by or on behalf of the Authority, a liability insurance policy covering the liability of the parties to the contract, a State-Owned Railroad Company as defined in G.S. 124-11 that owns or claims an interest in any real property subject to the contract, and any operating rights railroad for all claims for property damage, personal injury, bodily injury, and death arising out of or related to passenger rail services. The policy shall name the parties to the contract, a State-Owned Railroad Company as defined in G.S. 124-11 that owns or claims an interest in any real property subject to the contract, and any operating rights railroad as named insureds and shall have policy limits of not less than two hundred million dollars ($200,000,000) per single accident or incident, and may include a self insured retention in an amount of not more than five million dollars ($5,000,000).

(2) If the Authority does not enter into any contract authorized by subsection (b) of this section, upon and after the commencement of the operation of trains by or on behalf of the Authority, the Authority shall secure and maintain a liability insurance policy, with policy limits and a self-insured retention consistent with subdivision (1) of this subsection, for all claims for property damage, personal injury, bodily injury, and death arising out of or related to passenger rail services.

(d) Liability Limit. — The aggregate liability of the Authority, the parties to the contract or contracts authorized by subsection (b) of this section, a

State-Owned Railroad Company as defined in G.S. 124-11, and any operating rights railroad for all claims arising from a single accident or incident related to passenger rail services for property damage, personal injury, bodily injury, and death is limited to two hundred million dollars ($200,000,000) per single accident or incident or to any proceeds available under any insurance policy secured pursuant to subsection (c) of this section, whichever is greater.

(e) Effect on Other Laws. — This section shall not affect the damages that may be recovered under the Federal Employers' Liability Act, 45 U.S.C. § 51, et seq., (1908); or under Article 1 of Chapter 97 of the General Statutes. (2002-78, s. 1.)

Editor's Note. — The definitions in subsection (a) were redesignated at the direction of the Revisor of Statutes to preserve alphabetical order.

§ 160A-627. Civil liability.

Except as provided in G.S. 160A-626, the Authority shall be deemed a city for purposes of civil liability pursuant to G.S. 160A-485. Governmental immunity of the Authority is waived to a minimum of twenty million dollars ($20,000,000) per single accident or incident. The Authority shall maintain a minimum of twenty million dollars ($20,000,000) per single accident or incident of liability insurance. Participation in a local government risk pool pursuant to Article 23 of Chapter 58 of the General Statutes shall be deemed to be the purchase of insurance for the purpose of this section. (2005-160, s. 1.)

§§ 160A-628, 160A-629: Reserved for future codification purposes.

ARTICLE 27.

Regional Transportation Authority.

§ 160A-630. Title.

This Article shall be known and may be cited as the "Regional Transportation Authority Act." (1997-393, s. 1.)

Editor's Note. — Session Laws 1997-393, s. 3.1, as amended by Session Laws 1997-443, s. 32.27(b), and by Session Laws 1997-456, s. 56.5, provides that the Major Investment Study authorized in Senate Bill 352 as enacted, which provides that funds appropriated to the Department of Transportation to fund a study for a passenger rail proposal for service between Asheville and Raleigh, and a proposal for commuter rail services between Winston-Salem, Greensboro, High Point, and outlying communities, shall be administered by the Regional Transportation Authority which includes Guilford and Forsyth Counties, in consultation with the Department of Transportation, the Forsyth County Metropolitan Planning Organization (MPO), the Greensboro MPO, and the High Point MPO.

§ 160A-631. Definitions.

As used in this Article, unless the context otherwise requires:

(1) "Authority" means a Regional Transportation Authority as defined by subdivision (6) of this section.

(2) "Board of Trustees" means the governing board of the Authority, in which the general legislative powers of the Authority are vested.

(3) "Population" means the number of persons residing in respective areas as defined and enumerated in the most recent decennial federal census.

(4) "Public transportation" means transportation of passengers whether or not for hire by any means of conveyance, including, but not limited to, a street or elevated railway or guideway, subway, motor vehicle or motor bus, carpool or vanpool, either publicly or privately owned and operated, holding itself out to the general public for the transportation of persons within or working within the territorial jurisdiction of the Authority, excluding charter, tour, or sight-seeing service.

(5) "Public transportation system" means, without limitation, a combination of real and personal property, structures, improvements, buildings, equipment, vehicle parking, or other facilities, railroads and railroad rights-of-way whether held in fee simple by quitclaim or easement, and rights-of-way, or any combination thereof, used or useful for the purposes of public transportation. "Public transportation system" however, does not include streets, roads, or highways except those for ingress and egress to vehicle parking.

(6) "Regional Transportation Authority," means a body corporate and politic organized in accordance with the provisions of this Article for the purposes, with the powers and subject to the restrictions hereinafter set forth.

(7) "Unit of local government" means any county, city, town or municipality of this State, and any other political subdivision, public corporation, Authority, or district in this State, which is or may be authorized by law to acquire, establish, construct, enlarge, improve, maintain, own, and operate public transportation systems.

(8) "Unit of local government's chief administrative official" means the county manager, city manager, town manager, or other person, by whatever title he shall be known, in whom the responsibility for the unit of local government's administrative duties is vested. (1997-393, s. 1.)

§ 160A-632. Definition of territorial jurisdiction of Authority.

An authority may be created for the area of any Metropolitan Planning Organization of the State that, at the time of creation of the authority, meets the following criteria, such area being the initial territorial jurisdiction of the Authority:

(1) The area consists of all or part of five counties, all five counties of which form a contiguous territory;

(2) At least two of those counties are contiguous to each other and each have a population of 250,000 or over; and

(3) The other three counties each have a population of 100,000 or over. (1997-393, s. 1.)

§ 160A-633. Creation of Authority.

(a) The city councils of the four largest cities within an area for which an authority may be created as defined in G.S. 160A-632 may by resolution signify their determination to organize an authority under the provisions of this Article. Each of such resolutions shall be adopted after a public hearing thereon, notice of which hearing shall be given by publication at least once, not less than 10 days prior to the date fixed for such hearing, in a newspaper having a general circulation in the county. Such notice shall contain a brief statement of the substance of the proposed resolution, shall set forth the proposed articles of incorporation of the Authority and shall state the time and place of the public hearing to be held thereof. No city shall be required to make any other publication of such resolution under the provisions of any other law.

(b) Each such resolution shall include articles of incorporation which shall set forth:

(1) The name of the authority;
(2) A statement that such authority is organized under this Article; and
(3) The names of the four organizing cities.

(c) A certified copy of each of such resolutions signifying the determination to organize an authority under the provisions of this Article shall be filed with the Secretary of State, together with proof of publication of the notice of hearing on each of such resolutions. If the Secretary of State finds that the resolutions, including the articles of incorporation, conform to the provisions of this Article and that the notices of hearing were properly published, he shall file such resolutions and proofs of publication in his office and shall issue a certificate of incorporation under the seal of the State and shall record the same in an appropriate book of record in his office. The issuance of such certificate of incorporation by the Secretary of State shall constitute the Authority, a public body and body politic and corporate of the State of North Carolina. Said certificate of incorporation shall be conclusive evidence of the fact that such authority has been duly created and established under the provisions of this Article.

(d) When the Authority has been duly organized and its officers elected as herein provided, the secretary of the Authority shall certify to the Secretary of State the names and addresses of such officers as well as the address of the principal office of the Authority.

(e) The Authority may become a Designated Recipient pursuant to the Urban Mass Transportation Act of 1964, as amended. (1997-393, s. 1.)

§ 160A-634. Territorial jurisdiction and service area of the Authority.

(a) The territorial jurisdiction and service area of the Authority shall be as determined by the Board of Trustees consistent with its purpose, but shall initially consist of those areas included within the Metropolitan Planning Organization boundaries. With the consent by resolution of the affected board of county commissioners, the jurisdiction and area may be expanded to include contiguous areas, but the total jurisdiction and service area shall not exceed part or all of 12 counties. The jurisdiction and area include the entire area of the county if the Board of Trustees has been expanded to include the chair or other member of the board of commissioners of that county pursuant to G.S. 160A-635(a)(4).

(b) Except as provided by this Article, the jurisdiction of the Authority may include all local public passenger transportation operating within the territorial jurisdiction of the Authority, but the Authority may not take over the operation of any existing public transportation without the consent of the owner.

(c) The Authority shall not have jurisdiction over public transportation subject to the jurisdiction of and regulated by the United States Department of Transportation, nor shall it have jurisdiction over intrastate public transportation classified as common carriers of passengers by the North Carolina Utilities Commission. (1997-393, s. 1; 1999-445, s. 1.)

§ 160A-635. Membership; officers; compensation.

(a) The governing body of an authority is the Board of Trustees. The Board of Trustees shall consist of:

(1) The mayor of the four cities within the service area that have the largest population, or a member of the city council designated by the city council to serve in the absence of the mayor.

(2) Two members of the Board of Transportation appointed by the Secretary of Transportation, to serve as ex officio nonvoting members.

(3) The chair of each Metropolitan Planning Organization or a member of the Metropolitan Planning Organization designated by the Metropolitan Planning Organization in the territorial jurisdiction.

(4) The chair of the board of commissioners of any county within the territorial jurisdiction or a member of the board of commissioners designated by the board to serve in the absence of the chair, but only if the Board of Trustees by resolution has expanded the Board of Trustees to include the chair of the board of commissioners of that county and the board of commissioners of that county has consented by resolution.

(5) The chair of the principal airport authority or airport commission of each of the two most populous counties within the territorial jurisdiction, as determined by the most recent decennial federal census. The chair of the airport authority or airport commission may appoint a designee. The designee is not required to be a member of the airport authority or airport commission.

(b) The members appointed by the Secretary of Transportation shall serve at the pleasure of the Secretary.

(c) Service on the Board of Trustees may be in addition to any other office which a person is entitled to hold. Each voting member of the Board of Trustees may hold elective public office as defined by G.S. 128-1.1(d).

(d) Members of the Board of Trustees shall reside within the territorial jurisdiction of the Authority as defined by G.S. 160A-634.

(e) The Board of Trustees shall annually elect from its membership a Chairperson, and a Vice-Chairperson, and shall annually elect a Secretary, and a Treasurer.

(f) Members of the Board of Trustees shall receive the sum of fifty dollars ($50.00) as compensation for attendance at each duly conducted meeting of the Authority. (1997-393, s. 1; 1999-445, s. 2; 2004-203, s. 56; 2005-322, s. 1.)

§ 160A-636. Voting.

A majority of the members of the Board of Trustees shall constitute a quorum for the transaction of business. Except as provided by G.S. 160A-635(a)(2), each member shall have one vote. (1997-393, s. 1.)

§ 160A-637. Advisory committees.

The Board of Trustees may provide for the selection of such advisory committees as it may find appropriate, which may or may not include members of the Board of Trustees. (1997-393, s. 1.)

§ 160A-638. Purpose of the Authority.

The purpose of the authority is to enhance the quality of life in its territorial jurisdiction by promoting the development of sound transportation systems which provide transportation choices, enhance mobility, accessibility, and safety, encourage economic development and sound growth patterns, and protect the man-made and natural environments of the region. (1997-393, s. 1.)

§ 160A-639. General powers of the Authority.

The general powers of the Authority shall include any or all of the following:

(1) To sue and be sued;

(2) To have a seal;

(3) To make rules and regulations, not inconsistent with this Chapter, for its organization and internal management;

(4) To employ persons deemed necessary to carry out the functions and duties assigned to them by the Authority and to fix their compensation, within the limit of available funds;

(5) With the approval of the unit of local government's chief administrative official, to use officers, employees, agents, and facilities of the unit of local government for such purposes and upon such terms as may be mutually agreeable;

(6) To retain and employ counsel, auditors, engineers, and private consultants on an annual salary, contract basis, or otherwise for rendering professional or technical services and advice;

(7) To acquire, lease as lessee with or without option to purchase, hold, own, and use any franchise, property, real or personal, tangible or intangible, or any interest therein, and to sell, lease as lessor with or without option to purchase, transfer (or dispose thereof) whenever the same is no longer required for purposes of the Authority, or exchange same for other property or rights which are useful for the Authority's purposes, including but not necessarily limited to parking facilities;

(8) To acquire by gift, purchase, lease as lessee with or without option to purchase or otherwise to construct, improve, maintain, repair, operate, or administer any component parts of a public transportation system or to contract for the maintenance, operation or administration thereof, or to lease as lessor the same for maintenance, operation, or administration by private parties, including, but not necessarily limited to, parking facilities;

(9) To make or enter into contracts, agreements, deeds, leases with or without option to purchase, conveyances or other instruments, including contracts and agreements with the United States, the State of North Carolina, and units of local government;

(9a) To purchase or finance real or personal property in the manner provided for cities and counties under G.S. 160A-20;

(10) To surrender to the State of North Carolina any property no longer required by the Authority;

(11) To develop and make data, plans, information, surveys and studies of public transportation facilities within the territorial jurisdiction of the Authority and to prepare and make recommendations in regard thereto;

(12) To enter in a reasonable manner lands, waters, or premises for the purpose of making surveys, soundings, drillings, and examinations whereby such entry shall not be deemed a trespass except that the Authority shall be liable for any actual and consequential damages resulting from such entries;

(13) To develop and carry out demonstration projects;

(14) To make, enter into, and perform contracts with private parties, and public transportation companies with respect to the management and operation of public passenger transportation;

(15) To make, enter into, and perform contracts with any public utility, railroad or transportation company for the joint use of property or rights, for the establishment of through routes, joint fares, or transfer of passengers;

(16) To make, enter into, and perform agreements with governmental entities for payments to the Authority for the transportation of persons for whom the governmental entities desire transportation;

(17) With the consent of the unit of local government which would otherwise have jurisdiction to exercise the powers enumerated in this

subdivision: to issue certificates of public convenience and necessity; and to grant franchises and enter into franchise agreements, and in all respects to regulate the operation of buses, taxicabs, and other methods of public passenger transportation which originate and terminate within the territorial jurisdiction of the Authority as fully as the unit of local government is now or hereafter empowered to do within the territorial jurisdiction of the unit of local government;

(18) To operate public transportation systems and to enter into and perform contracts to operate public transportation services and facilities, and to own or lease property, facilities and equipment necessary or convenient therefor, and to rent, lease or otherwise sell the right to do so to any person, public or private; further, to obtain grants, loans, and assistance from the United States, the State of North Carolina, any public body, or any private source whatsoever, but may not operate or contract for the operation of public transportation systems outside the territorial jurisdiction of the Authority except as provided by subdivision (20) of this section;

(19) To enter into and perform contracts and agreements with other public transportation authorities, regional public transportation authorities, or units of local government pursuant to the provisions of G.S. 160A-460 through G.S. 160A-464 (Part 1 of Article 20 of Chapter 160A of the General Statutes); further to enter into contracts and agreements with private transportation companies, but this subdivision does not authorize the operation of, or contracting for the operation of, service of a public transportation system outside the service area of the Authority;

(20) To operate public transportation systems extending service into any political subdivision of the State of North Carolina unless a particular unit of local government operating its own public transportation system or franchising the operation of a public transportation system by majority vote of its governing board, shall deny consent, but such service may not extend more than 10 miles outside of the territorial jurisdiction of the authority, except that vanpool and carpool service shall not be subject to that mileage limitation;

(21) Except as restricted by covenants in bonds, notes, or equipment trust certificates, to set in its sole discretion rates, fees, and charges for use of its public transportation system;

(22) To do all things necessary or convenient to carry out its purpose and to exercise the powers granted to the Authority;

(23) To facilitate the coordination of transportation plans in the service area and the activities of the member Metropolitan Planning Organizations;

(24) To maintain databases for the projection of future travel demands in the region;

(25) To provide and operate regional ridesharing and vanpool operations;

(26) To provide and operate regional transportation services for the elderly and handicapped;

(27) To provide other transportation related services, including air quality monitoring and analysis, as determined by the Board of Trustees;

(28) To issue bonds or other obligations of the Authority as provided by law and apply the proceeds thereof to the financing of any public transportation system or any part thereof and to refund, whether or not in advance of maturity or the earliest redemption date, any such bonds or other obligations; and

(29) To contract for, or to provide and maintain, with respect to the facilities and property owned, leased with or without option to

purchase, operated or under the control of the Authority, and within the territory thereof, a security force to protect persons and property, dispense unlawful or dangerous assemblages and assemblages which obstruct full and free passage, control pedestrian and vehicular traffic, and otherwise preserve and protect the public peace, health, and safety; for these purposes a member of such force shall be a peace officer and, as such, shall have authority equivalent to the authority of a police officer of the city or county in which said member of such force is discharging such duties. (1997-393, s. 1; 1998-70, s. 3.)

§ 160A-640. Authority of Utilities Commission not affected.

(a) Except as otherwise provided in this Article, nothing in this Article shall be construed to limit or otherwise affect the power or authority of the North Carolina Utilities Commission or the right of appeal to the North Carolina Utilities Commission as provided by law.

(b) The North Carolina Utilities Commission shall not have jurisdiction over rates, fees, charges, routes, and schedules of an Authority for service within its territorial jurisdiction. (1997-393, s. 1.)

§ 160A-641. Fiscal accountability.

An Authority is a public authority subject to the provisions of Chapter 159 of the General Statutes. (1997-393, s. 1.)

§ 160A-642. Funds.

The establishment and operation of an Authority are governmental functions and constitute a public purpose, and the State of North Carolina and any unit of local government may appropriate funds to support the establishment and operation of the Authority. The State of North Carolina and any unit of local government may also dedicate, sell, convey, donate, or lease any of their interests in any property to the Authority. An Authority may apply for grants from the State of North Carolina, or from the United States or any department, agency, or instrumentality thereof. The Department of Transportation may allocate to an Authority any funds appropriated for transportation, or any funds whose use is not restricted by law. (1997-393, s. 1.)

§ 160A-643. Competition.

No equipment of the Authority may be used for charter, tour, or sight-seeing service. (1997-393, s. 1.)

§ 160A-644. Effect on existing franchises and operations.

Creation of the Authority shall not have an effect on any existing franchises granted by any unit of local government; such existing franchises shall continue in full force and effect until legally terminated; further, all ordinances and resolutions of the unit of local government regulating local public transportation systems, bus operations, and taxicabs shall continue in full force and effect now and in the future, unless superseded by regulations of the Authority; such superseding, if any, may occur only on the basis of prior mutual agreement between the Authority and the respective unit of local government. (1997-393, s. 1.)

§ 160A-645. Termination.

The Board of Trustees may terminate the existence of the Authority at any time when it has no outstanding indebtedness. In the event of such termination, all property and assets of the Authority not otherwise encumbered shall automatically become the property of the State of North Carolina, and the State of North Carolina shall succeed to all rights, obligations, and liabilities of the Authority. (1997-393, s. 1.)

§ 160A-646. Controlling provisions.

Insofar as the provisions of this Article are not consistent with the provisions of any other law, public or private, the provisions of this Article shall be controlling. (1997-393, s. 1.)

§ 160A-647. Bonds and notes authorized.

In addition to the powers granted by this Article, the Authority may issue bonds and notes pursuant to the provisions of The State and Local Government Revenue Bond Act, Article 5 of Chapter 159 of the General Statutes, for the purpose of financing public transportation systems or any part thereof and to refund such bonds and notes, whether or not in advance of their maturity or earliest redemption date. (1997-393, s. 1.)

§ 160A-648. Equipment trust certificates.

In addition to the powers here and before granted, the Authority shall have continuing power to purchase equipment, and in connection therewith execute agreements, leases with or without option to purchase, or equipment trust certificates. All money required to be paid by the Authority under the provisions of such agreements, leases with or without option to purchase, and equipment trust certificates shall be payable solely from the fares, fees, rentals, charges, revenues, and earnings of the Authority, monies derived from the sale of any surplus property of the Authority and gifts, grants, and contributions from any source whatever. Payment for such equipment or rentals therefore, may be made in installments; the deferred installments may be evidenced by equipment trust certificates payable solely from the aforesaid revenues or receipts, and title to such equipment may or may not vest in the Authority until the equipment trust certificates are paid. (1997-393, s. 1.)

§ 160A-649. Power of eminent domain.

(a) The Authority shall have continuing power to acquire, by gift, grant, devise, bequest, exchange, purchase, lease with or without option to purchase, or any other lawful method, including, but not limited to, the power of eminent domain, the fee or any lesser interest in real or personal property for use by the Authority.

(b) Exercise of the power of eminent domain by the Authority shall be in accordance with Chapter 40A of the General Statutes. (1997-393, s. 1.)

§ 160A-650. Tax exemption.

The property of the Authority, both real and personal, its acts, activities, and income shall be exempt from any tax or tax obligation; in the event of any lease of Authority property, or other arrangement which amounts to a leasehold interest, to a private party, this exemption shall not apply to the value of such leasehold interest nor shall it apply to the income of the lessee. Otherwise, however, for the purpose of taxation, when property of the Authority is leased to private parties solely for the purpose of the Authority, the acts and activities of the lessee shall be considered as the acts and activities of the Authority and the exemption. The interest on bonds or obligations issued by the Authority shall be exempt from State taxes. (1997-393, s. 1.)

§ 160A-651. Removal and relocation of utility structures.

(a) The Authority shall have the power to require any public utility, railroad, or other public service corporation owning or operating any installations, structures, equipment, apparatus, appliances, or facilities in, upon, under, over, across or along any ways on which the Authority has the right to own, construct, operate, or maintain its public transportation system, to relocate such installation, structures, equipment, apparatus, appliances, or facilities from their locations, or, in the sole discretion of the affected public utility, railroad, or other public service corporation, to remove such installations, structures, equipment, apparatus, appliances, or facilities from their locations.

(b) If the owner or operator thereof fails or refuses to relocate them, the Authority may proceed to do so.

(c) The Authority shall provide any necessary new locations and necessary real estate interests for such relocation, and for that purpose the power of eminent domain as provided in G.S. 160A-649 may be exercised provided the new locations shall not be in, on or above, a public highway; the Authority may also acquire the necessary new locations by purchase or otherwise.

(d) Any affected public utility, railroad, or other public service corporation shall be compensated for any real estate interest taken in a manner consistent with G.S. 160A-649, subject to the right of the Authority to reduce the compensation due by the value of any property exchanged under this section.

(e) The method and procedures of a particular adjustment to the facilities of a public utility, railroad, or other public service corporation shall be covered by an agreement between the Authority and the affected party or parties.

(f) The Authority shall reimburse the public utility, railroad, or other public service corporation, for the cost of relocations or removals which shall be the entire amount paid or incurred by the utility properly attributable thereto after deducting the cost of any increase in the service capacity of the new installations, structures, equipment, apparatus, appliances, or facilities and any salvage value derived from the old installations, structures, equipment, apparatus or appliances. (1997-393, s. 1.)

§§ 160A-652 through 160A-659: Reserved for future codification purposes.

Article 28.

Regional Natural Gas District.

§ 160A-660. Title.

This Article is the "Regional Natural Gas District Act" and may be cited by that name. (1997-426, s. 2.)

§ 160A-661. Purpose; definitions.

(a) The purpose of a district created under this Article is to enhance the quality of life in its territorial jurisdiction by promoting the development of natural gas systems to enhance the economic development of the area.

(b) The following definitions apply in this Article:

(1) Board of Trustees. — The governing board of the district in which the general legislative powers of the district are vested.

(2) District. — A regional natural gas district.

(3) Natural gas system. — A gas production, storage, transmission and distribution system, or any part or parts thereof.

(4) Regional natural gas district. — A public body and body politic and corporate of the State of North Carolina organized in accordance with the provisions of this Article exercising public and essential governmental functions to provide for the preservation and promotion of the public welfare for the purposes, with the powers, and subject to the restrictions set forth in this Article.

(5) Unit of local government. — Any county, city, town, or municipality of this State, and any other political subdivision, public corporation, or district in this State, that is or may be authorized by law to acquire, establish, construct, enlarge, improve, maintain, own, or operate natural gas systems.

(6) Unit of local government's chief administrative official. — The county manager, city manager, town manager, or other person, by whatever title known, in whom the responsibility for the unit of local government's administrative duties is vested. (1997-426, s. 2.)

§ 160A-662. Territorial jurisdiction and service area of district.

(a) A district may be created for one or more entire counties that are totally unserved with natural gas and in which a specific natural gas project has not been approved by the Utilities Commission at the time of creation of the district. A letter from the Utilities Commission to this effect shall conclusively establish that the area is totally unserved and that a project has not been approved. This area is the territorial jurisdiction and the service area of the district.

(b) The creation of a district does not confer on the district the exclusive right to provide natural gas service in that territorial jurisdiction. (1997-426, s. 2.)

§ 160A-663. Creation of district.

(a) The boards of commissioners of any one or more counties within an area for which a district may be created as provided by G.S. 160A-662, and the governing body of any city geographically located within one or more of these counties and that chooses to join in the organization of a district, may by resolution signify their determination to organize a district under the provisions of this Article. Each of these resolutions shall be adopted after a public hearing thereon, notice of which hearing shall be given by publication at least once, not less than 10 days prior to the date fixed for the hearing, in a newspaper having a general circulation in the county. The notice shall contain a brief statement of the substance of the proposed resolution, shall set forth the proposed articles of incorporation of the district, and shall state the time and place of the public hearing. A copy of the notice shall be mailed not later than the first day of newspaper publication to the business office of any public utility that holds a franchise from the North Carolina Utilities Commission to serve any part of the proposed district with natural gas service. No county or city shall be required to make any other publication of the resolution under the provisions of any other law.

(b) Each resolution shall include articles of incorporation which shall set forth all of the following:

(1) The name of the district.
(2) The composition of the board of trustees, terms of office, and the manner of making appointments and filling vacancies.
(3) A statement that the district is organized under this Article.
(4) The names of the organizing counties and cities.
(5) Provision for the distribution of assets in the event the district is terminated.

(c) A certified copy of each of the resolutions signifying the determination to organize a district under the provisions of this Article shall be filed with the Secretary of State, together with proof of publication and mailing of the notice of hearing on each of the resolutions. If the Secretary of State finds that the resolutions, including the articles of incorporation, conform to the provisions of this Article and that the notices of hearing were properly published and mailed, the Secretary of State shall file the resolutions and proofs of publication and mailing, shall issue a certificate of incorporation under the seal of the State, and shall record the certificate in an appropriate book of record. The issuance of this certificate of incorporation by the Secretary of State shall constitute the district a public body and body politic and corporate of the State of North Carolina. The certificate of incorporation shall be conclusive evidence of the fact that the district has been duly created and established under this Article.

(d) When the district has been duly organized and its officers elected, the secretary of the district shall certify to the Secretary of State the names and addresses of the officers, the name and address of the registered agent, and the address of the principal office of the district. The district shall be subject to the provisions of Article 5 of Chapter 55A of the General Statutes. (1997-426, s. 2.)

§ 160A-664. Membership; officers; compensation.

(a) The governing body of a district is the Board of Trustees. The Board of Trustees shall consist of members as provided in the articles of incorporation.

(b) Service on the Board of Trustees may be in addition to any other office which a person is entitled to hold. Each voting member of the Board of Trustees may hold elective public office as defined by G.S. 128-1.1(d).

(c) Members of the Board of Trustees shall reside within the territorial jurisdiction of the district as defined by G.S. 160A-662.

(d) The Board of Trustees shall annually elect from its membership a Chair and a Vice-Chair and shall annually elect a Secretary and a Treasurer.

(e) Members of the Board of Trustees shall receive a sum not to exceed fifty dollars ($50.00) as compensation for attendance at each duly conducted meeting of the district. (1997-426, s. 2.)

§ 160A-665. Quorum.

A majority of the members of the Board of Trustees shall constitute a quorum for the transaction of business. (1997-426, s. 2.)

§ 160A-666. Advisory committees.

The Board of Trustees may provide for the selection of any advisory committees that it finds appropriate, which may or may not include members of the Board of Trustees. (1997-426, s. 2.)

§ 160A-667. General powers of the district.

The general powers of the district include all of the following:

(1) To sue and be sued.

(2) To have a seal.

(3) To make rules not inconsistent with this Article, for its organization and internal management.

(4) To employ persons deemed necessary to carry out the functions and duties assigned to them by the district and to fix their compensation, within the limit of available funds.

(5) With the approval of the unit of local government's chief administrative official, to use officers, employees, agents, and facilities of the unit of local government for such purposes and upon such terms as may be mutually agreeable.

(6) To retain and employ counsel, auditors, engineers, and private consultants on an annual salary, contract basis, or otherwise for rendering professional or technical services and advice.

(7) To acquire, lease as lessee with or without option to purchase, hold, own, and use any franchise, property, real or personal, tangible or intangible, or any interest therein and to sell, lease as lessor with or without option to purchase, transfer (or dispose thereof) whenever the property is no longer required for purposes of the district, or exchange it for other property or rights which are useful for the district's purposes. Except as provided in any covenant or debt instrument designed to protect the creditor, if any loans or grants by the Department of Commerce have not been repaid, all or a substantial part of an operating natural gas district may not be disposed of without the approval of the Department of Commerce. If the sale is approved by the Department of Commerce, the district shall repay the State the lesser of the amount of any capital grant made by the State or one-half of the amount of the proceeds.

(8) To acquire by gift, purchase, lease as lessee with or without option to purchase or otherwise to construct, improve, maintain, repair, operate, or administer any component parts of a natural gas system. The district also may contract for the maintenance, operation, or administration thereof or to lease as lessor the same for maintenance, operation, or administration by private parties.

(9) To make or enter into contracts, agreements, deeds, leases with or without option to purchase, conveyances, or other instruments, including contracts and agreements with the United States, the State of North Carolina, and units of local government.

(10) To develop and make data, plans, information, surveys, and studies of natural gas systems within the territorial jurisdiction of the district and to prepare and make recommendations in regard thereto.

(11) To enter in a reasonable manner lands, waters, or premises for the purpose of making surveys, soundings, drillings, and examinations. This entry shall not be deemed a trespass except that the district shall be liable for any actual and consequential damages resulting from the entry.

(12) To develop and carry out demonstration projects.

(13) To make, enter into, and perform contracts with private parties and natural gas companies with respect to the management and operation of natural gas systems.

(14) To make, enter into, and perform contracts with any public utility, railroad, or transportation company for the joint use of property or rights.

(15) To own, lease, and operate natural gas systems. These systems may also include the purchase or lease, or both, of natural gas fields and natural gas reserves within the State, and the purchase of natural gas supplies within or without the State. A district may operate that part

of a gas system involving the purchase or lease, or both, of natural gas fields, natural gas reserves, and natural gas supplies, in an operating agreement, partnership or joint venture arrangement with natural gas utilities and private enterprise. The district may acquire, purchase, construct, receive, own, operate, maintain, enlarge, and improve natural gas systems and transport and sell at wholesale all or any part of its gas supply.

(16) To purchase or finance real or personal property under G.S. 160A-20.

(17) To obtain grants, loans, and assistance from the United States, the State of North Carolina, any public body, or any private source.

(18) To enter into and perform contracts and agreements with other natural gas districts, regional natural gas districts, or units of local government pursuant to the provisions of Part 1 of Article 20 of Chapter 160A of the General Statutes and to enter into contracts and agreements with private natural gas companies, but this subdivision does not authorize the operation of, or contracting for the operation of, service of a natural gas system outside the service area of the district. A district may provide service or contract for the providing of service to a city geographically located within a district, notwithstanding that the city did not join the district pursuant to G.S. 160A-663(a) or G.S. 160A-672.

(19) Except as restricted by covenants in bonds, notes, security interests, or trust certificates, to set in its sole discretion rates, fees, and charges for use of its natural gas system in accordance with G.S. 160A-676.

(20) To do all related things necessary to carry out its purpose and to exercise the powers granted to the district.

(21) To issue revenue bonds and notes and to incur other obligations as authorized by this Article. (1997-426, s. 2.)

§ 160A-668. Fiscal accountability.

A district is a public authority subject to the provisions of Chapter 159 of the General Statutes. (1997-426, s. 2.)

§ 160A-669. Funds.

The establishment and operation of a district is a public purpose, and the State of North Carolina and any unit of local government may appropriate funds to support the establishment and operation of the district. The State of North Carolina and any unit of local government may also dedicate, sell, convey, donate, or lease any of their interests in any property to the district. A district may apply for grants from the State of North Carolina, or from the United States or any department, agency, or instrumentality thereof. The Department of Commerce may allocate to a district any funds appropriated for natural gas. (1997-426, s. 2.)

§ 160A-670. Effect on existing franchises and operations.

Creation of the district does not affect any existing franchises granted by any unit of local government. Those existing franchises shall continue in full force and effect until legally terminated, and all ordinances and resolutions of the unit of local government regulating local natural gas systems shall continue in full force and effect unless superseded by rules of the district. This superseding, if any, may occur only on the basis of prior mutual agreement between the district and the respective unit of local government. (1997-426, s. 2.)

§ 160A-671. Termination of district.

The Board of Trustees, after providing for the continued availability of natural gas service to its customers, if any, may terminate the existence of the district at any time when it has no outstanding indebtedness. The Board of Trustees shall file notification of the termination with the Secretary of State. (1997-426, s. 2.)

§ 160A-672. Joinder of county or city.

(a) Whenever a district has been organized under the provisions of this Article, a county as defined in G.S. 160A-662(a) or a city within that county, or a city that did not join in the organization of a district but is geographically located within the district may, with the consent of the district as evidenced by a resolution adopted by a majority of the members of the Board of Trustees of the district, join the district.

(b) A county or city desiring to join an existing district shall signify its desire by resolution adopted after a public hearing thereon, notice of which hearing shall be given in the manner and at the time provided in G.S. 160A-663. Such notice shall contain a brief statement of the substance of said resolution and shall state the time and place of the public hearing.

(c) A certified copy of each resolution signifying the desire of a county or city to join an existing district, together with proof of publication of the notice of hearing on the resolution, and a certified copy of the resolution of the Board of Trustees of the district consenting to the joining shall be filed with the Secretary of State. If the Secretary of State finds that the resolutions conform to the provisions of this Article and that the notices of hearing were properly published, the Secretary of State shall file such resolutions and proofs of publication in the office of the Secretary of State, shall issue a certificate of joinder, and shall record the certificate in the appropriate book of record. The issuance of the certificate shall be conclusive evidence of the joinder of the county or city to the district. (1997-426, s. 2.)

§ 160A-673. Bonds and notes authorized.

The district may issue revenue bonds and revenue bond anticipation notes pursuant to the provisions of the State and Local Government Revenue Bond Act, Article 5 of Chapter 159 of the General Statutes, and Article 9 of Chapter 159 for the purposes provided in this Article. If and to the extent any provisions of Articles 5 and 9 of Chapter 159 are inconsistent with the provisions of this Article, the provisions of this Article shall be controlling. A district may proceed with the issuance of bonds and notes under Articles 5 and 9 of Chapter 159 notwithstanding that, to the extent of any inconsistency only, the district complies with the provisions of this Article and not the provisions of Articles 5 and 9 of Chapter 159. (1997-426, s. 2.)

§ 160A-674. Acquisition, power of eminent domain.

(a) The district shall have continuing power to acquire, by gift, grant, devise, bequest, exchange, purchase, lease with or without option to purchase, or any other lawful method including, but not limited to, the power of eminent domain, the fee or any lesser interest in real or personal property for use by the district.

(b) Exercise of the power of eminent domain by the district shall be as a private condemnor in accordance with Chapter 40A of the General Statutes. Notwithstanding Chapter 40A of the General Statutes, before final judgment may be entered in any action of condemnation initiated by the district, the district shall furnish proof that the board of commissioners of the county where the land is located has consented by resolution or ordinance to the taking. (1997-426, s. 2.)

§ 160A-675. Tax exemption.

A district, and its property, bonds and notes, and income, are exempt from property taxes and income taxes to the same extent as if it were a city. A district is subject to gross receipts tax under G.S. 105-116. (1997-426, s. 2.)

§ 160A-676. Authority to fix and enforce rates.

(a) A district may establish and revise from time to time schedules of rents, rates, fees, charges, and penalties made applicable throughout the district for the gas services. Schedules of rents, rates, fees, charges, or penalties may vary according to classes of service. Before it establishes or revises a schedule of rents, rates, fees, charges, or penalties, the district Board of Trustees shall hold a public hearing on the matter. A notice of the hearing shall be given at least once in a newspaper having general circulation in the area, not less than seven days before the public hearing.

(b) A district may collect delinquent accounts by any remedy provided by law for collecting and enforcing private debts. A district may also discontinue service to any customer whose account remains delinquent for more than 30 days. When service is discontinued for delinquency, it shall be unlawful for any person other than a duly authorized agent or employee of the district to do any act that results in a resumption of services. If a delinquent customer is not the owner of the premises to which the services are delivered, the payment of the delinquent account may not be required before providing services at the request of a new and different tenant or occupant of the premises, but this restriction shall not apply when the premises are occupied by two or more tenants whose services are measured by the same meter.

(c) Rents, rates, fees, charges, and penalties for services shall be legal obligations of the person contracting for them and shall in no case be a lien upon the property or premises served.

(d) Rents, rates, fees, charges, and penalties for services shall be legal obligations of the owner of the premises served when the property or premises are leased or rented to more than one tenant and services rendered to more than one tenant are measured by the same meter. (1997-426, s. 2.)

Chapter 160B.

Consolidated City-County Act.

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ARTICLE 1.

Title and Definition.

§ 160B-1. Title; effective date.

This Chapter shall be cited as the "Consolidated City-County Act of 1973" and is enacted pursuant to Article V, Sec. 2(4) of the North Carolina Constitution, effective July 1, 1973. (1973, c. 537, s. 1.)

§ 160B-2. Definitions.

In this Chapter:

(1) "Consolidated city-county" means any county where the largest municipality in the county has been abolished and its powers, duties, rights, privileges and immunities consolidated with those of the county. Other municipalities in the county, if any, may or may not have been abolished and their powers, duties, rights, privileges and immunities consolidated with those of the county.

(2) "Governing board" means the governing board of a consolidated city-county. (1973, c. 537, s. 1.)

ARTICLE 1A.

Consolidated City-County Powers and Governance.

§ 160B-2.1. Powers of consolidated city-county.

(a) A consolidated city-county shall have and may exercise or may hereafter be authorized or required to exercise the powers, duties, functions, rights, privileges, and immunities granted to:

(1) A county under the Constitution and the general laws of the State of North Carolina, throughout its jurisdiction; and

(2) A city under the Constitution and the general laws of the State of North Carolina, within an urban service district.

(b) Outside the boundaries of an urban service district, the consolidated city-county shall have and may exercise or may hereafter be authorized or required to exercise the same powers, duties, functions, rights, privileges, and immunities granted to a city under the Constitution and the general laws of the State of North Carolina that can be exercised or may hereafter be authorized or required to exercise outside of city boundaries. (1995, c. 461, s. 1.)

Funds for Local Government Water and Sewer Improvement Grants. — Session Laws 2007-323, s. 13.13A, provides for the use of certain funds appropriated to the Rural Economic Development Center, Inc. for the 2007-2008 fiscal year for wastewater-related and public water system-related projects. See note at G.S. 160A-311.

§ 160B-2.2. Dissolution of consolidated city-county; establishment of study commission; purposes and powers of study commission.

(a) The governing board of a consolidated city-county may by resolution establish a governmental study commission to study all matters pertaining to the dissolution of the consolidated city-county and reestablishment of separate city and county government. The study commission may:

(1) Prepare a report of its findings and conclusions.

(2) Prepare drafts of any agreements or legislation necessary to effect the dissolution of a consolidated city-county.

(3) Prepare a plan for dissolution of the consolidated city-county.

(b) A study commission established pursuant to this section may:

(1) Adopt rules and regulations for the conduct of its business.

(2) Employ personnel.

(3) Contract with consultants.

(4) Hold hearings in the furtherance of its business.

(5) Take any other action necessary or expedient to the furtherance of its business. (1995, c. 461, s. 1.)

§ 160B-2.3. Ethics.

(a) The governing board shall adopt a resolution or policy containing a code of ethics, as required by G.S. 160A-86.

(b) All members of the governing board, whether elected or appointed, shall receive the ethics education required by G.S. 160A-87. (2009-403, s. 5.)

Editor's Note. — Session Laws 2009-403, s. 8, made this section effective January 1, 2010. Section 8 further provides: "All members of governing boards covered by this act shall receive their initial training to comply with G.S. 160A-87 within 12 months after that date."

Session Laws 2009-403, s. 7, provides: "The resolution or policy containing a code of ethics that is required by G.S. 160A-86 shall be adopted by each municipality, county, local board of education, unified government, sanitary district, and consolidated city-county on or before January 1, 2011. The governing board may look to model local government codes of ethics for guidance in developing the resolution or policy."

§§ 160B-2.4 through 160B-2.6: Reserved for future codification purposes.

ARTICLE 2.

Defining Urban Service Districts.

§ 160B-3. Authority; purpose; administration.

(a) The governing board may define any number of urban service districts in order to finance, provide or maintain for the districts services, facilities and functions in addition to or to a greater extent than those financed, provided, or maintained for the entire consolidated city-county.

(b) The powers, duties, functions, rights, privileges, and immunities of an urban service district shall be exercised or administered by the governing board of the consolidated city-county. Any revenues, distributions, or other funds due an urban service district shall be paid to the governing board of the consolidated city-county. (1973, c. 537, s. 1; 1995 (Reg. Sess., 1996), c. 646, ss. 22(a), 22(b).)

Editor's Note. — Subsection (b) of this section was formerly subsection (c) of G.S. 160B-4. It was recodified as subsection (b) of this section by Session Laws 1995 (Reg. Sess., 1996), c. 646, s. 22.

§ 160B-4. Definition of urban service districts to replace municipalities abolished at the time of consolidation.

(a) The governing board, by resolution, may define an urban service district within the boundaries of the largest municipality that existed in the county before consolidation and within the boundaries of any other municipality abolished at the time of the establishment of the consolidated city-county. Notwithstanding the provisions of G.S. 160B-7, the resolution may also define an urban service district to include areas proposed for inclusion in an urban service district and identified in a plan for consolidation prepared by a consolidation study commission pursuant to Article 20 of Chapter 153A of the General Statutes or a plan approved by the General Assembly. Any urban service district so defined shall comprise the total area of the abolished municipality as it existed immediately before the effective date of consolidation. As determined by the governing board, the resolution shall take effect as to the areas included therein either upon its adoption or at the beginning of a fiscal year commencing after its passage.

(b) Prior to the effective date of consolidation, an interim governing board of a consolidated city-county by resolution may define an urban service district. The resolution defining the urban service district shall take effect upon the effective date of the consolidation.

(c) Recodified as § 160B-3(b) by Session Laws 1995 (Reg. Sess., 1996), c. 646, s. 22(a). (1973, c. 537, s. 1; 1995, c. 461, s. 2; 1995 (Reg. Sess., 1996), c. 646, s. 22(a).)

§ 160B-5. Definition of urban service districts to replace municipalities abolished subsequent to consolidation.

The governing board, by resolution, may define an urban service district within the boundaries of any municipality within the consolidated city-county the citizens of which, subsequent to the establishment of the consolidated city-county, have voted in a referendum to abolish their municipality and consolidate its powers, duties, rights, privileges and immunities with those of the consolidated city-county. An urban service district so defined shall comprise the total area of the municipality as it existed immediately before the effective date of its abolition. The resolution shall take effect at the beginning of the fiscal year next occurring after its adoption. (1973, c. 537, s. 1.)

§ 160B-6. Definition of urban service districts where no municipality existed.

(a) Standards. — The governing board, by resolution, may define an urban service district upon finding that a proposed district:

(1) Has a resident population of at least 1,000;
(2) Has a resident population density of at least one person per acre;
(3) Has an assessed valuation of at least two and one-half million dollars ($2,500,000);
(4) Requires one or more of the services, facilities and functions that are provided or maintained only or to a greater extent for an urban service district; and
(5) Does not include any territory within an active incorporated municipality.

(b) Report. — Prior to the public hearing required by subsection (c), the consolidated city-county shall prepare a report containing:

(1) A map of the proposed district, showing its proposed boundaries;
(2) A statement showing that the proposed district meets the standards of subsection (a); and
(3) A plan for providing urban services, facilities and functions for the district.

The report shall be available in the office of the clerk of the consolidated city-county for at least two weeks prior to the date of the public hearing.

(c) Hearing and Notice. — The governing board shall hold a public hearing prior to adoption of any resolution defining a new urban service district. Notice of the hearing shall state the date, hour and place of the hearing and its subject, and shall include a statement that the report required by subsection (b) is available for inspection in the office of the clerk of the consolidated city-county. The notice shall be published in a newspaper of general circulation in the county at least once and not less than one week prior to the date of the hearing. In addition it shall be mailed at least four weeks prior to the date of the hearing to the owners as shown by the tax records of the consolidated city-county of all property located within the proposed district. The person designated by the governing board to mail the notice shall certify to the governing board that the mailing has been completed and his certificate shall be conclusive in the absence of fraud. The hearing may be held within the proposed district.

(d) Effective Date. — The resolution defining an urban service district shall take effect at the beginning of a fiscal year commencing after its passage, as determined by the governing board. (1973, c. 537, s. 1.)

§ 160B-7. Extension of urban service districts.

(a) Standards. — The governing board, by resolution, may extend by annexation the boundaries of any urban service district upon finding that:

(1) The area to be annexed is contiguous to the district, with at least one eighth of the area's aggregate external boundary coincident with the existing boundary of the district;

(2) The area to be annexed has a resident population density of at least one person per acre and an assessed valuation of at least one thousand dollars ($1,000) per resident person; or the area to be annexed is so developed that at least sixty per cent (60%) of the total number of lots and tracts in the area at the time of annexation are used for residential, commercial, industrial, institutional or governmental purposes and at least sixty percent (60%) of the total acreage of the area at the time of annexation is devoted to these uses; and

(3) The area to be annexed requires the services, facilities or functions that are provided for the contiguous urban service district.

(b) Annexation by Petition. — The governing board also, by resolution, may extend by annexation the boundaries of any urban service district when one hundred percent (100%) of the real property owners of the area to be annexed have petitioned the governing board for annexation to the service district.

(c) Report. — Prior to the public hearing required by subsection (d), the consolidated city-county shall prepare a report containing:

(1) A map of the urban service district and the adjacent territory, showing the present and proposed boundaries of the district;

(2) A statement showing that the area to be annexed meets the standards of subsection (a) or comes before the governing board by petition as provided by subsection (b); and

(3) A plan for extending urban services, facilities and functions to the area to be annexed.

The report shall be available in the office of the clerk of the consolidated city-county for at least two weeks prior to the date for the public hearing.

(d) Hearing and Notice. — The governing board shall hold a public hearing prior to adoption of any resolution extending the boundaries of an urban service district. Notice of the hearing shall state the date, hour and place of the hearing and its subject, and shall include a statement that the report required by subsection (c) is available for inspection in the office of the clerk of the consolidated city-county. Notice shall be published in a newspaper of general circulation in the county at least once and not less than one week prior to the date of the hearing. In addition notice shall be mailed at least four weeks prior to the date of the hearing to the owners as shown by the tax records of the consolidated city-county of all property located within the area to be annexed. The person designated by the governing board to mail the notice shall certify to the governing board that the mailing has been completed, and his certificate shall be conclusive in the absence of fraud.

(d1) Alternative Notice. — Notwithstanding the provisions of subsection (d) of this section, first-class mail notice shall not be required where a plan for consolidation prepared by a consolidation study committee pursuant to Article 20 of Chapter 153A of the General Statutes or a plan approved by the General Assembly proposed to include the area under consideration for annexation within an urban service district.

(e) Effective Date. — The resolution extending the boundaries of the district shall take effect at the beginning of a fiscal year commencing after its passage, as determined by the governing board.

(f) A consolidated city-county may not utilize the procedures of this section to annex to an urban service district territory within the boundaries of an active incorporated municipality. (1973, c. 537, s. 1; 1995, c. 461, s. 3.)

§ 160B-8. Consolidation of urban service districts.

(a) Standards. — The governing board, by resolution, may consolidate two or more urban service districts upon finding that:

(1) The districts are contiguous or are in a continuous boundary; and

(2) The provision or maintenance of urban services, facilities and functions for each of the districts is substantially the same; or

(3) If the provision or maintenance of urban services, facilities and functions is lower for one of the districts, there is a need to increase those services, facilities and functions for that district. However, no urban service district providing electric or telephone services may be consolidated with any other urban service district unless the voters of the district providing these utility services approve the consolidation in a referendum held for that purpose. Any consolidated city-county may hold these referendums.

(b) Report. — Prior to the public hearing required by subsection (c), the consolidated city-county shall prepare a report containing:

(1) A map of the districts to be consolidated;

(2) A statement showing the proposed consolidation meets the standards of subsection (a); and

(3) If necessary, a plan for increasing the urban services, facilities and functions for one of the districts so that they are substantially the same throughout the consolidated district.

The report shall be available in the office of the clerk of the consolidated city-county for at least two weeks prior to the date of the public hearing.

(c) Hearing and Notice. — The governing board shall hold a public hearing prior to adoption of any resolution consolidating urban service districts. Notice of the hearing shall state the date, hour and place of the hearing and its subject, and shall include a statement that the report required by subsection (b) is available for inspection in the office of the clerk of the consolidated city-county. Notice shall be published in a newspaper of general circulation in the county at least once and not less than two weeks prior to the date of the hearing. In addition, if the services, facilities and functions for one of the districts will be substantially increased as a result of the consolidation, notice shall be mailed at least four weeks prior to the date of the hearing to the owners as shown by the tax records of the consolidated city-county of all property located within the district. The person designated by the governing board to mail the notice shall certify to the governing board that the mailing has been completed and his certificate shall be conclusive in the absence of fraud.

(d) Effective Date. — The consolidation of urban service districts shall take effect at the beginning of a fiscal year commencing after passage of the resolution of consolidation, as determined by the governing board. (1973, c. 537, s. 1.)

§ 160B-9. Required provision or maintenance of services, facilities and functions.

(a) New District. — When a consolidated city-county defines a new urban service district, it shall provide or maintain the services, facilities and functions for which the residents of the district are being taxed within a reasonable time, not to exceed one year, after the effective date of the definition of the district.

(b) Extended District. — When a consolidated city-county annexes territory to an urban service district, it shall provide or maintain the services, facilities and functions provided or maintained throughout the district to the residents of the area annexed to the district within a reasonable time not to exceed one year, after the effective date of the annexation.

(c) Consolidated District. — When a consolidated city-county consolidates two or more urban service districts, one of which has provided or maintained a lower level of urban services, it shall increase the services, facilities and functions within that district to a level comparable to those provided or maintained elsewhere in the consolidated district within a reasonable time, not to exceed one year, after the effective date of the consolidation. (1973, c. 537, s. 1.)

§ 160B-10. Abolition of urban service districts.

Upon finding that there is no longer a need for a particular urban service district, the governing board, by resolution, may abolish that district. The governing board shall hold a public hearing prior to adoption of a resolution abolishing a district. Notice of the hearing shall state the date, hour and place of the hearing, and its subject, and shall be published in a newspaper of general circulation in the county at least once a week for two successive weeks prior to the date of the hearing. The abolition of any urban service district shall take effect at the end of a fiscal year following passage of the resolution, as determined by the governing board. (1973, c. 537, s. 1.)

ARTICLE 3.

Levy of Taxes in Urban Service Districts.

§ 160B-11. Taxes authorized; limits.

A consolidated city-county may levy the following taxes within defined urban service districts in addition to those levied throughout the county, in order to finance, provide or maintain for the districts services, facilities and functions in addition to or to a greater extent than those financed, provided or maintained for the entire county.

(1) Property Taxes. — A consolidated city-county may levy within any urban service district a tax on property at a rate not to exceed one dollar and fifty cents ($1.50) on the one hundred dollars ($100.00) of appraised valuation. This rate limitation does not apply to property taxes levied (i) for debt service on general obligation bonds of the consolidated city-county, (ii) for the support of the public schools or (iii) for any purpose approved by a special vote of the people.

(2) Motor Vehicle and Taxicab License Taxes. — A consolidated city-county may levy within any urban service district the motor vehicle and taxicab license taxes authorized in G.S. 20-97.

(3) Privilege License Taxes. — A consolidated city-county may levy within any urban service district privilege license taxes as authorized for cities and towns under the general law of the state. (1973, c. 537, s. 1.)

ARTICLE 4.

Allocation of Other Revenues.

§ 160B-12. Other allocation authorized.

A consolidated city-county may allocate to any urban service district it creates any other revenues of the consolidated government whose use is not otherwise restricted by law. (1973, c. 537, s. 1.)

§ 160B-13. Authority to borrow money and issue bonds.

A consolidated city-county may borrow money and issue its bonds under Chapter 159, Subchapter IV, and for those purposes shall be considered a unit of local government under Article 4 thereof and a municipality under Article 5 thereof. A consolidated city-county may borrow money and issue its bonds for any purpose for which either a city or a county may do so. (1973, c. 537, s. 1.)

§ 160B-14. Procedure for issuing general obligation and revenue bonds.

In issuing its general obligation and revenue bonds, a consolidated city-county, except as expressly modified by this chapter, is subject to the provisions of Chapter 159 of the General Statutes of North Carolina.

If a proposed bond issue is required by law to be submitted to and approved by the voters of the consolidated government, and if the proceeds of the proposed bond issue are to be used in connection with a service, facility or function that is or, if the bond issue is approved, will be financed, provided or maintained only for one or more urban service districts, the proposed bond issue must be approved concurrently by a majority of those voting throughout the entire consolidated government and by a majority of the total of those voting in all the affected or to be affected urban service districts. (1973, c. 537, s. 1.)

§ 160B-15. Debt limitations.

The net indebtedness in the form of general obligations of a consolidated city-county for school purposes may not exceed eight percent (8%) of the appraised valuation of taxable property in the county. The net indebtedness in the form of general obligations of a consolidated city-county for all purposes other than for schools or water, sewerage, gas and electric purposes may not exceed eight percent (8%) of the appraised valuation of taxable property in the county. No other debt limitations applying to counties and municipalities in North Carolina apply to a consolidated city-county. (1973, c. 537, s. 1.)

ARTICLE 5.

Assumption of Obligations and Debt Secured By a Pledge of Faith and Credit.

Part 1. General Provisions.

§ 160B-16. Applicability of this Article.

(a) This Article applies to any county that has (i) a population over 120,000 according to the most recent federal decennial census and (ii) an area of less than 200 square miles.

(b) If this section is declared unconstitutional or invalid by the courts, it does not affect the validity of the Article as a whole or any part other than the part so declared to be unconstitutional or invalid. (1995, c. 461, s. 4.)

Part 2. Assumption of Obligations and Debt.

§ 160B-17. Organizational meeting; preparation of budget.

The governing board of a consolidated city-county shall have its first organizational meeting as provided in the charter or applicable local acts of the General Assembly, but not later than the first business day following the effective date of the consolidation. Unless otherwise provided in the charter or applicable local acts, the organizational meeting shall be held at 12:00 noon at the regular meeting place of the previous board of county commissioners. Prior to the effective date of consolidation, any interim governing board designated or appointed in the charter or applicable local acts may meet to discuss business and take action as appropriate, including preparation of a proposed budget for the next ensuing fiscal year. In addition, any such interim governing board may take any action which is specifically authorized by this Chapter to be taken by an interim governing board. Meetings of any interim governing board during this period are subject to all applicable notice and meeting procedures required by general law. (1995, c. 461, s. 4.)

§ 160B-18. Referendum approval of certain debt assumption required for consolidation; effective date of consolidation.

(a) Referendum Approval of Certain Debt Assumption Required for Consolidation. — For the consolidation of a city with a county to be effective in accordance with the provisions hereof, the assumption by the consolidated city-county of all debt secured by a pledge of faith and credit of said city outstanding at the effective date of consolidation must have been approved by referendum (which referendum approval may occur at different times for different portions of said debt).

(b) Effective Date of Consolidation. — Subject to the requirement of referendum approval of certain debt assumption for consolidation as provided by subsection (a) of this section, the consolidation of a city with a county shall be effective upon the later of:

(1) Sixty days following publication of notice of the enactment of the consolidation by the General Assembly;

(2) Sixty days following publication of the statement of result of the latest referendum relating to the consolidation or to the assumption of debt secured by a pledge of faith and credit in connection with the consolidation; or

(3) Any effective date of the consolidation set by the General Assembly.

In addition, upon adoption of concurrent resolutions by the governing board of each unit to be consolidated, or by the interim governing board of the consolidated city-county, the effective date may be delayed further, but no later than July 1 of the next calendar year.

(c) Limitation of Local Acts. — No special, private, or local act, including any enactment of a consolidation of a city with a county, enacted after July 1, 1995, may be construed to modify, amend, or repeal any portion of this section unless it expressly so provides by specific reference to this section. (1995, c. 461, s. 4.)

§ 160B-19. Referendum on consolidation and on assumption of certain debt secured by a pledge of faith and credit; right to issue certain authorized but unissued debt secured by a pledge of faith and credit.

(a) In connection with a city-county consolidation, if there exists at the effective date of the consolidation (i) any outstanding debt secured by a pledge of faith and credit of a consolidating city or (ii) the right to issue any authorized but unissued debt of said city that is to be secured by a pledge of faith and credit and is proposed to be assumed by the consolidated city-county, then there shall have been held a favorable referendum on the question of the assumption of that debt secured by a pledge of faith and credit and, if applicable, there shall have been held a referendum on the assumption of the right to issue that authorized but unissued debt secured by a pledge of faith and credit.

(b) The referendum on the question of the assumption of debt secured by a pledge of faith and credit or, if applicable, the assumption of the right to issue authorized but unissued debt secured by a pledge of faith and credit may be included in the proposition submitted to the voters in a referendum called by a consolidation study commission under G.S. 153A-405.

(c) If the General Assembly provided for a referendum on the question of consolidation instead of a referendum called by a consolidation study commission under G.S. 153A-405, the governing bodies of the units proposed to be consolidated, by resolution, may add to the ballot proposition the assumption of debt secured by a pledge of faith and credit question and, if applicable, the assumption of the right to issue authorized but unissued debt secured by a pledge of faith and credit question. In either event, the proposition shall be substantially as provided in G.S. 153A-405.

(d) If the city-county consolidation is authorized by the General Assembly without a referendum or if there otherwise has not been a referendum on the question of the assumption of any debt secured by a pledge of faith and credit or, if applicable, the question of the assumption of the right to issue any authorized but unissued faith and credit debt, then the governing bodies of the units proposed to be consolidated, by resolution, may provide for a referendum on said questions. In addition, any interim governing board for the consolidated city-county, by resolution, also may provide for such a referendum. The proposition submitted to the voters shall be substantially in the following form (and may include part or all of the bracketed language as appropriate and any other modifications as may be needed to reflect the issued debt secured by a pledge of faith and credit of any of the consolidating units or the portion of the authorized but unissued debt secured by a pledge of faith and credit of any of the consolidating units, the right to issue which is proposed to be assumed by the consolidated city-county):

> "Shall, in connection with the consolidation of the City of ________ with the County of ________, the consolidated unit assume the debt of each secured by a pledge of faith and credit, [the right to issue authorized but unissued debt to be secured by a pledge of faith and credit [(including any such debt as may be authorized for said city or county on the date of this referendum)] and any of said authorized but unissued debt as may be hereafter issued,] and be authorized to levy taxes in an amount sufficient to pay the principal of and the interest on said debt secured by a pledge of faith and credit?
>
> [ ] YES [ ] NO"

(e) To be approved the proposition must receive the votes of a majority of those voting in the referendum. In connection with the proposed consolidation of one or more cities with a county, if the assumption by the consolidated city-county of outstanding debt secured by a pledge of faith and credit of the consolidating city and, if applicable, the right to issue authorized but unissued debt secured by a pledge of faith and credit of the consolidating city was approved by the votes of a majority of those voting in the referendum, the vote on that referendum shall constitute the approval by a majority of the qualified voters who vote thereon as required by Article V, Section 4(2) of the Constitution of North Carolina.

(f) Any such referendum on the question of consolidation or the assumption of debt secured by a pledge of faith and credit or the right to issue authorized but unissued debt secured by a pledge of faith and credit may be held on the same day as any other referendum or election in the county involved, but may not otherwise be held during the period beginning 30 days before and ending 30 days after the day of any other referendum or election to be conducted by the board of elections conducting the referendum and already validly called or scheduled by law.

(g) A notice of a referendum on consolidation or on the assumption of debt secured by a pledge of faith and credit or, if applicable, the right to issue authorized but unissued debt secured by a pledge of faith and credit shall be published at least twice in a newspaper of general circulation in the county. The first publication shall be not less than 14 days and the second publication not less than seven days before the last day on which voters may register for the referendum. The notice shall state the date of the referendum, a statement as to the last date for registration for the referendum under the election laws then in effect, and substantially the text of the proposition to be voted upon. The notice shall be published by the governing bodies of the units proposed to be consolidated or, if applicable, the interim governing board of the consolidated city-county by their respective clerks or by such other person as shall be designated by each applicable governing body or board.

(h) The board of elections shall canvass any referendum on consolidation and any referendum on the assumption of debt secured by a pledge of faith and credit or, if applicable, the right to issue authorized but unissued debt secured by a pledge of faith and credit and shall certify the results to the governing bodies of the units proposed to be consolidated or, if applicable, the interim governing board of the consolidated city-county which shall then certify and declare the result of the referendum and shall publish a statement of the result once in a newspaper of general circulation in the county, with the following statement appended:

> "Any action or proceeding challenging the regularity or validity of this referendum must be begun within 30 days after the date of publication of this statement of result."

(i) Any action or proceeding in any court to set aside a referendum on consolidation or a referendum on assumption of debt secured by a pledge of faith and credit or, if applicable, the right to issue authorized but unissued debt secured by a pledge of faith and credit in connection with consolidation, or to obtain any other relief, upon the grounds that the referendum is invalid or was irregularly conducted, must be begun within 30 days after the publication of the statement of the result of the referendum. After the expiration of this period of limitation, no right of action or defense based upon the invalidity of or any irregularity in the referendum shall be asserted, nor shall the validity of the referendum be open to question in any court upon any ground whatever, except in an action or proceeding begun within the period of limitation prescribed in this section. (1995, c. 461, s. 4.)

§ 160B-20. Local Government Commission review of assumption of debt secured by a pledge of faith and credit; assumption of debt secured by a pledge of faith and credit and right to issue authorized but unissued debt secured by a pledge of faith and credit upon consolidation.

(a) Review by Local Government Commission. — At the date specified in the following sentence if any consolidating city or county has outstanding any debt secured by a pledge of faith and credit or, if applicable, any authorized but unissued debt secured by a pledge of faith and credit which is proposed to be assumed by the consolidated city-county or has outstanding or pending approval any debt secured by a pledge of faith and credit the issuance of which was or is subject to approval by the Local Government Commission, then the assumption of any such debt and, if applicable, the assumption of the right to issue such authorized but unissued debt, if any, shall be subject to review by the Local Government Commission. The finance officers of the units proposed to be consolidated shall use their best efforts to notify the secretary of the Local Government Commission of the proposed consolidation and assumption of debt secured by a pledge of faith and credit or, if applicable, the right to issue authorized but unissued debt secured by a pledge of faith and credit at least two months before the introduction in the General Assembly of legislation proposing to enact the consolidation into law, provided that time allows. The Local Government Commission, to such extent it deems appropriate, may conduct a review of the proposed consolidation and assumption of debt secured by a pledge of faith and credit or, if applicable, the right to issue authorized but unissued debt secured by a pledge of faith and credit and may report the results of its review to the presiding officer of each house of the General Assembly to be provided to the respective committees to which the legislation to enact the consolidation shall be referred.

(b) Assumption of Debt Secured by a Pledge of Faith and Credit by Consolidated City-County. — Subject to the requirement of referendum approval of certain debt assumption for consolidation provided in G.S. 160B-18(a), upon enactment of the consolidation by the General Assembly and effective upon the effective date of the consolidation provided in G.S. 160B-18(b), the debt secured by a pledge of faith and credit of the consolidating city at the effective date of the consolidation (including formerly authorized but unissued debt secured by a pledge of faith and credit as may have been issued at the time) is assumed by, and becomes a binding obligation of the consolidated city-county, and the faith and credit of the consolidated city-county is pledged to secure any such assumed debt secured by a pledge of faith and credit. In addition, any debt secured by a pledge of faith and credit of the county at the effective date of the consolidation shall become a binding obligation of the consolidated city-county and the faith and credit of the consolidated city-county is pledged to secure any such debt.

(c) Right to Issue Authorized but Unissued Debt Secured by a Pledge of Faith and Credit. — Subject to the passage of a referendum relating to the assumption by the consolidated city-county of the right to issue any authorized but unissued debt of the consolidating city to be secured by a pledge of faith and credit that is proposed to be assumed by the consolidated city-county, upon enactment of the consolidation by the General Assembly and effective upon the effective date of the consolidation as provided in G.S. 160B-18(b), the right to issue the authorized but unissued debt secured by a pledge of faith and credit of the consolidating city at the effective date of the consolidation is assumed by, and upon issuance such obligations become binding obligations of, the consolidated city-county, and, upon issuance, the faith and credit of the consolidated city-county is pledged to secure any such debt secured by a pledge of faith and credit. In addition, the right to issue the authorized but unissued debt secured by a pledge of faith and credit of the county at the effective date of the consolidation shall be vested in the consolidated city-county and, upon issuance, such debt secured by a pledge of faith and credit becomes a binding obligation of the consolidated city-county and, upon issuance, the faith and credit of the consolidated city-county is pledged to secure any such debt. (1995, c. 461, s. 4; 1995 (Reg. Sess., 1996), c. 742, s. 40.)

§ 160B-21. Notice of enactment of consolidation; limitation of actions.

(a) Publication of Notice of Enactment. — Following ratification of an act of the General Assembly authorizing consolidation, there shall be published once in a newspaper of general circulation in the county a notice of said enactment and, if applicable, the fact that in connection with said enactment there is an assumption by the consolidated city-county of the debt secured by a pledge of faith and credit of the consolidating city and, if applicable, assumption of the right to issue authorized but unissued debt secured by a pledge of faith and credit of the consolidating city and that there is also binding on the consolidated city-county the debt secured by a pledge of faith and credit of the county and, if applicable, there is vested in the consolidated city-county the right to issue authorized but unissued debt secured by a pledge of faith and credit of the county with the following statement appended:

> "Any action or proceeding challenging the regularity or validity of this enactment must be begun within 30 days after the date of publication of this notice."

The notice shall be published by the governing bodies of the units proposed to be consolidated or, if applicable, the interim governing board of the consolidated city-county by their respective clerks or by such other persons as shall be designated by each applicable governing body or board.

(b) Limitation on Action Contesting Validity of Enactment of Consolidation. — Any action or proceeding in any court to set aside enactment of a city-county consolidation by the General Assembly, or to obtain any other relief, upon the grounds that the enactment is invalid or was irregularly enacted, must be begun within 30 days after the publication of the notice of the enactment. After the expiration of this period of limitation, no right of action or defense based upon the invalidity of the enactment or any irregularity in the enactment shall be asserted, nor shall the validity of the enactment be open to question in any court upon any grounds whatever, except in an action or proceeding begun within the period of limitation prescribed in this section. (1995, c. 461, s. 4; 1995 (Reg. Sess., 1996), c. 742, s. 41.)

Editor's Note. — Session Laws 2008-107, s. 13.8, provides for the use of certain funds appropriated to the Rural Economic Development Center, Inc. for the 2007-2008 fiscal year for wastewater-related and public water system-related projects. See note at G.S. 160A-311.

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

Chapter 160C.

Baseball Park Districts.

§§ 160C-1, 160C-2: Repealed by Session Laws 2001-414, s. 52, effective September 14, 2001.

Editor's Note. — Session Laws 2001-414, s. 52, effective September 14, 2001, repealed Session Laws 1997-380, which enacted this chapter.

Chapter 161.

Register of Deeds.

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ARTICLE 1.

The Office.

§ 161-1. Election and term of office.

In each county there shall be elected biennially by the qualified voters thereof, as provided for the election of members of the General Assembly, a register of deeds. (Const., art. 7, s. 1; Rev., s. 2650; C.S., s. 3543.)

Cross References. — As to time of election, see G.S. 163-1.

Editor's Note. — An amendment to this section in Session Laws 1981, c. 504, s. 9, was made effective upon certification of approval of the constitutional amendments proposed by ss. 1 to 3 of the act. The constitutional amendments were submitted to the people at an election held June 29, 1982, and were defeated. Therefore, the 1981 amendment to this section never went into effect.

CASE NOTES

Legislature May Change Duties and Emolument. — The office of register of deeds is constitutional, but the duties are statutory, and the legislature may, within reasonable limits, change the duties and diminish the emoluments of the office, if the public welfare so requires. Fortune v. Buncombe County Comm'rs, 140 N.C. 322, 52 S.E. 950 (1905).

§ 161-2. Four-year term for registers of deeds.

A register of deeds shall be elected in each county of the State by the qualified voters of the county. The register of deeds shall serve for a term of four years beginning on the first Monday in December after the election and until a successor register of deeds is elected and qualified. (1935, cc. 362, 392, 462; 1937, c. 271; 1939, cc. 11, 99; 1941, c. 192; 1949, cc. 756, 830; 1957, c. 1022, s. 2; 1973, c. 215, s. 1; 1991, c. 60, s. 2.)

Local Modification. — Johnston: Pub. Loc., 1937, c. 319.

§ 161-3. Oath of office.

The register of deeds shall take the oath of office on the first Monday of December next after his election, before a person authorized to administer oaths as defined in G.S. 11-7.1. (1868, c. 35, s. 2; 1876-7, c. 276, s. 5; Code, s. 3647; Rev., s. 2652; C.S., s. 3544; 1987, c. 620, s. 4.)

Cross References. — As to form of oath, see G.S. 11-11.

Editor's Note. — Session Laws 1987, c. 620, which amended this section, in s. 6 provided that any oath of office taken by a register of deeds before a person authorized to administer oaths as defined in G.S. 11-7.1 and not before the board of county commissioners was validated.

§ 161-4. Bond required.

(a) Every register of deeds shall give bond with sufficient surety, to be approved by the board of county commissioners, in a sum of not less than ten thousand dollars ($10,000) nor more than fifty thousand dollars ($50,000), payable to the State, and conditioned for the safekeeping of the books and records, and for the faithful discharge of the duties of his office.

(b) The bond and surety required under subsection (a) shall further be conditioned for the safekeeping of the books and records, and for the faithful discharge of the duties of office of the register of deeds by any incumbent assistant and deputy register of deeds appointed prior to the vacancy pursuant to G.S. 161-6 and holding over after vacancy in the office of register of deeds for the interim, as provided in G.S. 161-5(b). (1868, c. 35, s. 3; 1876-7, c. 276, s. 5; Code, s. 3648; 1899, c. 54, s. 52; Rev., s. 301; C.S., s. 3545; 1963, c. 204; 1965, c. 900; 1969, c. 636.)

Local Modification. — Dare: 1907, c. 75; Nash: 1955, c. 690.

Cross References. — As to failure to register instrument as breach of bond, see G.S.

161-14. As to failure to index and cross-index, see G.S. 161-22.

CASE NOTES

The words "and faithfully discharge the duties of his office" in the bond of a register of deeds do not refer alone to the safekeeping of the "records and books," but to all other official acts, the nonperformance of which results in injury. State ex rel. Kivett v. Young, 106 N.C. 567, 10 S.E. 1019 (1890).

Failure to Give Bond. — The board of commissioners may declare the office vacant for failure of the register to give a sufficient bond. State ex rel. Cole v. Patterson, 97 N.C. 360, 2 S.E. 262 (1887).

§ 161-4.1. Salary in counties where fees formerly allowed.

In any county where during the fiscal year beginning July 1, 1980, and ending June 30, 1981, the register of deeds received fees in addition to salary, and retained them personally as allowed by local act, the salary of the register of deeds in such county in any future fiscal year shall not be less than the sum of the salary plus fees received in the fiscal year beginning July 1, 1980 and ending June 30, 1981. (1981, c. 968, s. 4.)

§ 161-4.2. Liability insurance for register of deeds.

To the same extent that the county provides liability insurance to other county officers or employees, pursuant to G.S. 153A-97 and 160A-167, or 58-32-10, or Article 23 of Chapter 58 of the General Statutes, the county shall provide insurance to the register of deeds. If the county does not provide insurance to any officers or employees, then the county shall notify the register of deeds, in writing, prior to the first Monday in December of each year, of its intent not to provide insurance coverage to the register of deeds. This required notification shall be in the form of a letter signed by the chairman of the board of county commissioners, attested by the clerk of the board of county commissioners. If the county fails to provide the required notice, then the county shall be liable for damages that would have been paid had the county purchased the insurance pursuant to the General Statutes section cited above. (1991, c. 470, s. 1.)

§ 161-5. Vacancy in office.

(a) Repealed by Session Laws 1991, c. 60, s. 1.

(a1) When a vacancy occurs from any cause in the office of register of deeds, the board of county commissioners shall fill such vacancy by the appointment of a successor for the unexpired term, who shall qualify and give bond as required by law. If the register of deeds was elected as the nominee of a political party, the board of county commissioners shall consult the county executive committee of that political party before filling the vacancy and shall appoint the person recommended by that committee, if the party makes a recommendation within 30 days of the occurrence of the vacancy.

(b) In the interim between a vacancy in the office of register of deeds and the appointment and qualification of a successor register of deeds, under the provisions of subsection (a), any incumbent assistant or deputy register of deeds appointed under G.S. 161-6 prior to the vacancy shall continue to hold office as assistant or deputy registers of deeds until discharged or otherwise lawfully relieved of office by the lawful successor to the office of register of deeds. (1868, c. 35, s. 4; Code, s. 3649; Rev., s. 2651; C.S., s. 3546; 1965, c. 900; 1975, c. 868, ss. 1, 2; 1977, c. 180; 1981, c. 763, ss. 8, 9, 14; c. 830; 1987, c. 196,

s. 2; 1989, c. 497, s. 4; 1989 (Reg. Sess., 1990), c. 1056, s. 1; 1991, c. 14, s. 1; c. 60, ss. 1, 4.)

Local Modification. — Camden: 1991, c. 376; Chowan: 1991, c. 376; Pasquotank: 1991, c. 376; Perquimans: 1991, c. 376.

Cross References. — As to validation of acts of assistant and deputy registers of deeds performed pending filling of vacancy in office of register of deeds, see G.S. 161-28.

CASE NOTES

Appointment of Successor When Office Declared Vacant. — The county commissioners may appoint a successor to the office of register of deeds where they have declared the office vacant by reason of the incumbent's failure to give a sufficient bond. State ex rel. Cole v. Patterson, 97 N.C. 360, 2 S.E. 262 (1887).

§ 161-6. Appointment of assistant and deputy registers of deeds; authority to sign in name of register of deeds; holdover assistants and deputies.

(a) The registers of deeds of the several counties are hereby authorized to appoint one or more assistant registers of deeds and one or more deputy registers of deeds, whose acts as assistants or deputies shall be valid and for which the registers of deeds shall be officially responsible. The certificate of appointment of an assistant or deputy shall be filed by the appointing register of deeds in the office of the clerk of the superior court, who shall record the same.

(b) Each assistant and deputy register of deeds so appointed shall be authorized, in addition to his other powers and duties, to register and sign instruments and documents in the name and under the title of the appointing register of deeds, by himself as assistant or deputy, as appropriate. Such signing shall be substantially as follows:

John Doe, Register of Deeds
by Richard Roe, Assistant (or Deputy, as appropriate).

(c) Such registering and signing, when regular and sufficient in all other respects, shall be valid for all purposes, and of the same force and effect as if the instrument or document had been registered and signed by the register of deeds personally.

(d) Wherever in the General Statutes reference is made to "the register of deeds and (or) his assistant" or "the register of deeds and (or) his deputy" or words substantially to this effect, or reference is made only to "the assistant register of deeds" or "the deputy register of deeds," such reference to either assistant or deputy, unless the contrary intent is specifically stated in the text, shall also include the other, insofar as such reference pertains to the authority, powers, duties, rights, privileges, or qualifications for office of assistant or deputy register of deeds.

(e) Incumbent assistant and deputy registers of deeds holding over after a vacancy in the office of register of deeds, pursuant to the provisions of G.S. 161-5(b), shall continue to have and exercise all lawful power and authority of office until lawfully relieved of office, including, but not restricted to, all power and authority set forth in subsections (a), (b), (c) and (d), and in Chapter 161 generally, and their acts as assistant or deputy registers of deeds shall be official and valid, and the appointing register of deeds, or his estate, and the official bond under G.S. 161-4 shall be responsible for their acts as assistant or deputy registers of deeds, and such assistant or deputy register of deeds shall also be individually, personally and officially responsible for his own acts. (1909, c. 628, s. 1; C.S., s. 3547; 1949, c. 261; 1959, c. 279; 1963, c. 191; 1965, c. 900.)

Local Modification. — Dare: 1907, c. 393; Durham: 1909, c. 91; Person: 1909, c. 546.

Cross References. — As to validation of acts of assistant and deputy registers of deeds performed pending filling of vacancy in office of register of deeds, see G.S. 161-28.

Legal Periodicals. — For brief comment on the 1949 amendment to this section, see 27 N.C.L. Rev. 476 (1949).

§ 161-7. Office at courthouse.

The register shall keep his office at the courthouse unless the board of county commissioners shall deem it impracticable. (1868, c. 35, s. 5; Code, s. 3650; Rev., s. 2653; C.S., s. 3548.)

§ 161-8. Attendance at office.

The board of county commissioners may fix by order, to be entered on their records, what days of each week, and at what hours of each day, the register of deeds shall attend at his office in person or by deputy, and he shall give his attendance accordingly. (1868, c. 35, s. 6; Code, s. 3651; Rev., s. 2654; C.S., s. 3549.)

§ 161-9. Official seal.

The office of register of deeds for every county shall have and use an official seal or stamp, which shall be provided by the county commissioners. The official seal or stamp shall be round, and the size shall not exceed one and five-eighths inches in diameter. Contained thereon shall be the name of the register of deeds, the county and letters "N.C.," and the words "Register of Deeds." The ink used for the official stamp shall be of the reproducible type; provided, that any register of deeds using a nonconforming seal or stamp prior to July 1, 1969 may continue to use such seal or stamp. (1893, c. 119, s. 1; Rev., s. 2649; C.S., s. 3550; 1969, c. 1028.)

§ 161-10. Uniform fees of registers of deeds.

(a) Except as otherwise provided in this Article, all fees collected under this section shall be deposited into the county general fund. While performing the duties of the office, the register of deeds shall collect the following fees which shall be uniform throughout the State:

(1) Instruments in General. — For registering or filing any instrument for which no other provision is made by this section, whether written, printed, or typewritten, the fee shall be twelve dollars ($12.00) for the first page plus three dollars ($3.00) for each additional page or fraction thereof.

When a document is presented for registration that consists of multiple instruments, the fee shall be ten dollars ($10.00) for each additional instrument. A document consists of multiple instruments when it contains two or more instruments with different legal consequences or intent, each of which is separately executed and acknowledged and could be recorded alone.

(1a) Deeds of Trust, Mortgages, and Cancellation of Deeds of Trust and Mortgages. — For registering or filing any deed of trust or mortgage, whether written, printed, or typewritten, the fee shall be twenty-eight dollars ($28.00) for the first page plus three dollars ($3.00) for each additional page or fraction thereof.

When a deed of trust or mortgage is presented for registration that contains one or more additional instruments, the fee shall be ten dollars ($10.00) for each additional instrument. A deed of trust or mortgage contains one or more additional instruments if such additional instrument or instruments has or have different legal consequences or intent, each of which is separately executed and acknowledged and could be recorded alone.

For recording records of satisfaction, or the cancellation of record by any other means, of deeds of trust or mortgages, there shall be no fee.

(2) Marriage Licenses. — For issuing a license sixty dollars ($60.00); for issuing a delayed certificate with one certified copy twenty dollars ($20.00); and for a proceeding for correction of an application, license or certificate, with one certified copy ten dollars ($10.00).

(3) Plats. — For each original or revised plat recorded twenty-one dollars ($21.00) per sheet or page; for furnishing a certified copy of a plat five dollars ($5.00).

(4) Right-of-Way Plans. — For each original or amended plan and profile sheet recorded twenty-one dollars ($21.00) for the first page and five dollars ($5.00) per page for each additional page. This fee is to be collected from the Board of Transportation.

(5) Registration of Birth Certificate One Year or More after Birth. — For preparation of necessary papers when birth to be registered in another county ten dollars ($10.00); for registration when necessary papers prepared in another county, with one certified copy ten dollars ($10.00); for preparation of necessary papers and registration in the same county, with one certified copy twenty dollars ($20.00).

(6) Amendment of Birth or Death Record. — For preparation of amendment and affecting correction ten dollars ($10.00).

(7) Legitimations. — For preparation of all documents concerned with legitimations ten dollars ($10.00).

(8) Certified Copies of Birth and Death Certificates and Marriage Licenses. — For furnishing a certified copy of a death or birth certificate or marriage license ten dollars ($10.00). Provided however, a Register of Deeds may issue without charge a certified Birth Certificate to any person over the age of 62 years.

(8a) Vital Records Network. — For obtaining access to the Vital Records Computer Network, two dollars ($2.00).

(9) Certified Copies. — For furnishing a certified copy of an instrument for which no other provision is made by this section five dollars ($5.00) for the first page, plus two dollars ($2.00) for each additional page or fraction thereof.

(10) Comparing Copy for Certification. — For comparing and certifying a copy of any instrument filed for registration, when the copy is furnished by the party filing the instrument for registration and at the time of filing thereof five dollars ($5.00).

(11) Uncertified Copies. — A register of deeds who supplies uncertified copies of instruments, or index pages, as a convenience to the public, may charge fees that the register of deeds determines bear a reasonable relation to the quality of copies supplied and the cost of purchasing and maintaining copying and/or computer equipment. These fees may be changed from time to time, but the amount of these fees shall at all times be uniform and prominently posted in the office of the register of deeds.

(12) Notarial Acts. — For taking an acknowledgment, oath, or affirmation or performing any other notarial act the maximum fee set in G.S. 10B-31 or G.S. 10B-118 for electronic notarial acts. This fee shall not be charged if the act is performed as a part of one of the services for which a fee is provided by this subsection; except that this fee shall be charged in addition to the fees for registering, filing, or recording

instruments or plats as provided by subdivisions (1) and (3) of this subsection.

(13) Uniform Commercial Code. — Such fees as are provided for in Chapter 25, Article 9, Part 5, of the General Statutes.

(14) Torrens Registration. — Such fees as are provided in G.S. 43-5.

(15) Master Forms. — Such fees as are provided for instruments in general.

(16) Probate. — For verification of proofs and acknowledgements as provided in G.S. 47-14 two dollars ($2.00).

(17) Qualification of Notary Public. — For administering the oaths of office to a notary public and making the appropriate record entries as provided in G.S. 10B-10 ten dollars ($10.00).

(18) Reinstatement of Articles of Incorporation. — For filing reinstatements of Articles of Incorporation prepared pursuant to G.S. 105-232; such fees as provided for instruments in general. The fee shall be paid by the corporation affected.

(18a) Nonstandard Document. — For registering or filing any document not in compliance with the recording standards adopted under G.S. 161-14(b), the fee shall be twenty-five dollars ($25.00) in addition to all other applicable recording fees.

(19) Miscellaneous Services. — For performing miscellaneous services such as faxing documents, providing laminated copies of documents, expedited delivery of documents, and similar services, the cost of the service.

(b) The uniform fees set forth in this section are complete and exclusive and no other fees shall be charged by the register of deeds.

(c) These fees shall be collected in every case prior to filing, registration, recordation, certification or other service rendered by the register of deeds unless by law it is provided that the service shall be rendered without charge. (Code, ss. 710, 3109, 3751; 1887, c. 283; 1891, c. 324; 1897, cc. 27, 68; 1899, c. 17, s. 2; c. 247, s. 3; cc. 261, 302, 578, 723; 1901, c. 294; 1903, c. 792; 1905, cc. 226, 292, 319; Rev., s. 2776; 1911, c. 55, s. 3; C.S., s. 3906; 1967, c. 639, s. 4; c. 823, s. 33; 1969, c. 80, s. 1; c. 912, s. 3; 1973, c. 507, s. 5; c. 1317; 1975, c. 428; 1977, 2nd Sess., c. 1132; 1981, c. 968, ss. 1, 2; 1983, c. 894, ss. 2, 3; 1987, c. 792, ss. 2-5; 1989, c. 523, s. 1; 1991, c. 636, s. 18; c. 683, s. 3; c. 693, s. 1; 1991 (Reg. Sess., 1992), c. 1030, s. 49; 1993, c. 425, s. 1; 1997-309, s. 9; 2000-167, s. 1; 2000-169, s. 44; 2001-390, s. 1; 2005-123, s. 7; 2005-391, s. 8; 2008-107, s. 29.7(a); 2009-451, ss. 17.8(a), 20A.4(a).)

Local Modification. — Beaufort: 1949, c. 368, s. 3; Cabarrus: 1945, c. 880, s. 3; Chowan: 1947, c. 490; Gaston: 1951, c. 868; Guilford: 1949, c. 602; Hertford: 1955, c. 619; Iredell: 1959, c. 654; Jones: 1961, c. 569; McDowell: 1953, c. 728; Pender: 1945, c. 430; Perquimans: 1949, c. 664; 1953, c. 660; 1955, c. 108; Richmond: 1951, c. 529.

Editor's Note. — Session Laws 1967, c. 823, which amended this section, in s. 34 provided: "It is the intent of this act to establish the office of the register of deeds as the filing office for all of the corporate and related documents now required to be filed with the clerk of the superior court and to transfer all of the duties relating thereto from the clerk of the superior court to the register of deeds. To this end, all relevant sections of the General Statutes of North Carolina not specifically amended by sections 1 through 33 of this act are hereby amended to the same effect."

The references to G.S. 10B-31, G.S. 10B-118, and G.S. 10B-10, in subdivisions (a)(12) and (a)(17), were originally G.S. 10B-20, G.S. 10B-48, and G.S. 10B-9, respectively. They have been changed at the direction of the Revisor of Statutes.

Session Laws 2005-391, s. 12, provides: "This act shall not affect any civil or criminal litigation pending on the effective date of this act. Any act committed prior to the effective date of this act which violated any provision of the statutes repealed or amended by this act shall be subject to enforcement, prosecution, conviction, and punishment as if this act had not been enacted. Any claim arising under any provisions of the statutes repealed or amended by this act prior to the effective date of this act shall remain valid as if this act had not been enacted."

Session Laws 2005-123, s. 9.1, as added by Session Laws 2006-226, s. 28, provides: "The Revisor of Statutes shall cause to be printed at the appropriate locations in the General Statutes all relevant portions of the official comments to the Uniform Residential Mortgage Satisfaction Act and all explanatory comments of the drafters of this act as the Revisor deems appropriate."

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.5 is a severability clause.

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.5 is a severability clause.

Effect of Amendments. — Session Laws 2008-107, s. 29.7(a), effective October 1, 2008, and applicable to deeds of trust and mortgages registered or filed on or after that date, in subsection (a), substituted "otherwise provided in this Article" for "provided in G.S. 161-11.1 or 161-11.2" in the introductory language; and in subdivision (a)(1a), substituted "twenty-two dollars ($22.00)" for "twelve dollars ($12.00)."

Session Laws 2009-451, s. 17.8(a), effective October 1, 2009, and applicable to deeds of trust and mortgages registered or filed on or after that date, substituted "twenty-eight dollars ($28.00)" for "twenty-two dollars ($22.00)" in the first paragraph of subdivision (a)(1a).

Session Laws 2009-451, s. 20A.4(a), effective September 1, 2009, and applicable to licenses issued on or after that date, substituted "sixty dollars ($60.00)" for "fifty dollars ($50.00)" in subdivision (a)(2).

CASE NOTES

Free Abstracts Not Required. — While it is the duty of the register of deeds to permit all persons to inspect the records committed to his custody, he will not be required, without the payment of his proper fees, to allow anyone to make copies or abstracts therefrom. Newton v. Fisher, 98 N.C. 20, 3 S.E. 822 (1887).

Applied in Durham Land Owners Ass'n v. County of Durham, 177 N.C. App. 629, 630 S.E.2d 200, 2006 N.C. App. LEXIS 1187 (2006).

OPINIONS OF ATTORNEY GENERAL

Subdivision (a)(1) of this section does not vest any discretion in the register of deeds. See opinion of the Attorney General to Miss Frances H. Burwell, Stokes County Register of Deeds, 40 N.C.A.G. 611 (1969).

Register of deeds should charge only one fee for the probate of instruments to be registered, regardless of the number of notary acknowledgments appearing thereon. See opinion of Attorney General to Miss Frances H. Burwell, Stokes County Register of Deeds, 40 N.C.A.G. 611 (1969).

§ 161-10.1. Exemption of armed forces discharge documents and certain other records needed in support of claims for veterans' benefits.

Any schedule of fees which is now or may be prescribed in Chapter 161 of the General Statutes or in G.S. 161-10 shall not apply to nor shall the same repeal any of the provisions of Article 5 of Chapter 47 of the General Statutes. Any schedule of fees which is now or may be hereafter prescribed in Chapter 161 of the General Statutes or as may appear in G.S. 161-10 shall not apply to nor shall the same repeal any of the provisions of G.S. 165-11. (1971, c. 679.)

§ 161-10.2: Repealed by Session Laws 1969, c. 80, s. 6.

§ 161-11: Repealed by Session Laws 1973, c. 1027.

§ 161-11.1. Fees for Children's Trust Fund.

(a) Five dollars ($5.00) of each fee collected by a register of deeds on or after October 1, 1983, for issuance of a marriage license pursuant to G.S. 161-

10(a)(2) shall be forwarded, as soon as practical but no later than 60 days after collection by the register of deeds, to the county finance officer, who shall forward same to the State Treasurer for deposit in the Children's Trust Fund.

(b) Repealed by Session Laws 1997-136, s. 1, effective June 4, 1997. (1983, c. 894, s. 4; 1989 (Reg. Sess., 1990), c. 1039, s. 8; 1997-136, s. 1.)

Cross References. — As to establishment of Children's Trust Fund, see now G.S. 7B-1302.

Editor's Note. — Session Laws 1989 (Reg. Sess., 1990), c. 1039, s. 9 provided that no additional funds shall be appropriated to carry out the requirements of this section.

§ 161-11.2. Fees for domestic violence centers.

Thirty dollars ($30.00) of each fee collected by a register of deeds for issuance of a marriage license pursuant to G.S. 161-10(a)(2) shall be forwarded by the register of deeds to the county finance officer, who shall forward the funds to the Department of Administration to be credited to the Domestic Violence Center Fund established under G.S. 50B-9. The register of deeds shall forward the fees to the county finance officer as soon as practical. The county finance officer shall forward the fees to the Department of Administration within 60 days after receiving the fees. The Register of Deeds shall inform the applicants that thirty dollars ($30.00) of the fee for a marriage license shall be used for Domestic Violence programs. (1991, c. 693, s. 2; 2009-451, s. 20A.4(b).)

Editor's Note. — Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.5 is a severability clause.

Effect of Amendments. — Session Laws 2009-451, s. 20A.4(b), effective September 1, 2009, and applicable to licenses issued on or after that date, substituted "Thirty dollars ($30.00)" for "Twenty dollars ($20.00)" at the beginning of the first sentence, and "thirty dollars ($30.00)" for "twenty dollars ($20.00)" in the last sentence.

§ 161-11.3. Automation Enhancement and Preservation Fund.

Ten percent (10%) of the fees collected pursuant to G.S. 161-10 and retained by the county, or three dollars and twenty cents ($3.20) in the case of a fee collected pursuant to G.S. 161-10(a)(1a) for the first page of a deed of trust or mortgage, shall be set aside annually and placed in a nonreverting Automation Enhancement and Preservation Fund, the proceeds of which shall be expended on computer or imaging technology and needs associated with the preservation and storage of public records in the office of the register of deeds. Nothing in this section shall be construed to affect the duty of the board of county commissioners to furnish supplies and equipment to the office of the register of deeds. (2001-390, s. 2; 2007-353, s. 5; 2009-451, s. 17.8(c).)

Editor's Note. — Session Laws 2008-118, s. 3.5, provides: "The Department of Crime Control and Public Safety shall use funds appropriated to the Department to keep and maintain the five North Carolina floodplain mapping positions that were not funded for fiscal year 2008-2009. The authority conferred by this section expires when the receipts of the Department received pursuant to G.S. 161-11.3 are sufficient to support these five positions."

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.5 is a severability clause.

Effect of Amendments. — Session Laws 2009-451, s. 17.8(c), effective October 1, 2009, and applicable to deeds of trust and mortgages registered or filed on or after that date, inserted "or three dollars and twenty cents ($3.20) in the case of a fee collected pursuant to G.S. 161-10(a)(1a) for the first page of a deed of trust or mortgage" in the first sentence.

§ 161-11.4. Fees for floodplain mapping.

Ten dollars ($10.00) of each fee collected by the register of deeds for registering or filing a deed of trust or mortgage pursuant to G.S. 161-10(a)(1a) must be forwarded by the register of deeds to the county finance officer, who must forward the funds to the Department of Crime Control and Public Safety to be credited to the Floodplain Mapping Fund established under G.S. 143-215.56A. The county finance officer must forward the funds to the Department on a monthly basis. (2008-107, s. 29.7(b).)

Editor's Note. — Session Laws 2008-107, s. 29.7(b), enacted this section as G.S. 161-11.3. It has been renumbered as this section at the direction of the Revisor of Statutes.

Session Laws 2008-107, s. 29.7(d), made this section effective October 1, 2008, and applicable to deeds of trust and mortgages registered or filed on or after that date.

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.5 is a severability clause.

§ 161-11.5. Fees for General Fund support.

Five dollars ($5.00) of each fee collected by the register of deeds for registering or filing a deed of trust or mortgage pursuant to G.S. 161-10(a)(1a) shall be remitted by the register of deeds to the county finance officer, who shall remit the funds to the State Treasurer to be credited to the General Fund as nontax revenue. The county finance officer shall remit the funds to the State Treasurer on a monthly basis. (2009-451, s. 17.8(b).)

Editor's Note. — Session Laws 2009-451, s. 17.8(d), made this section effective October 1, 2009, and applicable to deeds of trust and mortgages registered or filed on or after that date.

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.5 is a severability clause.

§ 161-11.6. Fees for archival of records.

In addition to any other fees collected pursuant to this Article, the register of deeds shall collect a fee of five dollars ($5.00) for each deed filed, registered, or recorded. The register of deeds shall forward the fees collected to the county finance officer. The county finance officer shall, on a monthly basis, remit the fees to the Department of Cultural Resources for the purpose of offsetting the costs of the Archives and Records Management Program less two percent (2%) of the amount of the fees collected to cover the county's administrative costs. (2009-451, s. 20B.3(a).)

Editor's Note. — Session Laws 2009-451, s. 20B.3(c), made this section effective October 1, 2009, and applicable to all deeds filed, registered, or recorded on or after that date.

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.5 is a severability clause.

Article 2.

The Duties.

§§ 161-12, 161-13: Repealed by Session Laws 1973, c. 1027.

§ 161-14. Registration of instruments.

(a) After the register of deeds has determined that all statutory and locally adopted prerequisites for recording have been met, the register of deeds shall immediately register all written instruments presented to him for registration. When an instrument is presented for registration, the register of deeds shall endorse upon it the day and hour on which it was presented. This endorsement forms a part of the registration of the instrument. All instruments shall be registered in the precise order in which they were presented for registration. Immediately after endorsing the day and hour of presentation upon an instrument, the register of deeds shall index and cross-index it in its proper sequence. The register of deeds shall then proceed to register it on the day that it is presented unless a temporary index has been established.

The register of deeds may establish a temporary index in which all instruments presented for registration shall be indexed until they are registered and entered in the permanent indexes. A temporary index shall operate in all respects as the permanent index. All instruments presented for registration shall be registered and indexed and cross-indexed on the permanent indexes not later than 30 days after the date of presentation.

(b) All instruments, except instruments conforming to the provisions of G.S. 25-9-521, presented for registration on paper shall meet all of the following requirements:

(1) Be eight and one-half inches by eleven inches or eight and one-half inches by fourteen inches.

(2) Have a blank margin of three inches at the top of the first page and blank margins of one-half inches on the remaining sides of the first page and on all sides of subsequent pages.

(3) Be typed or printed in black on white paper in a legible font. A font size no smaller than 10 points shall be considered legible. Blanks in an instrument may be completed in pen and corrections to an instrument may be made in pen.

(4) Have text typed or printed on one side of a page only.

(5) State the type of instrument at the top of the first page.

If an instrument does not meet these requirements, the register of deeds shall register the instrument after collecting the fee for nonstandard documents as required by G.S. 161-10(a)(19) in addition to all other applicable recording fees. However, if an instrument fails to meet the requirements because it contains print in a font size smaller than 10 points, the register of deeds may register the instrument without collecting the fee for nonstandard documents if, in the discretion of the register of deeds, the instrument is legible.

(c) Transportation corridor official maps authorized under Article 2E of Chapter 136 shall be registered and indexed by the end of the third business day after the business day the map is presented to the register of deeds.

(d) For the purposes of this section, the term "instrument" means all of the following for which a fee is collected under G.S. 161-10(a):

(1) Instruments in General.

(2) Deeds of Trust, Mortgages, and Cancellation of Deeds of Trust and Mortgages.

(3) Uniform Commercial Code filings.

(4) Torrens Registrations.

(5) Master Forms. (R.C., c. 37, s. 23; 1868, c. 35, s. 9; Code, s. 3654; Rev., s. 2658; C.S., s. 3553; 1921, c. 114; 1971, c. 657; 1998-184, s. 5; 2001-390, s. 5; 2001-464, ss. 2, 3; 2002-159, s. 53.)

Local Modification. — Cabarrus: 2002-115, s. 3 (applicable to documents filed with register of deeds only); Durham: 2003-326, s. 2.1; Harnett: 2003-326, s. 2.1; Mecklenburg: 2002-115, s. 3 (applicable to documents filed with register of deeds only); Moore: 2003-326, s. 2.1; New Hanover: 2003-326, s. 2.1; Randolph: 2003-326, s. 2.1.

Cross References. — As to requisites and formalities of the registration of deeds and mortgages generally, see G.S. 47-17 et seq. As to indexing of instruments, see also G.S. 161-21, 161-22.

Editor's Note. — This section was rewritten by Session Laws 2001-390, s. 5, effective July 1, 2002, with respect to instruments executed on or after that date.

Session Laws 2001-464, s. 3, provides that the amendment to this section by s. 2, which added "Except as provided in G.S. 161.21" at the beginning of subsection (a), is repealed July 1, 2002.

CASE NOTES

This section means a registration which is complete and perfect, so that it may serve all the purposes of the law in protecting the rights of parties directly interested, and truly give notice to the public. State ex rel. Kivett v. Young, 106 N.C. 567, 10 S.E. 1019 (1890).

Failure to Register as Breach of Bond. — Failure of the register of deeds to register written instruments properly presented is a breach of the bond required by G.S. 161-4. Bank of Spruce Pine v. McKinney, 209 N.C. 668, 184 S.E. 506 (1935).

Filing Has Effect of Registration. — The filing for registration is in law registration; all rights and liabilities accrue from the date of filing and do not depend upon the greater or lesser diligence of the register in performing his duty. Glanton v. Jacobs, 117 N.C. 427, 23 S.E. 335 (1895).

Delivery at Proper Office Prerequisite to Valid Filing. — It is required for a valid filing of a mortgage that it be delivered at the official office of the register of deeds, and where such a paper is delivered to the register outside of his office it is ineffectual until he returns and makes the proper entry. McHan v. Dorsey, 173 N.C. 694, 92 S.E. 598 (1917).

Time of Delivery to Proper Officer Determinative. — Where the filing of a paper in the office of the register of deeds is necessary to the title to lands, the time thereof will be considered as that at which the paper was delivered to and received by the proper officers; and while the file mark of the officer is evidence as to the time, it is not essential under the North Carolina statutes. Carolina-Tennessee Power Co. v. Hiawassee River Power Co., 175 N.C. 668, 96 S.E. 99 (1918), appeal dismissed, 252 U.S. 341, 40 S. Ct. 330, 64 L. Ed. 601 (1920).

And Register's Endorsement Is Not Essential. — The endorsement required to be made by register of deeds on mortgages and deeds in trust on the day on which such deeds are presented to him for registration, is not essential to registration; and when made is not conclusive evidence, but only prima facie evidence, of the facts therein recited. Cunninggim v. Peterson, 109 N.C. 33, 13 S.E. 714 (1891).

But Fees Must Be Timely Paid. — Where a deed was handed to the register for registration, but he refused to register it until his fees were paid several months later, at which time he made an endorsement that it was filed on the day first presented, followed by an explanatory endorsement reciting the facts, it was held that the register was not compelled to register the deed before his fees were paid, and that the facts did not constitute a filing for registration on the day when the deed was first presented to the register. Cunninggim v. Peterson, 109 N.C. 33, 13 S.E. 714 (1891).

Indexing and Cross-Indexing Essential. — The indexing and cross-indexing of deeds or other instruments in writing filed with a register of deeds for registration, as required by this section, is essential to their proper registration. Bank of Spruce Pine v. McKinney, 209 N.C. 668, 184 S.E. 506 (1935); Johnson Cotton Co. v. Hobgood, 243 N.C. 227, 90 S.E.2d 541 (1955).

The indexing of the deeds in the office of the register thereof is an essential part of the registration; and where the grantor's name has been omitted from the book, a subsequent grantee of the same lands from the same grantor acquires the title from him. Fowle & Son v. O'Ham, 176 N.C. 12, 96 S.E. 639 (1918). See also, Dorman v. Goodman, 213 N.C. 406, 196 S.E. 352 (1938), commented on in 19 N.C.L. Rev. 77 (1941).

Certificates of Registration as Prima Facie Evidence. — The certificates of registration made by registers of deeds are prima facie evidence of the facts therein recited. Sellers v. Sellers, 98 N.C. 13, 3 S.E. 917 (1887).

Sufficiency of Acknowledgment. — A certificate by the clerk of the superior court that the officers of the corporation who signed the deed "acknowledged the due execution of the annexed instrument for the purpose therein set forth" was sufficient to warrant the registration of the deed. Heath, Springs & Co. v. Big Falls Cotton Mills, 115 N.C. 202, 20 S.E. 369 (1894).

Effect of Clerical Mistake. — A registry of a mortgage is not void because of a clerical mistake made by the register in transcribing, which does not affect the sense and provision as to the amount secured, description of property, etc., or obscure the meaning of the instrument. Royster v. Lane, 118 N.C. 156, 24 S.E. 796 (1896).

Omission of Signatures. — The registration of a deed showing the probate, including the separate examination of the wife, and the order of registration, and the names of the grantors, but omitting a copy of their signatures at the end of the instrument is sufficient notice under this section. Smith v. Ayden Lumber Co., 144 N.C. 47, 56 S.E. 555 (1907).

Omission of Corporate Seal. — The failure of the register of deeds to copy the seal of the corporation on his books, or make an imitation copy thereon, does not render the conveyance of the lands invalid where the recitals in the deed signify that the seal was in fact attached, it appears upon the original, and the books show the name of the corporation appearing in brackets therein at its proper location. Heath, Springs & Co. v. Big Falls Cotton Mills, 115 N.C. 202, 20 S.E. 369 (1894); Lockville Power Corp. v. Carolina Power & Light Co., 168 N.C. 219, 84 S.E. 398 (1915).

Omission of Great Seal of State. — The fact that it does not appear of record that a scroll or imitation of the great seal of the State was copied thereon does not invalidate the registry of a grant. The recital in the body of the grant, as recorded, of the affixing of the seal is sufficient evidence of its regularity. Broadwell v. Morgan, 142 N.C. 475, 55 S.E. 340 (1906).

Correction of Omission or Error. — Where the register has committed an error or omission in the recordation of an instrument he has the power to correct such error. Brown v. Hutchinson, 155 N.C. 205, 71 S.E. 302 (1911).

Cited in Moore v. Ragland, 74 N.C. 343 (1876); Fleming v. Graham, 110 N.C. 374, 14 S.E. 922 (1892).

§ 161-14.01. Registration of instruments for business and other purposes.

(a) The register of deeds is hereby authorized to record and file documents relating to persons, partnerships, and corporations for business and other purposes, including but not limited to certificates of partnerships, assumed business names, incorporations, dissolutions, or amendments thereto, in a consolidated book or record, including books or records used for the filing of deeds, deeds of trust, leases, and similar documents. It is the intent of this section that the register of deeds may file and record some or all of the above instruments and documents and those of a similar nature in one book or record or in a series of books or records consolidated for recording purposes; provided, said instruments and documents shall be indexed as required by law.

(b) All other laws providing for the filing of documents provided for herein shall not be applicable to the county upon adoption by the register of deeds of a consolidated recording and filing system as authorized herein. (1973, c. 1013, ss. 1, 2.)

§ 161-14.1. Recording subsequent entries as separate instruments.

(a) As used in this section, the following terms mean:

(1) Original instrument. — The previously recorded instrument that is modified, amended, supplemented, assigned, satisfied, terminated, revoked, or cancelled by a subsequent instrument.

(2) Recording data. — The book and page number or document number that indicates where an instrument is recorded in the office of the register of deeds.

(3) Subsequent instrument. — Any instrument presented for registration that indicates in its title or within the first two pages of its text that it is intended or purports to modify, amend, supplement, assign, satisfy, terminate, revoke, or cancel a previously registered instrument. Examples of subsequent instruments include the appointment or designation of a substitute trustee in a deed of trust; an affidavit extending the life of a deed of trust; the cancellation of a Notice of Inactive Hazardous Substance or Waste Disposal Site registered

pursuant to G.S. 130A-310.8(f); a record of satisfaction or other instrument purporting to satisfy a security instrument registered pursuant to G.S. 45-37 or G.S. 45-37.2; a notice of foreclosure registered pursuant to G.S. 45-38; an assignment of a security instrument or lease; a modification agreement; a release or partial release of property from the lien of a security instrument; an assumption agreement; a subordination agreement; an instrument terminating future optional advances registered pursuant to G.S. 45-72; the revocation of a power of attorney; any instrument authorized or directed by law to be indexed under the provisions of this section; and any instrument for which the register of deeds is authorized or directed by law to make a subsequent entry upon the margin of the record of an original instrument.

(b) The register of deeds shall register each subsequent instrument as a separate instrument and do all of the following:

(1) Index the parties to the subsequent instrument.
(2) If the subsequent instrument names one or more of the original parties to the original instrument, index the original parties to the original instrument as they are named in the subsequent instrument.
(3) If the subsequent instrument states the recording data for the original instrument, reference the recording data of the original instrument as that recording data is stated in the subsequent instrument to each name so indexed.

(c) The register of deeds shall not be required to (i) read or examine any page of an instrument, other than the first two pages, to determine whether it is a subsequent instrument within the meaning of this section, or (ii) verify or make inquiry concerning the accuracy, sufficiency, or completeness of information about an original instrument contained in any subsequent instrument. The register of deeds is expressly authorized to rely solely on the information contained in the subsequent instrument, including, but not limited to, the names of the original parties to the original instrument and the recording data for the original instrument. (1963, c. 1021, s. 3; 1991, c. 114, s. 1; 2005-123, s. 8.)

Editor's Note. — Session Laws 2005-123, s. 9.1, as added by Session Laws 2006-226, s. 28, provides: "The Revisor of Statutes shall cause to be printed at the appropriate locations in the General Statutes all relevant portions of the official comments to the Uniform Residential Mortgage Satisfaction Act and all explanatory comments of the drafters of this act as the Revisor deems appropriate."

§ 161-14.2. Indexing procedures for instruments and documents filed in the office of the register of deeds.

The following procedure shall be used in making index entries:

(1) When each word of the signature is legible and it gives the complete name of the party, the signature shall govern.
(2) When the signature is legible but initials or abbreviations are used, any additional information given by the printed or typed name and not in conflict with the signature shall govern.
(3) When none of the words in the signature are legible, the printed or typed name shall govern.
(4) When one or more of the words in the signature are legible, then the words that are legible shall govern; the words that appear in the printed or typed name shall govern over the words of the signature that are not legible.

(5) When the spelling of any word in a legible signature and the spelling of the corresponding word in the typed or printed name is at variance, and the variance would cause the entries to be made at different places in the index, then the instrument shall be indexed under both spellings.

(6) When a reasonable interpretation of an illegible word in a signature is at variance with the corresponding word in a typed or printed name, and the variance would cause the entries to be made at different places in the index, then the instrument shall be indexed in both places. (1969, c. 694, s. 1.)

CASE NOTES

Registration outside the chain of title has the same effect on notice as no registration. Schuman v. Roger Baker & Assoc's, 70 N.C. App. 313, 319 S.E.2d 308 (1984).

§ 161-15. Certify and register copies.

When a deed, mortgage, or other conveyance conveying real estate situate in two or more counties is presented for registration duly probated and a copy thereof is presented with the same, the register shall compare the copy with the original, and if it be a true copy thereof he shall certify the same, and thereupon the register shall endorse the original deed or conveyance as duly registered in his county, designating the book in which the same is registered, and deliver the original deed to the party entitled thereto and register the same from the certified copy thereof to be retained by him for that purpose. (1899, c. 302; Rev., s. 2657; C.S., s. 3554.)

§ 161-16. Liability for failure to register.

In case of his failure to register any deed or other instrument within the time and in the manner required by G.S. 161-15, the register shall be liable, in an action on his official bond, to the party injured by such delay. (1868, c. 35, s. 10; Code, s. 3660; Rev., s. 2659; C.S., s. 3555.)

Local Modification. — Caswell: 1977, c. 391.

CASE NOTES

Failure to Register or Index as Breach of Bond. — The failure of the register of deeds to register instruments properly presented or his failure to properly index and cross-index them is a breach of his statutory bond, for which, under this section, he and the surety on his bond are liable to the person injured. Bank of Spruce Pine v. McKinney, 209 N.C. 668, 184 S.E. 506 (1936).

A register is liable for wrongly recording the amount of a mortgage to a person injured thereby. State ex rel. Kivett v. Young, 106 N.C. 567, 10 S.E. 1019 (1890).

As to abatement of action by death, see Wallace v. McPherson, 139 N.C. 297, 51 S.E. 897 (1905).

§ 161-17. Papers filed alphabetically.

The register shall keep in files alphabetically labeled all original instruments delivered to him for registration, and on application for such originals by any person entitled to their custody, he shall deliver the same. (1868, c. 35, s. 11; Code, s. 3661; Rev., s. 2660; C.S., s. 3556.)

§ 161-18. Transcribe and index books.

The board of county commissioners, when they deem it necessary, may direct the register of deeds to transcribe and index such of the books in the register's office as from decay or other cause may require to be transcribed and indexed. They may allow him such compensation at the expense of the county for this work as they think just. The books when so transcribed and approved by the board shall be public records as the original books, and copies therefrom may be certified accordingly. (1868, c. 35, s. 12; Code, s. 3662; Rev., s. 2661; C.S., s. 3557.)

§ 161-19. Number of survey in grants registered.

The register of deeds in each county in this State, when grants have been registered without the number of tract or survey, shall place in the registration of the grants the number of the tract or survey, when the same shall be furnished him by the grantee or other person; and in registering any grant he shall register the number of the tract or survey. (1889, c. 522, s. 2; Rev., s. 2662; C.S., s. 3558.)

§ 161-20. Certificate of survey registered.

It shall be the duty of the register of deeds in each county, when any grant is presented for registration with a certificate of survey attached, to register such certificate of survey, together with all endorsements thereon, together with said grant, and a record of any certificate of survey so made shall be read in evidence in any action or proceeding: Provided, the failure to register such certificate of survey shall not invalidate the registration of the grant. (1905, c. 243; Rev., s. 2663; C.S., s. 3559.)

§ 161-21. General index kept.

The board of county commissioners shall, at the expense of the county, maintain a consolidated index of all the deeds and other documents affecting real property in the register's office. (1868, c. 35, s. 13; Code, s. 3663; Rev., s. 2664; C.S., s. 3560; 1929, c. 327, s. 1; 1987, c. 620, s. 5; 2008-194, s. 7(d).)

Effect of Amendments. — Session Laws 2008-194, s. 7(d), effective August 8, 2008, rewrote the first sentence; and deleted the former second sentence, which provided the board of county commissioners additional authority to install the "Family" index system.

CASE NOTES

Cited in Woodley v. Gregory, 205 N.C. 280, 171 S.E. 65 (1933); Dorman v. Goodman, 213 N.C. 406, 196 S.E. 352 (1938); Tocci v. Nowfall, 220 N.C. 550, 18 S.E.2d 225 (1942); McKnight v. M. & J. Fin. Corp., 247 F.2d 112 (4th Cir. 1957).

§ 161-22. Index of registered instruments.

(a) Except as otherwise provided by statute, the register of deeds shall provide and keep in the register's office full and complete alphabetical indexes of the names of the parties to all liens, grants, deeds, mortgages, bonds, and other instruments required or authorized to be registered, and the indexes shall state in full the names of all parties, whether grantors, grantees, vendors, vendees, obligors, or obligees. The full names of parties shall be entered in the indexes in accordance with the minimum indexing standards adopted pursuant to G.S. 147-54.3(b) and (b1). Reference shall be made, opposite each name, to the book and page or other location where the instrument is registered. All instruments shall be indexed on either the temporary or permanent index within 24 hours of registration. The register of deeds is not required to index an instrument that is part of a document containing multiple instruments, as defined in G.S. 161-10(a)(1), unless the title of that instrument is shown on the first page of the document and the additional registration fee is paid as required by G.S. 161-10(a)(1).

(b) Repealed by Session Laws 2008-194, s. 7(e), effective August 8, 2008.

(c) Repealed by Session Laws 2008-194, s. 7(e), effective July 1, 2008.

(d) Deeds of trust may be indexed in the names of the grantor and beneficiary only.

(e) Certificates filed for recording pursuant to G.S. 59-2, the Uniform Limited Partnership Act, shall be indexed only under the names of the partnership and each of the general partners. The register of deeds shall cause a statement to be affixed or printed on the index page of the book or books in which limited partnership agreements are filed that the documents are indexed only in the names of the partnership and of each of the general partners.

(f) The alphabetical indexes required by this section may be maintained in index books, on index cards, on film, or in computers or other automated data-processing machines. If the index is maintained in a computer or other automated data processing machine, the register of deeds shall, at least once each month, obtain from the computer or other automated data-processing machine a printed copy on paper or film, or a tape or disk, of all index entries made since the previous printed or filmed copy, or tape or disk, was obtained. These printed or filmed copies, tapes` or disks, shall be retained as security copies and may not be altered or destroyed until a subsequent security copy is made containing the index entries from all previous security copies.

(g) The register of deeds may adopt rules establishing indexing procedures and the format of the indexes. The rules shall conform with the requirements of this section and of other applicable statutes. The rules may address such subjects, by way of example and not limitation, as the indexing of business firms, the indexing of names containing numerals, and the indexing of government agencies. The rules shall be posted in at least two prominent places in the office of register of deeds and shall also be placed near the index books or in user manuals in offices using automated indexing systems.

(h) No instrument shall be deemed registered until it has been indexed in a manner to put a reasonably careful and prudent examiner on notice upon inquiry, and, if upon inquiry, the instrument would have been found.

(i) Repealed by Session Laws 2008-194, s. 7(e), effective August 8, 2008. (1876-7, c. 93, s. 1; Code, s. 3664; 1899, c. 501; Rev., ss. 2665, 3600; C.S., s. 3561; 1929, c. 327, s. 2; 1967, cc. 443, 1262; 1973, c. 1136, ss. 1, 2; 1983, c. 127; c. 699, ss. 1, 3; 1989, c. 523, s. 2; 1993, c. 178, ss. 1, 2, 4, 5; c. 539, s. 1096; 1994, Ex. Sess., c. 24, s. 14(c); 2005-123, s. 9; 2008-194, s. 7(e).)

Local Modification. — Alamance: 1963, c. 739; 1965, cc. 17, 150; Buncombe: 1971, c. 1069; Duplin: 1963, c. 739; 1965, cc. 17, 150; Forsyth: 1963, c. 739; 1965, cc. 17, 150; 1971, c. 1069; Guilford: 1963, c. 739; 1965, cc. 17, 150; Orange: 1971, c. 1069; Wake and Wayne: 1963, c. 739; 1965, cc. 17, 150.

Cross References. — As to the use and confidential nature of actual addresses of Address Confidentiality Program participants by boards of elections for election-related purposes, see G.S. 15C-8.

Editor's Note. — Section 59-2, referred to in subsection (e) of this section, was repealed by Session Laws 1985 (Reg. Sess., 1986), c. 989, s. 2, effective October 1, 1986. For the Revised Uniform Limited Partnership Act, see G.S. 59-101 et seq.

Session Laws 1993, c. 178, which amended this section, in s. 6 provides: "Index entries made pursuant to G.S. 161-22 prior to the effective date of Sections 1 and 2 of this act that omitted symbols, spaces, commas, hyphens, periods, dashes, or similar punctuation, or that omitted the word 'The' when it was the first word in the name of the party, or that placed the word 'The' at the end of the index entry rather than at the beginning when it was the first word in the name of a party, are hereby declared sufficient and valid."

Session Laws 2005-123, s. 9.1, as added by Session Laws 2006-226, s. 28, provides: "The Revisor of Statutes shall cause to be printed at the appropriate locations in the General Statutes all relevant portions of the official comments to the Uniform Residential Mortgage Satisfaction Act and all explanatory comments of the drafters of this act as the Revisor deems appropriate."

Effect of Amendments. — Session Laws 2008-194, s. 7(e), effective August 8, 2008, in subsection (a), in the first sentence, inserted "Except as otherwise provided by statute" at the beginning, substituted "the register's" for "her or his", and made minor grammatical changes, and substituted "register of deeds is not required" for "register of deeds shall not be required" in the last sentence; deleted subsection (b) regarding use of the "Family" index system; made a minor grammatical change in subsection (e); rewrote subsections (g) and (h); and deleted subsection (i), which read: "A violation of this section shall constitute a Class 1 misdemeanor."

Session Laws 2008-194, s. 7(e), effective July 1, 2008, deleted subsection (c) regarding appropriate indexing of instruments affecting real and personal property.

CASE NOTES

Editor's Note. — *Most of the cases below were decided under this section as it read prior to being rewritten in 1983.*

The provisions of this section are mandatory. Woodley v. Gregory, 205 N.C. 280, 171 S.E. 65 (1933); Cuthrell v. Camden County, 254 N.C. 181, 118 S.E.2d 601 (1961).

And Strict Compliance Is Required. — In its interpretation of the recording statutes, the Supreme Court of this State has insisted on strict compliance. McKnight v. M. & J. Fin. Corp., 247 F.2d 112 (4th Cir. 1957).

Section 7A-109 Distinguished. — Section 7A-109 does not require the cross-indexing of liens filed in the clerk's office and is not to be confused with the requirements for registering liens, deeds, etc., in the office of the register of deeds as provided by this section, which does require cross-indexing. Saunders v. Woodhouse, 243 N.C. 608, 91 S.E.2d 701 (1956).

Indexing and Cross-Indexing Essential to Proper Registration. — The indexing and cross-indexing of deeds or other instruments in writing filed with a register of deeds for registration, as required by G.S. 161-14, is essential to their proper registration. Bank of Spruce Pine v. McKinney, 209 N.C. 668, 184 S.E. 506 (1935); Johnson Cotton Co. v. Hobgood, 243 N.C. 227, 90 S.E.2d 541 (1955).

The indexing of the deeds in the office of the register thereof is an essential part of the registration; and where the grantor's name has been omitted from the book, a subsequent grantee of the same lands from the same grantor acquires the title from him. Fowle & Son v. O'Ham, 176 N.C. 12, 96 S.E. 639 (1918). See also, Dorman v. Goodman, 213 N.C. 406, 196 S.E. 352 (1938), commented on in 19 N.C.L. Rev. 77 (1941).

Indexing of chattel mortgages is an essential part of their registration. Whitehurst v. Garrett, 196 N.C. 154, 144 S.E. 835 (1928).

Priority of Second Mortgage Where First Mortgage Not Indexed. — A mortgage duly filed for registration and spread upon the registry, but not indexed or cross-indexed as required by this section, is not superior to the lien of a duly registered "second mortgage" on the same property. Story v. Slade, 199 N.C. 596, 155 S.E. 256 (1930).

Priority of Properly Indexed Chattel Mortgage Over General Mortgage. — Under this section and G.S. 161-21, a duly recorded chattel mortgage which was indexed and cross-indexed in the general chattel mortgage index had priority over a mortgage covering the same personal property and also certain real estate which was previously executed and recorded and indexed in the general real estate mortgage index, but subsequently indexed and cross-indexed in the general chattel mortgage index. Pruitt v. Parker, 201 N.C. 696, 161 S.E. 212 (1931).

Recorded deed of trust dated August 5, 1982, did not have priority over warranty deed recorded on May 5, 1983, where it was not indexed until after plaintiff's deed was duly registered. The priority of instruments affecting an interest in real property which are required to be recorded is established by the priority of their registration, and an instrument is not deemed registered until it has been properly indexed. Badger v. Benfield, 78 N.C. App. 427, 337 S.E.2d 596 (1985), cert. denied, 316 N.C. 374, 342 S.E.2d 890 (1986).

Effect of Filing at Same Instant of Time. — Where a purchase-money mortgage and another mortgage given to secure cash payment for land were filed for registration at the same instant of time, neither mortgage had priority over the other, but both constituted a first lien on the land; the fact that one necessarily appeared before the other on the index of the day's transactions did not alter this result, since the record failed to show that the mortgages were not indexed at the same time. Hood v.

Landreth, 207 N.C. 621, 178 S.E. 222 (1935).

There is no law requiring that cross-index show capacity in which the grantor acted in the making or execution of a deed. Tocci v. Nowfall, 220 N.C. 550, 18 S.E.2d 225 (1942).

Recording and indexing a mortgage executed by one not the owner of the property mentioned therein will not give constructive notice binding upon third parties dealing with the true owner. It is, at least as to third parties, as though no mortgage had been made. McKnight v. M. & J. Fin. Corp., 247 F.2d 112 (4th Cir. 1957).

Effect of Failure to Index Mortgage in Name of Wife. — The proper indexing of a mortgage upon lands is an essential part of its registration, and where the husband and wife make a mortgage on her lands which is only indexed by the register of deeds in the name of the husband, it is not good as against a subsequent purchaser for value by deed from the husband and wife that had been properly indexed and registered. Heaton v. Heaton, 196 N.C. 475, 146 S.E. 146 (1929).

Index of Mortgage on Land Held by Entireties under "J.H. and Wife". — Where the husband and wife mortgage their lands held by the entireties and the mortgage was indexed and cross-indexed under "J.H. and wife," the name of the wife not appearing on the index although it appeared on the mortgage deed, the index was sufficient to put a reasonable man upon inquiry which would have disclosed the facts, and upon the husband's death and the wife's remarriage, a mortgage given by the wife and her second husband was subject to the first mortgage; the subsequent mortgagee was charged with notice thereof, and could not restrain the first mortgagee from foreclosing his mortgage on the ground of insufficient indexing, although the name of the wife should have appeared on the index. West v. Jackson, 198 N.C. 693, 153 S.E. 257 (1930).

Indexing and cross-indexing deed of trust given by tenant and remainderman in name of life tenant only followed by the words "et al.," was not a sufficient compliance with this section, and where another deed of trust was subsequently executed on the same lands which was registered, indexed and cross-indexed in compliance with this section, the purchaser under foreclosure of the second deed of trust acquired title free from the lien of the improperly indexed prior deed of trust. Woodley v. Gregory, 205 N.C. 280, 171 S.E. 65 (1933), distinguishing. Prudential Ins. Co. v. Forbes, 203 N.C. 252, 165 S.E. 699 (1932), in which the lien was indexed under "S.T. et ux."

Indexing of Chattel Mortgage Held Sufficient. — A proper index of chattel mortgages kept for years in the books wherein the instruments were registered was a substantial compliance with this section and G.S. 161-21, where the record of the instrument could have been found with an ordinary search such as a man of ordinary prudence would have made. Whitehurst v. Garrett, 196 N.C. 154, 144 S.E. 835 (1928).

Where a chattel mortgage was duly transcribed upon the records in the office of the register of deeds in the chattel mortgage book and an erroneous book and page were given opposite the name of the grantor in the direct index and opposite the name of the grantee in the cross-index, but within two days of the time the chattel mortgage was transcribed on the records the cross-index was corrected, such indexing constituted a sufficient compliance with this section. Johnson Cotton Co. v. Hobgood, 243 N.C. 227, 90 S.E.2d 541 (1955).

Failure to Index as Breach of Bond. — Failure of the register of deeds to properly index and cross-index registered instruments is a breach of the bond required by G.S. 161-4. Bank of Spruce Pine v. McKinney, 209 N.C. 668, 184 S.E. 506 (1935).

Liability on Bond for Failure to Index. — The failure of a register of deeds to properly index the registry of a mortgage renders him liable on his official bond to one injured by such neglect. State ex rel. Daniel v. Grizzard, 117 N.C. 105, 23 S.E. 93 (1895). See Watkins v. Simonds, 202 N.C. 746, 164 S.E. 363 (1932).

Where Failure Is Proximate Cause of Injury. — While the register of deeds and the surety on his official bond are liable for his failure to index and cross-index instruments, such liability does not arise to the individual claiming damages therefor unless the default of the register in these particulars has been the proximate cause of injury to the claimant, and liability will not be imputed to the register of deeds when the negligence of the claimant or his agent has caused or concurred in causing the injury. State ex rel. Bryant Mfg. Co. v. Hester, 177 N.C. 609, 98 S.E. 721 (1919), overruling Davis v. Whitaker, 114 N.C. 279, 19 S.E. 699 (1894). See also Ely v. Norman, 175 N.C. 294, 95 S.E. 543 (1918); Fowle & Son v. O'Ham, 176 N.C. 12, 96 S.E. 639 (1918).

A register of deeds will not be held liable for failure to properly index an instrument unless the default of the register of deeds was the proximate cause of pecuniary injury to the claimant. Badger v. Benfield, 78 N.C. App. 427, 337 S.E.2d 596 (1985), cert. denied, 316 N.C. 374, 342 S.E.2d 890 (1986).

Liability will not be imposed on the register of deeds if claimant's negligence caused or concurred in causing the injury. Badger v. Benfield, 78 N.C. App. 427, 337 S.E.2d 596 (1985), cert. denied, 316 N.C. 374, 342 S.E.2d 890 (1986).

§ 161-22.1. Index and cross-index of immediate prior owners of land.

Whenever, any deed or other instrument conveying real property by a trustee, mortgagee, commissioner, or other officer appointed by the court, or by the sheriff under execution, is filed with the register of deeds for the purpose of being recorded, it shall be the duty of the register of deeds to index and cross-index as grantors the names of all persons recited in said instrument to be the persons whose interest in such real estate is being conveyed or from whom the title of such real estate was acquired by the grantor in such instrument. (1947, c. 211, ss. 1, 2; 1969, c. 80, s. 5.)

§ 161-22.2. Parcel identifier number indexes.

(a) In lieu of the alphabetical indexes required by G.S. 161-21, 161-22 and 161-22.1, the register of deeds of any county in which unique parcel identifier numbers have been assigned to all parcels of real property may install an index by land parcel identifier numbers. For each instrument filed of record, the entry in a land parcel identifier number index must contain the following information:

(1) The parcel identifier number of the parcel or parcels affected;
(2) A brief description of the parcel or parcels, including subdivision block and lot number, if any;
(3) A description of the type of instrument recorded and the date the instrument was filed;
(4) The names of the parties to the instrument to the same extent as required by G.S. 161-22 and the legal status of the parties indexed;
(5) The book and page number, or film reel and frame number, or other file number where the instrument is recorded.

(b) Every instrument affecting real property filed for recording in the office of such register of deeds shall be indexed under the parcel identifier number of the land parcel or parcels affected.

(c) The parcel identifier number index may be maintained in index books, on index cards, on film, or in computers or other automated data-processing machines. If the parcel identifier number index is maintained in a computer or other automated data-processing machine, the register of deeds shall, at least once each month, obtain from the computer or other data-processing machine a printed copy on paper or film of all index entries made since the previous printed copy was obtained. The printed copies shall be retained as security copies and shall not be altered or destroyed.

(d) Before a register of deeds may install a parcel identifier number index in lieu of the alphabetical indexes required by G.S. 161-22, the proposed index must be approved by the Secretary of State. Before approving a parcel identifier number index, the Secretary must find that:

(1) The requirements of this section, G.S. 161-22, and all other applicable indexing requirements of the North Carolina General Statutes and applicable judicial decisions will be met by the index;
(2) Measures for the protection of the indexed information are such that computer or other machine failure will not cause an irremediable loss of the information;
(3) Printed forms and index sheets used in the index permit a display of all information required by law and are otherwise adequate;
(4) Any computer or other data-processing machine used and the program for the use of such machines are adequate to perform the tasks assigned to them;
(5) Access to the information contained in the index can be obtained by the use of both a parcel identifier number and the name of any party to an instrument filed of record;

(6) Any parcel identifier number either reflects the State plane coordinates of some point in the parcel, or is keyed to a map of the parcel that shows the location of the parcel within the county;
(7) The parcel identifier numbering system is designed so that no parcel will be assigned the same number as any other parcel within the county;
(8) The parcel identifier numbering system shows for parcels of land created by subdivision, the number of the parcel of land subdivided in addition to the numbers of the newly-created parcels;
(9) The parcel identifier numbering system shows for parcels of land created by the combining of separate parcels, the numbers of the land parcels that were combined in addition to the number of the newly-created parcel;
(10) The parcel identifier numbering system is capable of identifying condominium units and other separate legal interests that may be created in a single parcel of land;
(11) The parcel identifier numbering system will meet the needs of the users as well as or better than the alphabetical indexes required by G.S. 161-21, 161-22 and 161-22.1.

The Secretary may require a register of deeds seeking approval of a parcel identifier number index to furnish him with any information concerning the index that is pertinent to the findings required for approval.

(e)(1) An approved parcel identifier number index shall become effective as the official real property index of the county as of the first day of July or the first day of January, as the board of commissioners directs, following approval by the Secretary of State.
(2) In any county in which a parcel identifier index is the official index, the register of deeds shall post notices in the alphabetical index books and at other appropriate places in his office stating that the parcel identifier number index is the official index and the date when the change became effective. (1977, c. 589; 1979, c. 700, s. 2; 1983, c. 49; 1985, c. 757, s. 161(a), (b); 1989, c. 727, s. 218(163); 1989 (Reg. Sess., 1990), c. 1004, s. 19(b); 1997-443, s. 11A.119(a); 1999-119, s. 3.)

Local Modification. — Orange: 1983, c. 3.

§ 161-22.3. Minimum standards for land records management.

In addition to the recording and indexing procedures set forth in this Article, the register of deeds shall follow the rules specifying minimum standards and procedures in land records management adopted by the Department of Secretary of State pursuant to G.S. 143-345.6(b1). (1991, c. 697, s. 2; 1993, c. 178, s. 3.)

Local Modification. — Brunswick: 1995 (Reg. Sess., 1996), c. 629, s. 2 (effective January 1, 1999).

Editor's Note. — Session Laws 1993, c. 178, which amended G.S. 161-22 and changed the effective date of this section, in s. 6 provides: "Index entries made pursuant to G.S. 161-22 prior to the effective date of Sections 1 and 2 of this act that omitted symbols, spaces, commas, hyphens, periods, dashes, or similar punctuation, or that omitted the word 'The' when it was the first word in the name of the party, or that placed the word 'The' at the end of the index entry rather than at the beginning when it was the first word in the name of a party, are hereby declared sufficient and valid."

§ 161-23. Clerk to board of commissioners.

The register of deeds, or such other county officer or employee as the board of county commissioners shall designate in accordance with the provisions of G.S. 153-40, shall be ex officio clerk of the board of county commissioners, and as such shall perform the duties imposed by law or by order of said board. (Const., art. 7, s. 2; 1868, c. 35, s. 15; Code, s. 3656; Rev., s. 2666; C.S., s. 3562; 1955, c. 247, s. 2.)

Local Modification. — Guilford: 1955, c. 143; Wake: 1953, c. 644; 1959, c. 299.

Editor's Note. — Section 153-40, referred to in this section, was repealed by Session Laws 1973, c. 822.

CASE NOTES

The register of deeds is ex officio clerk to the board of county commissioners, and the two positions are not separate offices. State v. Gouge, 157 N.C. 602, 72 S.E. 994 (1911).

§ 161-24: Repealed by Session Laws 1973, c. 108, s. 99.

§ 161-25: Repealed by Session Laws 1973, c. 803, s. 36.

§ 161-26. Duties unperformed at expiration of term.

Whenever, upon the termination for any cause of the term of office of the register of deeds, it appears that he has failed to perform any of the duties of his office, the board of commissioners shall cause the same to be performed by another person or the successor of any such defaulting register. Such person or successor shall receive for his compensation the fees allowed for such services, and if any portion of the compensation has been paid to such defaulting register, the same may be recovered by the board of county commissioners, by suit on his official bond, for the benefit of the county or person injured thereby. (1868, c. 35, s. 14; Code, s. 3655; Rev., s. 2669; C.S., s. 3566.)

§ 161-27. Register of deeds failing to discharge duties; penalty.

If any register of deeds fails to perform any of the duties imposed or authorized by law, he shall be guilty of a Class 1 misdemeanor, and he shall be removed from office. (1868, c. 35, s. 18; Code, s. 3659; Rev., s. 3599; C.S., s. 3567; 1993, c. 539, s. 1097; 1994, Ex. Sess., c. 24, s. 14(c).)

Cross References. — As to misconduct in public office and penalty therefor, see G.S. 14-228 et seq. As to duty of register to issue marriage license, see G.S. 68-18.1. As to penalty for issuing license unlawfully, see G.S. 51-17. As to duty of register in regard to clerk's bonds, see G.S. 58-74-20. As to duty of register in regard to strays, see G.S. 79-1.

CASE NOTES

A register of deeds is not liable under this section for issuing a marriage license for the marriage of an infant female under 18 years of age without the written consent of her parent or guardian. State v. Snuggs, 85 N.C. 541 (1881).

OPINIONS OF ATTORNEY GENERAL

Penalties for Issuance of Marriage Licenses to Individuals of Same Gender. — A register of deeds would violate North Carolina law in issuing a marriage license to persons of the same gender and if, in issuing such a license, the register of deeds operates in bad faith he may subject himself to the penalties provided in this section. See opinion of Attorney General to Mr. Willie L. Covington, Register of Deeds, Durham County Courthouse, 2004 N.C.A.G. 2 (3/29/04).

§ 161-28. Validation of acts of assistant and deputy registers of deeds performed pending filling of vacancy in office of register of deeds.

Any and all acts and duties performed by any and all assistant or deputy registers of deeds appointed and acting under the provisions of G.S. 161-6 or any other provisions of law, general, local, or special, after a vacancy may have occurred from any cause in the office of register of deeds, including, but not restricted to, a vacancy occurring as a result of the death in office of any incumbent register of deeds, and before the board of county commissioners shall have filled such vacancy by the appointment of a successor and his qualification for office as required by law, under and pursuant to the provisions of G.S. 161-5 and any other applicable provisions of law, shall be and the same are hereby validated, ratified and confirmed to all intents and purposes as if performed by an incumbent in the office of register of deeds and to all intents and purposes as if performed under and pursuant to specific provisions of law authorizing and empowering the register of deeds, or any assistant or deputy registers of deeds, to perform all such acts and duties. The provisions of this validating act shall include, but not be restricted to, all acts and duties of the office of register of deeds, or of the office of assistant or deputy register of deeds, as enumerated and set forth under the specific provisions of this Chapter, or under the provisions of any other general laws as set forth in the General Statutes of North Carolina, or in any other provisions of law, private, local or special. (1965, c. 835, s. 1.)

§ 161-29. Validating acts of assistant and deputy registers of deeds in failing to execute instruments in the name of the register of deeds.

(a) Any and all acts and duties performed by any and all assistant or deputy registers of deeds in executing any instrument, while acting under the provisions of G.S. 161-6 or any other provisions of law, general, local or special, which failed to substantially comply with G.S. 161-6(b), shall be and the same are hereby validated, ratified and confirmed to all intents and purposes as if executed in full compliance with G.S. 161-6(b).

(b) The provisions of this validating act shall include all acts and duties of the office of assistant or deputy register of deeds, as enumerated and set forth under the specific provisions of this Chapter, or under the provisions of any general laws as set forth in the General Statutes of North Carolina, or in any other provisions of law, private, local or special. (1973, c. 166, ss. 1, 2.)

§ 161-29.1. Validating acts of assistant and deputy registers of deeds performed before they were sworn into office.

All acts and duties heretofore performed by any and all assistant or deputy registers of deeds, who were appointed but who were not sworn into office or who were sworn into office after their duties commenced, shall be and the same are hereby validated, ratified, and confirmed to all intents and purposes as if performed by assistant or deputy registers of deeds who were theretofore formally appointed and sworn into office, as required by G.S. 161-6, or as required by any other provision of law. (1977, c. 124, s. 1.)

§ 161-30. Modernization of land records.

(a) The county commissioners of any county may require that the register of deeds shall not accept for registration any map or instrument affecting real property unless the following requirements are satisfied:

(1) The name and address of the person to whom the map or instrument is to be returned is affixed on the face thereof.

(2) The grantee's or owner's permanent mailing address is affixed on the face thereof.

(b) In any county in which parcel identifiers have been assigned to any of the real property situated within the county, the county commissioners may require that the register of deeds shall not accept for registration any map, deed, deed of trust or other instrument affecting real property unless the parcel identifier for all of the property described and affected is affixed and verified by the county on the face of the map or instrument or affixed and verified by the county as a part of the legal description contained in any instrument.

(c) Failure to comply with the provisions of subsections (a) and (b) above shall not affect the validity of any map or other instrument that is duly recorded. (1973, c. 992.)

§ 161-31. Tax certification.

(a) Tax Certification. — The board of commissioners of a county may, by resolution, require the register of deeds not to accept any deed transferring real property for registration unless the county tax collector has certified that no delinquent ad valorem county taxes, ad valorem municipal taxes, or other taxes with which the collector is charged are a lien on the property described in the deed. The county commissioners may describe the form the certification must take in its resolution.

(a1) Exception to Tax Certification. — If a board of county commissioners adopts a resolution pursuant to subsection (a) of this section, notwithstanding the resolution, the register of deeds shall accept without certification a deed submitted for registration under the supervision of a closing attorney and containing this statement on the deed: "This instrument prepared by: ________________________, a licensed North Carolina attorney. Delinquent taxes, if any, to be paid by the closing attorney to the county tax collector upon disbursement of closing proceeds."

(b) Applicability. — This section applies only to Alexander, Anson, Beaufort, Bertie, Burke, Cabarrus, Camden, Carteret, Caswell, Catawba, Cherokee, Chowan, Clay, Cleveland, Currituck, Davidson, Davie, Duplin, Durham, Edgecombe, Forsyth, Gaston, Gates, Graham, Granville, Greene, Halifax, Harnett, Haywood, Henderson, Hertford, Hyde, Iredell, Jackson, Johnston, Jones, Lee, Lenoir, Lincoln, Macon, Madison, Martin, Montgomery, Nash, Northampton, Onslow, Pasquotank, Pender, Perquimans, Person, Pitt, Polk, Robeson, Rockingham, Rowan, Rutherford, Stanly, Surry, Swain, Transylvania, Tyrrell, Vance, Warren, Washington, Wayne, Wilson, and Yadkin Counties. (2001-464, s. 1; 2001-513, s. 14; 2002-51, s. 1; 2003-72, s. 1; 2003-189, s. 6; 2003-354, s. 3; 2004-65, s. 1; 2005-109, s. 1; 2005-433, s. 2(a); 2006-16, s. 1; 2006-150, s. 1; 2007-221, s. 1; 2009-290, s. 1.)

Effect of Amendments. — Session Laws 2009-290, s. 1, effective July 13, 2009, inserted "Alexander" and "Catawba" in subsection (b).

§§ 161-32 through 161-49: Reserved for future codification purposes.

ARTICLE 3.

Registers of Deeds' Supplemental Pension Fund Act of 1987.

§ 161-50. Short title and purpose.

(a) This Article shall be known and may be cited as the "Registers of Deeds' Supplemental Pension Fund Act of 1987."

(b) The purpose of this Article is to create a pension fund to supplement local government retirement benefits which will attract the most highly qualified talent available within the State to the position of register of deeds. (1987, c. 792, s. 1.)

§ 161-50.1. Scope.

(a) This Article provides supplemental pension benefits for all county registers of deeds who are retired from the Local Governmental Employees' Retirement System or an equivalent locally sponsored plan as herein described.

(b) The North Carolina Department of State Treasurer shall administer the provisions of this Article.

(c) The provisions of this Article shall be subject to future legislative change or revision, and no person is deemed to have acquired any vested right to a pension payment provided by this Article. (1987, c. 792, s. 1.)

§ 161-50.2. Assets.

(a) On and after October 1, 1987, each County Commission shall remit monthly to the Department of State Treasurer an amount equal to one and one-half percent (1.5%) of the monthly receipts collected pursuant to Article 1 of Chapter 161 of the General Statutes, to be deposited to the credit of the Registers of Deeds' Supplemental Pension Fund, hereinafter referred to as the Fund, to be used in making monthly pension payments to eligible retired registers of deeds under the provisions of this Article and to pay the cost of administering the provisions of this Article.

(b) The State Treasurer shall be the custodian of the Registers of Deeds' Supplemental Pension Fund and shall invest its assets in accordance with the provisions of G.S. 147-69.2 and G.S. 147-69.3. (1987, c. 792, s. 1; 2007-245, s. 1.)

§ 161-50.3. Disbursements.

(a) Immediately following July 1, 1988, the Department of State Treasurer shall divide an amount equal to forty-five percent (45%) of the assets of the Fund at the end of the preceding fiscal year into equal shares and disburse the same as monthly pension payments to all eligible retired registers of deeds as of July 1, 1988, payable in accordance with the method described in G.S. 161-50.5, except that such pension benefit shall be computed for a six-months basis beginning with the month of July, 1988.

(b) Immediately following January 1, 1996, and the first of January of each succeeding calendar year thereafter, the Department of State Treasurer shall divide an amount equal to ninety-three percent (93%) of the assets of the Fund at the end of the preceding calendar year into equal shares and disburse the same as monthly payments in accordance with the provisions of this Article.

(c) The remaining seven percent (7%) of the Fund's assets as of December 31, 1995, and at the end of each calendar year thereafter, may be used by the Department of State Treasurer in administering the provisions of this Article.

(d) All the Fund's disbursements shall be conducted in the same manner as disbursements are conducted for other special funds of the State.

(e) If, for any reason, the Fund shall be insufficient to pay any pension benefits or other charges, then all benefits or payments shall be reduced pro rata for as long as the deficiency in amount exists. No claim shall accrue with respect to any amount by which a pension payment shall have been reduced. (1987, c. 792, s. 1; 1995, c. 259, s. 2.)

§ 161-50.4. Eligibility.

(a) Each county register of deeds who has retired with at least 12 years eligible service as register of deeds from the Local Governmental Employees' Retirement System or an equivalent locally sponsored plan before June 30, 1988, and those who retire on or after June 30, 1988, but before July 1, 1991, and who have completed at least 12 years of eligible service as register of deeds is entitled to receive a monthly pension under this Article, beginning July 1, 1988. Effective July 1, 1991, each county register of deeds who retires with at least 10 years of eligible service as register of deeds is entitled to receive a monthly pension under this Article.

(a1) Notwithstanding the provisions of subsection (a) of this section, effective January 1, 1996, any county register of deeds who separates from service as register of deeds after completing at least 10 years of eligible service as register of deeds, but who does not commence retirement with the Local Governmental Employees' Retirement System, shall have the right to receive a monthly pension under this Article payable upon retirement with the Local Governmental Employees' Retirement System.

(a2) Each county register of deeds who is not eligible to retire with the Local Governmental Employees' Retirement System solely because the county has not elected to participate as an employer with the Local Governmental Employees' Retirement System and who has either (i) attained the age of 65, (ii) attained 30 years of creditable service regardless of age, or (iii) attained the age of 60 with not less than 25 years of creditable service, and who has completed at least 10 years of creditable service as a register of deeds is entitled to receive a monthly pension under this Article, provided that register of deeds is not eligible to receive any retirement benefits from any State or locally sponsored plan.

(b) Each eligible retired register of deeds as defined in subsection (a), (a1), or (a2) of this section relating to service and retirement status shall be entitled to receive a monthly pension under this Article beginning with the month of retirement. (1987, c. 792, s. 1; 1991, c. 443, s. 1; 1995, c. 259, s. 1; 1998-147, s. 1; 2007-245, s. 2.)

§ 161-50.5. Benefits.

(a) An eligible retired register of deeds shall be entitled to receive an annual pension benefit, payable in equal monthly installments, equal to one share for each full year of eligible service as register of deeds multiplied by his total number of years of eligible service. The amount of each share shall be determined by dividing the total number of years of eligible service for all eligible retired registers of deeds on December 31 of each calendar year into the amount to be disbursed as monthly pension payments in accordance with the provisions of G.S. 161-50.3. In no event, however, shall a monthly pension under this Article exceed an amount which, when added to a retirement allowance under the maximum allowance at retirement from the Local Governmental Employees' Retirement System or an equivalent locally sponsored plan, is greater than seventy-five percent (75%) of a register of deed's equivalent annual salary immediately preceding retirement computed on the latest monthly rate, including any and all supplements, to a maximum amount of one thousand five hundred dollars ($1,500).

(a1) A register of deeds eligible under G.S. 161-50.4(a2) shall be entitled to receive an annual pension benefit, payable in equal monthly installments as determined under the provisions of subsection (a) of this section, but reduced by an amount equal to the benefit that would be payable from the Local Governmental Employees' Retirement System if the register of deeds had been a member of the Local Governmental Employees' Retirement System and all of the years of local service were creditable to that System.

(b) All monthly pensions payable under this Article shall be paid on the same business day of each month that benefits are paid from the Local Governmental Employees' Retirement System.

(c) Monthly pensions payable under this Article shall cease at the death of the pensioner and no payment will be made to any beneficiaries or to the decedent's estate.

(d) Monthly pensions payable under this Article will cease upon the full-time reemployment of a pensioner with an employer participating in the Local Governmental Employees' Retirement System for as long as the pensioner is so reemployed.

(e) Repealed by Session Laws 1989, c. 792, s. 2.11, effective for taxable years beginning on or after January 1, 1989.

(f) Nothing contained in this Article shall preclude or in any way affect the benefits that a pensioner may be entitled to from any state, federal or private pension, retirement or other deferred compensation plan. (1987, c. 792, s. 1; 1989, c. 792, s. 2.11; 1991, c. 50, s. 1; c. 443, s. 2; 1998-147, s. 2; 2007-245, s. 3; 2009-576, s. 1.)

Editor's Note. — Session Laws 2009-576, s. 2, provides that amendments made to G.S. 161-50.5 by Section 1 of the act shall not apply to any retiree of the Register of Deeds' Supplemental Pension Fund. Section 1 of the act shall not apply to any register of deeds who is serving as of the effective date of this bill (September 10, 2009).

Effect of Amendments. — Session Laws 2009-576, s. 1, effective September 10, 2009, substituted "exceed an amount which, when added to a retirement allowance under the maximum allowance at retirement from the Local Governmental Employees' Retirement System or an equivalent locally sponsored plan, is greater than seventy-five percent (75%)" for "exceed seventy-five percent (75%)" in the last sentence of subsection (a). As to inapplicability of this amendment for certain persons, see the Editor's note.

Chapter 162.

Sheriff.

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The Office.

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ARTICLE 1.

The Office.

§ 162-1. Election and term of office.

In each county a sheriff shall be elected by the qualified voters thereof, as is prescribed for members of the General Assembly, and shall hold his office for four years. (Const., art. 4, s. 24; Rev., s. 2808; C.S., s. 3925.)

Cross References. — As to other oaths required of public officers, see G.S. 11-7 and N.C. Const., Art. VI, § 7. As to form of oath required of sheriff before taking office, see G.S. 11-11. As to penalty for failure to take oath, see G.S. 128-5.

Editor's Note. — An amendment to this section in Session Laws 1981, c. 504, s. 10, was made effective upon certification of approval of the constitutional amendments proposed by ss. 1 to 3 of the act. The constitutional amendments were submitted to the people at an election held June 29, 1982, and were defeated. Therefore, the 1981 amendment to this section never went into effect.

Legal Periodicals. — For a survey of 1996 developments in constitutional law, see 75 N.C.L. Rev. 2281 (1997).

CASE NOTES

A sheriff is no longer considered to have a vested right in his office, nor is his tenure considered to be based upon a contract with the State. Mial v. Ellington, 134 N.C. 131, 46 S.E. 961 (1903), overruling Hoke v. Henderson, 15 N.C. 1 (1833) and all cases following it in holding a public office to be private property.

Effect of Constitutional Amendment on Term of Office. — The term of office of sheriffs-elect begins on the first Monday in December next ensuing their election, and the constitutional amendment changing the term of office of sheriffs from two to four years, approved by the voters in the election of 1938, being in effect on the first Monday in December, the date of the beginning of the term of the sheriffs elected in that election, their term of office was four years in accordance with the amendment then in effect. Freeman v. Cook, 217 N.C. 63, 6 S.E.2d 894 (1940).

Proceedings in Nature of Quo Warranto. — An action by the Attorney General in the name of the people of the State, and of the person who claims the office of sheriff, is the proper mode of proceeding against the person who is alleged to be usurping it, to try the question as to which of the parties is entitled to the office. Loftin v. Sowers, 65 N.C. 251 (1871).

Sheriffs Not Entitled to Eleventh Amendment Immunity. — The Eleventh Amendment of the U.S. Constitution does not bar a suit against a sheriff in his official capacity, because state law treats sheriffs as local officials. Harter v. Vernon, 101 F.3d 334 (4th Cir. 1996), cert. denied, 521 U.S. 1120, 117 S. Ct. 2511, 138 L. Ed. 2d 1014 (1997).

Cited in Fate v. Dixon, 649 F. Supp. 551 (E.D.N.C. 1986); Braswell v. Ellis, 950 F. Supp. 145 (E.D.N.C. 1995); Carter v. Good, 951 F. Supp. 1235 (W.D.N.C. 1996); Efird v. Riley, 342 F. Supp. 2d 413, 2004 U.S. Dist. LEXIS 22140 (M.D.N.C. 2004); Boyd v. Robeson County, — N.C. App. —, 615 S.E.2d 296, 2005 N.C. App. LEXIS 520 (2005).

§ 162-2. Disqualifications for the office.

No person shall be eligible for the office of sheriff who is not of the age of 21 years, or has not resided in the county in which he is chosen for one year immediately preceding his election. No person shall engage in the practice of law or serve as a member of the General Assembly while serving as sheriff. (1777, c. 118, ss. 2, 4, P.R.; 1806, c. 699, s. 2, P.R.; 1829, c. 5, s. 6; 1830, c. 25, ss. 2, 3; R.C., c. 105, ss. 5, 6, 7; Code, ss. 2067, 2068, 2069; Rev., s. 2809; C.S., s. 3926; 1971, c. 1231, s. 1; 1983, c. 670, s. 1.)

CASE NOTES

Full Settlement of Public Funds Required of Incumbent. — A person, although elected by the qualified voters of a county to the office of sheriff, would not be eligible for said office, if he, having been theretofore sheriff of said county, had failed to settle with, and fully pay up to, every officer the taxes which were due from him. Lenoir County v. Taylor, 190 N.C. 336, 130 S.E. 25 (1925).

Incumbent to Produce Receipts. — A former sheriff must exhibit to the board of commissioners the receipts in full of the proper officers, for all public funds which he received, or ought to have received during his preceding official term, before he will be permitted to reenter upon a new term. Colvard v. Board of Comm'rs, 95 N.C. 515 (1886); Lenoir County v. Taylor, 190 N.C. 336, 130 S.E. 25 (1925).

The fact that incumbent was able, ready and willing at the time of tendering his bond, to make settlement and payment of any liability on account of funds so received, does not dispense with the requirement that he shall produce receipts in full. Colvard v. Board of Comm'rs, 95 N.C. 515 (1886).

Requirement to Produce Receipts Con-

stitutional. — The requirement that a sheriff-elect who has theretofore been sheriff produce his tax receipts is not unconstitutional. State ex rel. Lee v. Dunn, 73 N.C. 595 (1875).

Cited in Pender County v. King, 197 N.C. 50, 147 S.E. 695 (1929); Harter v. Vernon, 953 F. Supp. 685 (M.D.N.C. 1996).

§ 162-3. Sheriff may resign.

Every sheriff may vacate his office by resigning the same to the board of county commissioners of his county; and thereupon the board may proceed to elect another sheriff. (1777, c. 118, s. 1, P.R.; 1808, c. 752, P.R.; R.C., c. 105, s. 15; Code, s. 2077; Rev., s. 2810; C.S., s. 3927.)

Local Modification. — Buncombe, Cabarrus and Iredell: 1981, c. 199.

CASE NOTES

Cited in Durham Herald Co. v. County of Durham, 334 N.C. 677, 435 S.E.2d 317 (1993); Boyd v. Robeson County, — N.C. App. —, 615 S.E.2d 296, 2005 N.C. App. LEXIS 520 (2005).

§ 162-4: Repealed by Session Laws 1979, c. 518.

§ 162-5. Vacancy filled; duties performed by coroner or chief deputy.

If any vacancy occurs in the office of sheriff, the coroner of the county shall execute all process directed to the sheriff until the first meeting of the county commissioners next succeeding such vacancy, when the board shall elect a sheriff to supply the vacancy for the residue of the term, who shall possess the same qualifications, enter into the same bond, and be subject to removal, as the sheriff regularly elected. If the board should fail to fill such vacancy, the coroner shall continue to discharge the duties of sheriff until it shall be filled.

In those counties where the office of coroner has been abolished, the chief deputy sheriff, or if there is no chief deputy, then the senior deputy in years of service, shall perform all the duties of the sheriff until the county commissioners appoint some person to fill the unexpired term. In all counties the regular deputy sheriffs shall, during the interim of the vacancy, continue to perform their duties with full authority. (1829, c. 5, s. 8; R.S., c. 109, s. 11; R.C., c. 105, s. 11; Code, s. 2071; Rev., s. 2811; C.S., s. 3929; 1973, c. 74; 1983, c. 670, s. 2.)

Local Modification. — Buncombe, Cabarrus and Iredell: 1981, c. 199.

Legal Periodicals. — For a survey of 1996 developments in constitutional law, see 75 N.C.L. Rev. 2281 (1997).

CASE NOTES

Appointment by Commissioners for Unexpired Term Only. — In case of a vacancy in the sheriff's office, it is within the power of the board of county commissioners to appoint for the unexpired term only. People ex rel. Worley v. Smith, 81 N.C. 304 (1879).

Appointment by Commissioners Where Sheriff-Elect Fails to Qualify. — Where a sheriff-elect failed to qualify as sheriff for the term to which he had been elected, it became the duty of the board of commissioners forthwith to elect some suitable person in the county as sheriff for the unexpired term. Lenoir County v. Taylor, 190 N.C. 336, 130 S.E. 25 (1925).

As Where Incumbent Is in Arrears on Reelection. — It is the duty of the county commissioners to declare the sheriff's office vacant, and appoint someone for the unexpired term, whenever the incumbent thereof is found to be, on reelection, in arrears in his settlement of the public taxes. People ex rel. McNeill v.

Green, 75 N.C. 329 (1876).

Commissioners' Appointee Held Entitled to Office. — Where S was appointed sheriff in 1875, to fill a vacancy, and held the office until May, 1877, and in November, 1876, an election was held, and upon the result of certain legal proceedings in May, 1877, M was declared to be elected sheriff, but M failed to give bond, and the county commissioners declared a vacancy and appointed B to fill the same, it was held that S had no right to hold over until the next popular election, but that B was entitled to the office, having been elected by the commissioners. State ex rel. Sneed v. Bullock, 80 N.C. 132 (1879).

Upon the insanity of the sheriff, his right to exercise the office ceases and the agency of his deputies is terminated, and his committal to a hospital for the insane and the appointment of a guardian for him are certainly at least prima facie evidence of such insanity. Somers v. Board of Comm'rs, 123 N.C. 582, 31 S.E. 873 (1898).

Collection of Taxes When Sheriff Becomes Insane. — Upon the prima facie ascertainment of the insanity of the sheriff, or by inquisition of lunacy, the commissioners may declare the office vacant, under this section, but their failure to do so merely authorizes the coroner to perform the duties of sheriff proper, until such declaration, and does not cast upon him the right to collect the taxes, which goes to the sheriff's bondsmen for the current list, and after that devolves upon a tax collector chosen by the county commissioners. Somers v. Board of Comm'rs, 123 N.C. 582, 31 S.E. 873 (1898). See also, Greer v. City of Asheville, 114 N.C. 678, 19 S.E. 635 (1894).

Upon the declaration of insanity, the sureties of the sheriff have no more rights than would have gone to them upon his death to collect the tax list then in his hands, and the commissioners are vested with the power of electing a tax collector for the ensuing year, unless and until the sheriff should be restored to reason. Somers v. Board of Comm'rs, 123 N.C. 582, 31 S.E. 873 (1898). See also, Perry v. Campbell, 63 N.C. 257 (1869); McNeill v. Sommers, 96 N.C. 467, 2 S.E. 161 (1887).

Cited in Boyd v. Robeson County, — N.C. App. —, 615 S.E.2d 296, 2005 N.C. App. LEXIS 520 (2005).

§ 162-5.1. Vacancy filled in certain counties; duties performed by coroner or chief deputy.

If any vacancy occurs in the office of sheriff, the coroner of the county shall execute all process directed to the sheriff until the board shall elect a sheriff to supply the vacancy for the residue of the term, who shall possess the same qualifications, enter into the same bond, and be subject to removal, as the sheriff regularly elected. If the sheriff were elected as a nominee of a political party, the board of commissioners shall consult the county executive committee of that political party before filling the vacancy, and shall elect the person recommended by the county executive committee of that party, if the party makes a recommendation within 30 days of the occurrence of the vacancy. If the board should fail to fill such vacancy, the coroner shall continue to discharge the duties of sheriff until it shall be filled.

In those counties where the office of coroner has been abolished, the chief deputy sheriff, or if there is no chief deputy, then the senior deputy in years of service, shall perform all the duties of the sheriff until the county commissioners appoint some person to fill the unexpired term. In all counties the regular deputy sheriffs shall, during the interim of the vacancy, continue to perform their duties with full authority.

This section shall apply only in the following counties: Alamance, Alexander, Alleghany, Avery, Beaufort, Brunswick, Buncombe, Burke, Cabarrus, Caldwell, Carteret, Cherokee, Clay, Cleveland, Davidson, Davie, Edgecombe, Forsyth, Gaston, Graham, Guilford, Haywood, Henderson, Hyde, Jackson, Lee, Lincoln, Madison, McDowell, Mecklenburg, Moore, New Hanover, Onslow, Pender, Polk, Randolph, Richmond, Rockingham, Rutherford, Sampson, Stanly, Stokes, Surry, Transylvania, Wake, and Yancey. (1981, c. 763, ss. 10, 14; c. 830; 1983, c. 670, s. 2; 1987, c. 196, s. 3; 1989, c. 83; c. 497, s. 1; 1991, c. 15, s. 1; c. 558, s. 2; 2001-257, s. 2; 2003-39, s. 1; 2003-90, s. 1; 2009-32, s. 2.)

Editor's Note. — Session Laws 1981, c. 763, s. 10, amended G.S. 162-5, but the amendment was codified as this section.

Effect of Amendments. — Session Laws

2009-32, s. 2, effective May 21, 2009, inserted "Lee" in the third paragraph.

CASE NOTES

Cited in Jenkins v. Medford, 119 F.3d 1156 (4th Cir. 1997); Boyd v. Robeson County, — N.C. App. —, 615 S.E.2d 296, 2005 N.C. App. LEXIS 520 (2005).

OPINIONS OF ATTORNEY GENERAL

For a discussion of the proper authority and procedures for appointing an interim county tax collector, see opinion of Attorney General to The Honorable Charles Beall, North Carolina House of Representatives, 1998 N.C.A.G. 35 (8/5/98).

§§ 162-6, 162-7: Repealed by Session Laws 1973, c. 108, s. 99.

ARTICLE 2.

Sheriff's Bond.

§ 162-8. Bond required.

The sheriff shall furnish a bond payable to the State of North Carolina for the due execution and return of process, the payment of fees and moneys collected, and the faithful execution of his office as sheriff, which shall be conditioned as follows:

The condition of the above obligation is such that, whereas the above bounden ______ is elected and appointed sheriff of ______ County; if therefore, he shall well and truly execute and due return make of all process and precepts to him directed, and pay and satisfy all fees and sums of money by him received or levied by virtue of any process into the proper office into which the same, by the tenor thereof, ought to be paid, or to the person to whom the same shall be due, his executors, administrators, attorneys, or agents; and in all other things well and truly and faithfully execute the said office of sheriff during his continuance therein, then above obligation to be void; otherwise to remain in full force and effect.

The amount of the bond shall be determined by the board of county commissioners, but shall not exceed twenty-five thousand dollars ($25,000). (1777, c. 118, s. 1, P.R.; 1823, c. 1223, P.R.; R.C., c. 105, s. 13; 1879, c. 109; Code, s. 2073; 1895, c. 270, ss. 1, 2; 1899, c. 54, s. 52; c. 207, s. 2; 1903, c. 12; Rev., s. 298; C.S., s. 3930; 1943, c. 543; 1983, c. 670, s. 4.)

Cross References. — As to statute of limitation on official bond, see G.S. 1-50. As to official bonds generally, see G.S. 58-72-1 et seq., 162-9 and 162-10. As to right of action on official bond, see G.S. 58-76-5.

Legal Periodicals. — For note, "Extent of Liability on Sheriff's Official Bond," see 12 N.C.L. Rev. 394 (1934).

For a survey of 1996 developments in constitutional law, see 75 N.C.L. Rev. 2281 (1997).

CASE NOTES

I. In General.
II. Liability on Bonds.

I. IN GENERAL.

Editor's Note. *— Most of the cases below were decided under this section as it read prior to amendment by Session Laws 1983, c. 670, s. 4, under which the sheriff was to execute two bonds.*

No Right of Commissioners to Refuse Bonds. — When a sheriff-elect has fulfilled all the statutory requirements as to the execution of bonds, the county commissioners may not refuse said bonds and deprive the rightful holder of his office. Sikes v. Commissioners of Bladen County, 72 N.C. 34 (1875).

Where sheriff failed to comply with the requirements of this section, he was not entitled to have the county commissioners induct him into office, notwithstanding the fact that at the beginning of his term there was a tax collector in that county. Colvard v. Board of Comm'rs, 95 N.C. 515 (1886).

Ceremony and Registration Not Essential. — The ceremony of acknowledgment in open court, and registration, are not essential to the validity of a sheriff's bond. State ex rel. McLean v. Buchanan, 53 N.C. 444 (1862).

Bond Held Valid as Voluntary Bond. — Where a bond made payable to the State was given by a sheriff for the discharge of public duties, but was not taken in the manner or by the persons designated by law to take it, it would nevertheless be good as a voluntary bond; being for the benefit of the State, the State would be presumed to have accepted it when it was delivered to third person for its benefit. State ex rel. Davis v. McAlpin, 26 N.C. 140 (1843).

If a sheriff voluntarily gives bond, with sureties, in an amount larger than prescribed by law, they will be liable for a breach thereof. State Bank of North Carolina v. Twitty, 9 N.C. 5 (1822); Governor ex rel. Henderson v. Matlock, 9 N.C. 366 (1823).

Form of Bond Held Sufficient. — A sheriff's bond to "his Excellency M.S. Captain General and Commander in Chief, in and over the State of North Carolina in the sum of $10,000 to be paid to his Excellency, the Governor, his successor and assigns:" was a bond payable to the Governor in his official capacity, and was an official bond within the act of 1823, which was in force when it was taken. Governor ex rel. Huggins v. Montford, 23 N.C. 155 (1840).

Demand is not necessary before suit by county treasurer on sheriff's bond, as the sheriff is required by law to settle on or before a day certain. McGuire v. Williams, 123 N.C. 349, 31 S.E. 627 (1898).

As to proper relators for settlement of school taxes see State ex rel. Tillery v. Candler, 118 N.C. 888, 24 S.E. 709 (1896); State ex rel. Bd. of Comm'rs v. Sutton, 120 N.C. 298, 26 S.E. 920 (1897).

Previous Settlements Prima Facie Correct. — Previous settlements with the sheriff, when approved by the board of commissioners, are prima facie correct, and the burden of proving to the contrary rests upon them. Commissioners of Iredell County v. White, 123 N.C. 534, 31 S.E. 670 (1898).

The return of a sheriff that a fieri facias is satisfied is conclusive upon his sureties in an action on his official bond. Governor ex rel. State Bank v. Twitty, 12 N.C. 153 (1827).

Failure to Have Insolvent's Allowance Made. — Where a sheriff failed to settle for taxes within the time appointed by law and did not have allowance made him by the commissioners for insolvents at the time and in the manner prescribed by law, he could not have such allowances made by the court in an action brought against him on his official bond for the balance due by him on the tax list. Board of Comm'rs v. Wall, 117 N.C. 377, 23 S.E. 358 (1895).

Certified Copy as Evidence. — The office of the clerk of the superior court of the county for which one is sheriff is the proper place of deposit for the bond of such sheriff, and a copy of such bond, certified by such clerk, is competent evidence of its contents, even if the certificate does not state that it has been recorded. State ex rel. Erwin v. Lowrance, 64 N.C. 483 (1870).

Generally a plea in bar must be disposed of before a reference for an account can be made. Commissioners of Iredell County v. White, 123 N.C. 534, 31 S.E. 670 (1898).

Cited in Governor ex rel. Arundell v. Jones, 9 N.C. 359 (1823); State ex rel. Cain v. Corbett, 235 N.C. 33, 69 S.E.2d 20 (1952); Hull v. Oldham, 104 N.C. App. 29, 407 S.E.2d 611 (1991); Summey v. Barker, 142 N.C. App. 688, 544 S.E.2d 262, 2001 N.C. App. LEXIS 180 (2001); Efird v. Riley, 342 F. Supp. 2d 413, 2004 U.S. Dist. LEXIS 22140 (M.D.N.C. 2004).

II. LIABILITY ON BONDS.

Liability for Wrongs Under Color of Office. — Section 109-34 (now 58-76-5) extends liability on sheriff's general official bond and imposes liability for wrongs committed under color of office. Price v. Honeycutt, 216 N.C. 270, 4 S.E.2d 611 (1939). See also annotations to § 58-76-5.

For cases formerly holding sureties on sheriff's official bond not liable for wrongs committed under color of office, see Jones v. Montford, 20 N.C. 69 (1838); State ex rel. Martin v. Long, 30 N.C. 415 (1848); State ex rel. Butts v. Brown, 33 N.C. 141 (1850); State ex rel. Bd. of Comm'rs v. Sutton, 120 N.C. 298, 26 S.E. 920 (1897); North Carolina ex rel. Wimmer v. Leonard, 68 F.2d 228 (4th Cir. 1934).

Only Duties Specifically Described Are

Covered by Bond. — A sheriff and his sureties are liable on his official bond only for a breach of some duty specifically described therein. Eaton v. Kelly, 72 N.C. 110 (1875). But see, Price v. Honeycutt, 216 N.C. 270, 4 S.E.2d 611 (1939).

For cases construing general words "faithfully execute," etc., as not extending beyond duties specifically described in bond, see Crumpler v. Governor, 12 N.C. 52 (1826); Governor ex rel. County Trustee v. Matlock, 12 N.C. 214 (1827); Davis v. Moore, 215 N.C. 449, 2 S.E.2d 366 (1939), overruled, 217 N.C. 279, 7 S.E.2d 563 (1940).

Liability for Use of Excessive Force in Making Arrest. — Where complaint in an action against a sheriff in his official capacity and against his surety alleged that plaintiff was permanently injured by sheriff's use of excessive force in arresting him and that the arrest was wrongful and unlawful, defendants' demurrer to the complaint should have been overruled. Price v. Honeycutt, 216 N.C. 270, 4 S.E.2d 611 (1939).

Bond Held Broad Enough to Cover Money Collected. — A bond to serve process, collect and pay out moneys, etc., is broad enough to cover money collected for a town which it was the sheriff's duty to collect. State ex rel. Boger v. Bradshaw, 32 N.C. 229 (1849); State ex rel. Prince v. McNeill, 77 N.C. 398 (1877).

School Fund Included in County Bond. — It is immaterial whether the school fund is, strictly speaking, State taxes or county taxes, or both, as such funds are included in the "county" bond and the sheriff must account for them in settling his liability on that bond. State ex rel. Tillery v. Candler, 118 N.C. 888, 24 S.E. 709 (1896); State ex rel. Bd. of Comm'rs v. Sutton, 120 N.C. 298, 26 S.E. 920 (1897).

Settlement of One Tax Fund at Expense of Another. — Where a sheriff's settlement of one tax fund is made partially by an amount deducted from another tax fund, the settlement exonerates him and his surety from liability on the bond for the taxes settled; however, he and his sureties are liable in an action on the bond for the taxes misappropriated for such defalcation. McGuire v. Williams, 123 N.C. 349, 31 S.E. 627 (1898).

No Recovery of County Taxes upon Process Bond. — The county tax could not be recovered of the sheriff upon the official bond required by the Act of 1777, which was the process bond required by this section. Governor ex rel. Campbell v. Barr, 12 N.C. 65 (1826).

The sureties on the "process" bond are not liable for default as to county taxes. Crumpler v. Governor, 12 N.C. 52 (1826); State ex rel. Bd. of Comm'rs v. Sutton, 120 N.C. 298, 26 S.E. 920 (1897).

Bond Held Not to Cover Injury Caused by Prisoner While Unlawfully at Large as Trusty. — Where suit was brought on bond providing for liability if the sheriff failed to properly execute and return all process or properly pay all moneys received by him by virtue of any process, "and in all things well and truly and faithfully execute the said office of sheriff," the general provisions of the bond as to the sheriff's faithful performance of the duties of the office related to the specific obligations therein set out as to service and return of process, and neither the sheriff nor the sureties on his bond was liable thereon in a civil action for damages for a negligent injury inflicted by a prisoner lawfully entrusted to the custody of the sheriff while such prisoner was unlawfully permitted by the sheriff to be at large as a trusty. Sutton v. Williams, 199 N.C. 546, 155 S.E. 160 (1930).

Recovery in Excess of Bond. — In a wrongful death action arising from an incident at a county jail, although the sheriff claimed that sovereign immunity entitled him to summary judgment as a matter of law to the extent plaintiffs — the decedent's mother and the administrator of his estate, sought to recover damages in excess of the sheriff's official bond under G.S. 162-8 and G.S. 58-76-5, plaintiffs' claims were not barred by exclusions in the county's liability insurance under G.S. 153A-435; although the policy excluded coverage for claims arising from criminal behavior and plaintiffs claimed the sheriff was negligent by violating G.S. 153A-224 — a Class 1 misdemeanor, other grounds were alleged for the sheriff's negligence. Myers v. Bryant, 188 N.C. App. 585, 655 S.E.2d 882, 2008 N.C. App. LEXIS 215 (2008).

Former Sheriff's Bond Held Not Breached by Act of Duty Under Successor. — Where deputy of a sheriff received the note of a married woman for collection within a magistrate's jurisdiction and failed to collect the same during the sheriff's official term, but afterwards, when acting as the deputy of his successor, collected it and failed to pay over the money, there was no breach of the former sheriff's official bond. State ex rel. Graham v. Buchanan, 60 N.C. 93 (1863).

Commencement of Sureties' Liability. — Where under G.S. 162-10 the board of county commissioners declared the office of sheriff vacant for his failure to give the bond required by this section and after appointing another, who likewise failed to give bond, and again appointed the former sheriff, who gave the necessary bonds and then qualified, his term was by virtue of his appointment by the board of county commissioners, and the liability of the sureties on his official bonds commenced from the time of his appointment. Pender County v. King, 197 N.C. 50, 147 S.E. 695 (1929).

Coverage of Bonds Limited to Years

Stated. — Where an action was brought on the bonds of a sheriff given in 1872 and 1873 and conditioned only for those years, such bonds could not be enlarged to embrace a default occurring in the year 1874 on the ground that the law required a bond for the principal's whole term of office. State ex rel. Prince v. McNeill, 77 N.C. 398 (1877).

What Sureties Liable for Taxes Received Under Lists Furnished Preceding Year. — A sheriff's sureties for one year are not liable for any taxes received by him under the lists furnished in the preceding year; but the sureties of that year are liable. Fitts v. Hawkins, 9 N.C. 394 (1823).

Where sheriff, elected in 1872, continued to exercise duties of office after failure to renew his bond and produce his receipts, and was reelected in 1874, and failed to collect and pay over the taxes for that year, it was held that he was liable on his bond of 1872. State ex rel. Vann. v. Pipkin, 77 N.C. 408 (1877). See also State ex rel. Moore County v. McIntosh, 31 N.C. 307 (1848); State ex rel. Bd. of Comm'rs v. Clarke, 73 N.C. 255 (1875); State ex rel. Coffield v. McNeill, 74 N.C. 535 (1876).

Liability on Earlier Bond Not Discharged by Giving of Subsequent Bond. — The various bonds separately required to be given by the sheriff under this section impose a distinct liability on the sureties on each bond separately for the terms of office for which given; hence, where a bond is given by the same surety for the same sheriff for more than one successive term, the giving of the bond for the succeeding term does not discharge the bond previously given, nor release the surety from liability thereon, and a separate cause of action will lie against the surety on the bond for each term. Pender County v. King, 197 N.C. 50, 147 S.E. 695 (1929).

Coverage of Bond When New Duty Added by Statute. — Where a statute requires a bond from an officer for the faithful discharge of his duty, and a new duty is attached to the office by statute, such bond, given subsequently to the latter statute, embraces such new duty, and is a security for its performance, unless when the new duty is attached a bond is required to be given specifically for its performance. State ex rel. Boger v. Bradshaw, 32 N.C. 229 (1849).

Surety's Liability Not Affected by Change in Sheriff's Compensation. — The liability of a surety on a sheriff's bond given under this section is not affected by the fact that the sheriff, pending the life of the bond, has been put upon a salary instead of a fee basis or that the amount of his salary has been changed under the authority of a statute. Pender County v. King, 197 N.C. 50, 147 S.E. 695 (1929).

Waiver of Immunity. — In an action in which soldiers, who were shot by a sheriff's deputy, sought to hold the sheriff in his official capacity liable on the basis of respondeat superior for the alleged assault and battery committed by the deputy, the sheriff's governmental immunity was waived pursuant to G.S. 58-76-5 by the purchase of a statutorily required bond under G.S. 162-8 because the sheriff's surety was joined as a party. Massasoit v. Carter, 439 F. Supp. 2d 463, 2006 U.S. Dist. LEXIS 48305 (M.D.N.C. 2006).

§ 162-9. County commissioners to take and approve bonds.

The board of county commissioners in every county shall take and approve the official bond of the sheriffs, which they shall cause to be registered and the original deposited with the clerk of superior court for safekeeping. The bond shall be taken on the first Monday of December next after the election. (1806, c. 699, s. 2, P.R.; 1830, c. 5, s. 5; R.C., c. 105, s. 6; 1868, c. 20, s. 32; 1876-7, c. 276, s. 5; Code, ss. 2066, 2068; Rev., s. 2812; C.S., s. 3931; 1983, c. 670, s. 5.)

CASE NOTES

Purpose. — The evident purpose of this section is only to protect and safeguard the public revenue and to ensure its honest collection and application. Hudson v. McArthur, 152 N.C. 445, 67 S.E. 995 (1910).

Execution and Approval of Bond(s) Essential. — To entitle a sheriff to be inducted into office, it is essentially necessary that the bond(s) must be executed by him and approved by the county commissioners. Dixon v. Commissioners of Beaufort, 80 N.C. 118 (1879).

Commissioners Held Not Liable to Sureties for Failure to Demand Receipts. — County commissioners were not liable to the sureties on the bond of a defaulting sheriff and tax collector whose defalcations they were required to pay for failure to demand sheriff's receipts in full for taxes collected the previous year before permitting him to receive the tax duplicate for the current year. Hudson v. McArthur, 152 N.C. 445, 67 S.E. 995 (1910).

Cited in Pender County v. King, 197 N.C. 50, 147 S.E. 695 (1929); Boyd v. Robeson County, — N.C. App. —, 615 S.E.2d 296, 2005 N.C. App. LEXIS 520 (2005).

§ 162-10. Duty of commissioners when bond insufficient.

Whenever the board of county commissioners finds that the sheriff has been unable to provide the bond prescribed by the board, the board shall give written notice to the sheriff to appear before the board within 10 days and provide a sufficient bond. If the sheriff fails to appear or provide a sufficient bond, the sheriff shall forfeit his office, and the commissioners shall elect a suitable person in the county as sheriff for the unexpired term, pursuant to G.S. 162-5 or G.S. 162-5.1, as appropriate. (1879, c. 109, s. 2; Code, s. 2074; Rev., s. 2813; C.S., s. 3932; 1983, c. 670, s. 6.)

Cross References. — As to bonds required of sheriff, see G.S. 162-5, 162-8.

CASE NOTES

Power to Fill Vacancy on Sheriff's Failure to Give Bond. — Upon the failure of a sheriff-elect to give bond(s) required by law, the board has power to elect some suitable person in the county as sheriff for the unexpired term. Lenoir County v. Taylor, 190 N.C. 336, 130 S.E. 25 (1925).

Right to Examine Sheriff and Vacate Office. — Under Art. VII, § 2, Const. 1868, the county commissioners had the right to summons the sheriff to justify or renew his official bond, whenever in fact or in their opinion the sureties had become, or were liable to become insolvent, and it was not only the right but the duty of the commissioners to declare the office of sheriff vacant and appoint another person for the unexpired term whenever the incumbent took no notice of a summons by the commissioners to appear before them and justify or renew his bond. People ex rel. McNeill v. Green, 75 N.C. 329 (1876).

Cited in Pender County v. King, 197 N.C. 50, 147 S.E. 695 (1929); Boyd v. Robeson County, — N.C. App. —, 615 S.E.2d 296, 2005 N.C. App. LEXIS 520 (2005).

§ 162-11: Repealed by Session Laws 1983, c. 670, s. 7.

§ 162-12. Liability of sureties.

The sureties to a sheriff's bond shall be liable for all fines and amercements imposed on him, in the same manner as they are liable for other defaults in his official duty. (1829, c. 33; R.C., c. 105, s. 14; Code, s. 2076; Rev., s. 2815; C.S., s. 3934.)

Cross References. — As to execution of sheriff's bonds, see G.S. 162-8 and notes thereto.

CASE NOTES

Liability for Amercements. — The sureties to a sheriff's bond, with a condition in the ordinary form, are liable for an amercement of the sheriff for a default committed during his official year, even though the final judgment for the amercement may not have been rendered until after the expiration of the year. Governor ex rel. Huggins v. Montford, 23 N.C. 155 (1840).

Records of Proceedings for Amercement as Evidence. — The records of the proceedings against a sheriff for an amercement imposed upon him are not evidence against his sureties to prove his default, but they are admissible against them to prove the fact of the existence of the amercement itself. Governor ex rel. Huggins v. Montford, 23 N.C. 155 (1840).

Judgment of an amercement against a sheriff is not conclusive against sureties on his bond. They may show that the judgment was either fraudulently or improperly obtained against their principal. State ex rel. Parker v. Woodside, 29 N.C. 296 (1847).

Return Conclusive. — A sheriff cannot be heard to deny or contradict his return; as to him it is conclusive, and he and the sureties upon his bond are liable to the plaintiff in the execution for the sums so endorsed. Walters v. Moore, 90 N.C. 41 (1884).

ARTICLE 3.

Duties of Sheriff.

§ 162-13. To receipt for process.

Every sheriff or coroner shall, when requested, give his receipt for all original and mesne process placed in his hands for execution, to the party suing out the same, his agent or attorney; and such receipt shall be admissible as evidence of the facts therein stated, against such officer and his sureties, in any suit between the party taking the receipt and such officer and his sureties. (1848, c. 97; R.C., c. 105, s. 18; Code, s. 2081; Rev., s. 2816; C.S., s. 3935; 1995, c. 379, s. 14(d).)

Cross References. — As to duty when warrant of attachment is directed to sheriff, see G.S. 1-440.12. As to duties and liabilities in claim and delivery, see G.S. 1-476, 1-477. As to duty to adjourn court in absence of judge, see G.S. 7A-96. As to attachment for failure to obey writ of habeas corpus, see G.S. 17-16. As to attachment against sheriff to be directed to coroner, see G.S. 17-18. As to official deed, when sheriff selling or empowered to sell is out of office, see G.S. 39-5.

Legal Periodicals. — For a survey of 1996 developments in constitutional law, see 75 N.C.L. Rev. 2281 (1997).

CASE NOTES

This section obviously has no reference to final process. Person v. Newsom, 87 N.C. 142 (1882).

Cited in Messick v. Catawba County, 110 N.C. App. 707, 431 S.E.2d 489 (1993); Braswell v. Ellis, 950 F. Supp. 145 (E.D.N.C. 1995); Carter v. Good, 951 F. Supp. 1235 (W.D.N.C. 1996).

§ 162-14. Duty to execute process.

Every sheriff, by himself or his lawful deputies, shall execute and make due return of all writs and other process to him legally issued and directed, within his county or upon any river, bay or creek adjoining thereto, or in any other place where he may lawfully execute the same. (1777, c. 218, s. 5, P.R.; 1821, c. 1110, P.R.; R.C., c. 105, s. 17; 1874, c. 33; Code, s. 2079; 1899, c. 25; Rev., s. 2817; C.S., s. 3936; 1973, c. 108, s. 98; 1983, c. 670, s. 8.)

Cross References. — As to service of process and return, see G.S. 1A-1, Rule 4. As to failure to return process or making false return, see also G.S. 14-242. As to penalty for false return to writ of habeas corpus, see G.S. 17-27. As to return of process by mail, see G.S. 162-16. As to liability of outgoing sheriff for unexecuted process, see G.S. 162-17.

Local Modification. — Bertie, Martin: 2008-79, s. 1.

Legal Periodicals. — For a survey of 1977 law on torts, see 56 N.C.L. Rev. 1136 (1978).

CASE NOTES

I. General Consideration.
II. Penalties.
  A. In General.

B. Failure to Make Due Return.
C. False Returns.

I. GENERAL CONSIDERATION.

Editor's Note. *— The cases below were decided under former provisions of this section as it read prior to the 1983 amendment, which provided penalties for neglecting to make returns and for making false returns.*

"Return" Defined. — The term "return" means that the process must be brought back and produced in the court whence it issued with such endorsement as the law requires. Watson v. Mitchell, 108 N.C. 364, 12 S.E. 836 (1891).

The term "return" implies that the process is taken back, with such endorsements as the law requires, to the place from which it originated. Brogden Produce Co. v. Stanley, 267 N.C. 608, 148 S.E.2d 689 (1966).

Who May Issue Process. — Process can be issued by the mayor of a town or city to any lawful officer such as a sheriff, whose duty it then becomes to execute and make due return. State v. Cainan, 94 N.C. 880 (1886); Paul v. Washington, 134 N.C. 363, 47 S.E. 793 (1904).

Applied in East Carolina Lumber Co. v. West, 247 N.C. 699, 102 S.E.2d 248 (1958); Red House Furn. Co. v. Smith, 310 N.C. 617, 313 S.E.2d 569 (1984).

Cited in Boyd v. Robeson County, — N.C. App. —, 615 S.E.2d 296, 2005 N.C. App. LEXIS 520 (2005).

II. PENALTIES.

A. In General.

This section authorizes the following penalties and remedies: 1) An amercement nisi for $100.00 on "motion and proof" by the party aggrieved, for failure to "execute and make due return"; 2) A qui tam action for penalty of $500.00 for a "false return," one moiety to the party aggrieved, and the other to anyone who will sue for the same; 3) An action for damages by the party aggrieved; 4) An amercement nisi for $100.00 in justices' courts, on "motion and proof" by the party aggrieved, for "neglect or refusal" to execute process of such court. Piedmont Mfg. Co. v. Buxton, 105 N.C. 74, 11 S.E. 264 (1890); Rollins v. Gibson, 293 N.C. 73, 235 S.E.2d 159 (1977).

The public policy which prompted the enactment of this section is no less valid today, and the need for such a statute is no less real. Brogden Produce Co. v. Stanley, 267 N.C. 608, 148 S.E.2d 689 (1966).

The penalty is given to the party aggrieved chiefly as a punishment to the officer, and to stimulate him to active obedience. Red House Furn. Co. v. Smith, 63 N.C. App. 769, 306 S.E.2d 130 (1983), rev'd on other grounds, 310 N.C. 617, 313 S.E.2d 569 (1984).

The courts have no "dispensing power" to relieve a sheriff from the penalty imposed by this section. Swain v. Phelps, 125 N.C. 43, 34 S.E. 110 (1899); Brogden Produce Co. v. Stanley, 267 N.C. 608, 148 S.E.2d 689 (1966); Red House Furn. Co. v. Smith, 63 N.C. App. 769, 306 S.E.2d 130 (1983), rev'd on other grounds, 310 N.C. 617, 313 S.E.2d 569 (1984).

This section imposes no undue hardship upon sheriffs. Brogden Produce Co. v. Stanley, 267 N.C. 608, 148 S.E.2d 689 (1966); Red House Furn. Co. v. Smith, 63 N.C. App. 769, 306 S.E.2d 130 (1983), rev'd on other grounds, 310 N.C. 617, 313 S.E.2d 569 (1984).

Section Not Applicable to Federal Marshal. — Motion founded upon this section could not be allowed in federal district court, as such court has no power to enforce against a federal marshal a penalty imposed by the law of this State upon a sheriff for neglect of duty. Lowry v. Story, 31 F. 769 (W.D.N.C. 1887).

B. Failure to Make Due Return.

Essential Elements. — Delivery of process to officer and his failure to execute its commands and make due return are essential ingredients in the criminal dereliction of duty followed by penal consequences summarily enforced. Yeargin v. Wood, 84 N.C. 326 (1881).

The sheriff must be diligent in both the execution and return of process or suffer the $100.00 penalty provided in this section. Rollins v. Gibson, 293 N.C. 73, 235 S.E.2d 159 (1977); Red House Furn. Co. v. Smith, 63 N.C. App. 769, 306 S.E.2d 130 (1983), rev'd on other grounds, 310 N.C. 617, 313 S.E.2d 569 (1984).

Making Due Return Is an Affirmative Requirement. — The requirements that an officer having process in hand for service must note on the process the date received by him under G.S. 1A-1, Rule 4 and make due return thereof under G.S. 162-14 are affirmative requirements of these sections. State v. Moore, 230 N.C. 648, 55 S.E.2d 177 (1949).

What Constitutes Due Return. — Due return of process means a proper return, made in proper time. Waugh v. Brittain, 49 N.C. 470 (1857).

Due Return May Be Mixed Question of Law and Fact. — Whether, in any particular case, a due return has been made, may involve questions both of law and fact. Whether the return is a proper one in form and substance is a question of law to be decided by the court, but whether it was made in proper time is a question of fact to be decided by the jury. Waugh v. Brittain, 49 N.C. 470 (1857).

Whether the return was made in proper time is a question of fact to be decided by the jury. Brogden Produce Co. v. Stanley, 267 N.C. 608, 148 S.E.2d 689 (1966).

Section Prescribes Exclusive Method of Recovering Penalty. — The method by which a sheriff may be amerced for unlawfully failing to execute a warrant, as prescribed by this section, is alone to be followed in an action for a penalty brought thereunder. Walker v. Odom, 185 N.C. 557, 118 S.E. 2 (1923).

This section provides only for an amercement, on motion, for the failure of a sheriff to make due and proper return of process. Piedmont Mfg. Co. v. Buxton, 105 N.C. 74, 11 S.E. 264 (1890). See also, Harrell v. Warren, 100 N.C. 259, 6 S.E. 777 (1888), overruled on other grounds in Rollins v. Gibson, 293 N.C. 73, 235 S.E.2d 159 (1977).

A civil action cannot be resorted to in order to recover the penalty prescribed by this section. Piedmont Mfg. Co. v. Buxton, 105 N.C. 74, 11 S.E. 264 (1890).

Controlling Effect of Exemption Laws. — The provisions of the exemption laws (N.C. Const., Art. X, and the statutes passed in pursuance thereof) so modify Battle's Revisal, c. 106, G.S. 15 (now this section) as not to authorize the infliction of the penalty therein imposed for obedience to said exemption laws. Richardson v. Wicker, 80 N.C. 172 (1879).

An amercement is a penalty for a fixed sum without regard to the amount of plaintiff's damage. Thompson v. Berry, 65 N.C. 484 (1871); Brogden Produce Co. v. Stanley, 267 N.C. 608, 148 S.E.2d 689 (1966).

Purpose of Penalty. — The $100.00 is given to the plaintiff in the execution upon the theory that he is aggrieved, but chiefly as a punishment to the officer and to stimulate him to active obedience. Brogden Produce Co. v. Stanley, 267 N.C. 608, 148 S.E.2d 689 (1966).

Sheriff cannot be amerced if he returns an execution within the time prescribed by law, even though he fails to return the money levied thereon into court or pay it to the party or his attorney. Davis v. Lancaster, 5 N.C. 255 (1809); Cockerham v. Baker, 52 N.C. 288 (1859).

Time for Return. — Executions shall be returnable to the term (session) of the court next after that from which they bear teste; the sheriff is allowed all the days of the term (session) to return an execution, unless he be ruled, upon motion and cause shown, to return it on some intermediate day. Person v. Newsom, 87 N.C. 142 (1882); Turner v. Page, 111 N.C. 291, 16 S.E. 174 (1892).

A sheriff who fails to make return of process before the adjournment of the court to which it is returnable is subject to the penalty prescribed by statute. Boyd v. Teague, 111 N.C. 246, 16 S.E. 338 (1892); Turner v. Page, 111 N.C. 291, 16 S.E. 174 (1892).

Process Must Be Delivered 20 Days Before Session. — To bring a delinquent officer within the provisions of this section and subject him to its pains, process must be delivered to him 20 days before it is to be returned, and there must be "proof of such delivery." Yeargin v. Wood, 84 N.C. 326 (1881).

Delivery of Process by Mail. — The proof was sufficient for an amercement nisi under former rulings where it was shown that the process in an envelope properly directed and with postage prepaid was deposited in the post office in time to enable it to reach its destination in the due course of the mail 20 days before the session of the court to which it was returnable. State v. Latham, 51 N.C. 233 (1858); Yeargin v. Wood, 84 N.C. 326 (1881).

If a clerk sent a writ to the sheriff of another county, enclosed in a stamped envelope, in due time to reach him in the regular course of the mails, 20 days before the sitting of the court to which it was returnable, it would be sufficient to authorize a judgment nisi for an amercement for the nonreturn of the process. State v. Latham, 51 N.C. 233 (1858); Cockerham v. Baker, 52 N.C. 288 (1859).

Making Return by Mail. — If the mail can be used as a medium by which process can be transmitted to a sheriff, so as to charge him with its reception, it would seem that he ought to be allowed to adopt the same means for making his return, at least so far as the due time of the return is involved. In Waugh v. Brittain, 49 N.C. 470 (1857), it was intimated that he might do so, and that he would be excused if the letter endorsing the process, with his return upon it, was properly mailed in due time. Cockerham v. Baker, 52 N.C. 288 (1859).

Sheriff who goes out of office before return day of writ is not subject to amercement for failure to return it. McLin v. Hardie, 25 N.C. 407 (1843); State ex rel. Parker v. Woodside, 29 N.C. 296 (1847).

Until his fees are paid or tendered, sheriff is not bound to execute process. Johnson v. Kenneday, 70 N.C. 435 (1874).

But Is Not Excused Thereby for Failure to Make Return. — Though a sheriff is not required to execute process until his fees are paid or tendered by the person at whose expense the service is to be rendered, he is not excused thereby for a failure to make a return of process; for, if he has any excuse for not executing the writ, he must state it in his return. Jones v. Gupton, 65 N.C. 48 (1871).

The highest considerations of public policy require that sheriffs shall not be negligent in the service of process committed to them. Ignorance of the officer is no excuse. Whether any damage was done to the plaintiff is immaterial. The amercement is for failure to discharge an official duty. Brogden Produce Co. v. Stanley, 267 N.C. 608, 148 S.E.2d 689 (1966).

It is no excuse that the sheriff has no

corrupt or bad intentions and that the plaintiff is saved from any resulting injury by the voluntary appearance of the defendant. Brogden Produce Co. v. Stanley, 267 N.C. 608, 148 S.E.2d 689 (1966).

Endorsing Process "Served". — While it is a better practice for officers to make their returns of process show with particularity upon whom and in what manner the process was served, their endorsement "served" implies service as the law requires, and such return, signed by the officer in his official capacity, is sufficient to show prima facie service at least; error in the date of service is immaterial. State v. Moore, 230 N.C. 648, 55 S.E.2d 177 (1949).

Endorsing Execution "Satisfied". — Where a sheriff merely endorsed upon an execution the word "satisfied," without stating what disposition he had made of the fund, the return was nevertheless sufficient in law to relieve him from an amercement for not making due return. Wyche v. Newsom, 87 N.C. 142 (1882).

Order Restraining Further Prosecution of Action in Which Execution Issued. — Where sheriff failed to serve execution of a judgment against defendant in summary ejectment to remove her from land because of an intervening order restraining plaintiff from further prosecuting the summary ejectment, issued in a prior pending action to try title, motion to amerce the sheriff for failure to serve the execution was properly denied, since the sheriff had shown sufficient cause for failing to serve the execution. Massengill v. Lee, 228 N.C. 35, 44 S.E.2d 356 (1947).

An agreement to suspend collection of the debt, or to stay the execution, as it is commonly called, even if communicated to the sheriff, gives no authority to the officers not to return the writ. Brogden Produce Co. v. Stanley, 267 N.C. 608, 148 S.E.2d 689 (1966).

Where a scire facias was issued on a judgment, the sheriff was liable to amercement for failure to return the process, even though the parties had agreed, while it was in the sheriff's hands, that the collection of the money should be suspended, so as to enable them to make a full settlement. Morrow v. Allison, 33 N.C. 217 (1850).

Belief That Lien Was Divested by Subsequent Legislation. — A sheriff is liable to be amerced for a return on a vend. ex. of "no goods," etc., after levy, although made in the belief that the lien has been divested by subsequent legislation. McKeithan v. Terry, 64 N.C. 25 (1870).

Erroneous Impression of Return Day. — It is not a defense to an action to recover the penalty prescribed by the section that sheriff had the erroneous impression that the summons was returnable at a later date, and that his failure to make his return within the time required was occasioned by endeavoring to obtain service. Bell v. Wycoff, 131 N.C. 245, 42 S.E. 608 (1902).

Refusal or Inability of Clerk to Receive Return. — It is not a sufficient excuse to an officer for neglecting to return a process to the proper term (session) of the court that he had tendered it to the clerk, who had refused to receive it, nor that the clerk had died during the term (session). Hamlin v. March, 31 N.C. 35 (1848).

Failure to Collect Where Debtor Had No Property in Excess of Exemptions. — A sheriff was not liable to amercement for failure to have in court the amount of an execution issued on a judgment for a debt contracted prior to 1868, when the judgment debtor had no property in excess of his exemptions, under the applicable law. Richardson v. Wicker, 80 N.C. 172 (1879).

Officer Held Liable for Penalty. — A sheriff who had not sold property under execution nor made return on writs of venditioni exponas should be amerced. Anonymous, 2 N.C. 415 (1796).

A return by sheriff on a fieri facias that he had levied on goods subject to older executions, without stating whether he had sold the property seized or still held it, was not a due return, and subjected him to amercement. Buckley v. Hampton, 23 N.C. 322 (1840).

A return of a sheriff to a fieri facias that "he had made a levy on personal property and taken a forthcoming bond, but had not sold it, that the obligors did not deliver the property on the day, and that, after the day, it was too late to make a sale," was not such a "due return" of the process as will exempt the sheriff for amercement. Frost v. Rowland, 27 N.C. 385 (1845).

Officer Held Not Liable for Penalty. — Where summons sent by mail did not reach officer until six days before the sitting of the court to which it was returnable, and he served it in two days thereafter, he was not liable to amercement. Yeargin v. Wood, 84 N.C. 326 (1881).

Where a sheriff endorsed upon an execution the words "debt and interest due to sheriff, costs paid into office," and upon another the word "satisfied," without stating what disposition he had made of the fund, the returns were held to be sufficient in law to relieve the sheriff from amercement for not making "due return." Person v. Newsom, 87 N.C. 142 (1882).

Jurisdiction of Superior Court. — Where the sheriff has laid himself liable to the penalty for failure to make due return of process, the superior court has jurisdiction to give the judgment nisi on motion. Thompson v. Berry, 64 N.C. 79 (1870).

Party Aggrieved Is Entitled to Judgment Nisi as of Course. — Upon motion and proof that a sheriff has failed to return process delivered to him, as directed in the process and required by law, the party aggrieved is entitled, as of course, to judgment nisi against him. Brogden Produce Co. v. Stanley, 267 N.C. 608, 148 S.E.2d 689 (1966).

And Penalty Is Imposed Unless Sheriff Shows Cause at Next Succeeding Term to Vacate Amercement. — The penalty is imposed upon the delinquency of the sheriff for failing to make due return of the execution unless, at the next succeeding term after judgment nisi is entered against him, he shows to the court sufficient cause to vacate the tentative amercement. Brogden Produce Co. v. Stanley, 267 N.C. 608, 148 S.E.2d 689 (1966).

Making Judgment Nisi Absolute. — Where judgment nisi for $100.00 is rendered against a sheriff for failure to make due return of process, and no sufficient reason is shown for such failure, the judgment should be made absolute. C.E. Graham & Co. v. Sturgill, 123 N.C. 384, 31 S.E. 705 (1898).

Setting Aside Judgment Absolute. — In a proceeding to enforce the statutory penalty against a sheriff for failure to make due return of process, it is not error to set aside a judgment absolute where it appears that he had no notice of the rule upon him to show cause. Yeargin v. Wood, 84 N.C. 326 (1881).

Amercement at Subsequent Session. — A sheriff may be amerced for a nonreturn of process at a term (session) subsequent to that at which the process was returnable. Hyatte v. Allison, 48 N.C. 533 (1856).

A sheriff who fails to execute and return process shall be subject to a penalty to be paid to the party aggrieved, by order of the court, on motion and proof that process was delivered to him before the sitting of the court to which it was returnable, unless the sheriff shows sufficient cause to the court for his failure "at the court next succeeding such order." And there is nothing in the statute to prevent a sheriff who does not return process from being amerced at a subsequent term (session) to that to which the return should have been made. Halcombe v. Rowland, 30 N.C. 240 (1848).

As to the time of trial, see Hogg v. Bloodworth, 1 N.C. 593 (1804).

Effect of Surplusage in Affidavit. — When a prima facie case is made against a sheriff, either upon affidavit or other sufficient proof, a rule nisi is granted as of course, and surplusage in the affidavit will not impair its effect. Ex parte Schenck, 63 N.C. 601 (1869).

Trial on Affidavits. — On a scire facias against a sheriff to amerce him for not returning an execution into the Supreme Court, whence it issued, issues of fact must be tried on affidavits, as the court has no power to call a jury. Kea v. Melvin, 48 N.C. 243 (1855).

C. False Returns.

This section applies to process issued in criminal, as well as civil, proceedings, and Martin v. Martin, 50 N.C. 349 (1858) and Harrell v. Warren, 100 N.C. 259, 6 S.E. 777 (1888) are hereby overruled. Rollins v. Gibson, 293 N.C. 73, 235 S.E.2d 159 (1977).

A return untrue in fact is a false return within the intent and meaning of this section. Crowder v. Jenkins, 11 N.C. App. 57, 180 S.E.2d 482 (1971).

The importance of veracity of quasi-judicial records led to adoption of the stringent rule that every untrue return, in fact, is a false return within the purview of this section. Rollins v. Gibson, 293 N.C. 73, 235 S.E.2d 159 (1977).

Falseness in Point of Fact Essential to Liability. — For the sheriff to incur the heavy $500.00 penalty, the return must be false in point of fact, and not false merely as importing, from facts truly stated, a wrong legal conclusion. Rollins v. Gibson, 293 N.C. 73, 235 S.E.2d 159 (1977).

To subject one to the heavy penalty of this section, the falseness must be stated as a fact and not merely by way of inference from facts. Rollins v. Gibson, 293 N.C. 73, 235 S.E.2d 159 (1977).

In order to render a sheriff liable for a false return under the section, falsehood must be found in the statement of facts in the return. Harrell v. Warren, 100 N.C. 259, 6 S.E. 777 (1888), overruled on other grounds in Rollins v. Gibson, 293 N.C. 73, 235 S.E.2d 159 (1977).

A false inference in a return will render the return false only if the facts are omitted from the return. Where the facts underlying the inference or conclusion are truly stated in the return there can be no liability for a false return, even though the sheriff may still be exposed to a lesser liability for failing to execute the writ or for not making a proper and legal return. Rollins v. Gibson, 293 N.C. 73, 235 S.E.2d 159 (1977).

Conclusion That Defendant Cannot Be Found as Basis for False Return. — The conclusion found in a return that the defendant "after a due and diligent search is not to be found," without more, if untrue, may be the basis for a finding of a false return. Rollins v. Gibson, 293 N.C. 73, 235 S.E.2d 159 (1977).

A sheriff can be liable under this section for a return of criminal process which states only that a defendant "after due and diligent search is not to be found," when a jury finds, upon sufficient competent evidence, that the return is false. Rollins v. Gibson, 293 N.C. 73, 235 S.E.2d 159 (1977).

The return of "Not to be found" on a capias, because of defendant's being out of the State at the time the return is made, is not true if the officer had an opportunity of making the arrest previously, while the process was in his hands. Martin v. Martin, 50 N.C. 349 (1858), overruled on other grounds in Rollins v. Gibson, 293 N.C. 73, 235 S.E.2d 159 (1977). See also, Tomlinson v. Long, 53 N.C. 469 (1862); Harrell v. Warren, 100 N.C. 259, 6 S.E. 777 (1888), overruled on other grounds in Rollins v. Gibson, 293 N.C. 73, 235 S.E.2d 159 (1977).

Damage to Plaintiff Immaterial. — It is immaterial in a civil action for the $500.00 penalty whether any damage was done to the plaintiff. Rollins v. Gibson, 293 N.C. 73, 235 S.E.2d 159 (1977).

The $500.00 penalty is not intended to be a substitute for damages to an injured party, as this section allows the party aggrieved to bring a separate action for damages. Rollins v. Gibson, 293 N.C. 73, 235 S.E.2d 159 (1977).

Mistake, Inadvertence and Intent Immaterial. — Every return untrue in fact is a false return within this section, even though the officer may be mistaken in the matter or insert the fact in his return by inadvertence. It is immaterial that the officer had no selfish purpose to subserve, or was unmoved by any criminal intent. If in returning to the court his action under an execution, his return is false in its facts or any of the facts touching the things done under it, he is as well exposed to the penalty of $500.00 as if the false facts were willfully and corruptly inserted. Crowder v. Jenkins, 11 N.C. App. 57, 180 S.E.2d 482 (1971); Rollins v. Gibson, 293 N.C. 73, 235 S.E.2d 159 (1977).

If a return is false in fact, the officer's inadvertence or mistake is no excuse or protection, even though no intentional deceit was practiced. Harrell v. Warren, 100 N.C. 259, 6 S.E. 777 (1888), overruled on other grounds in Rollins v. Gibson, 293 N.C. 73, 235 S.E.2d 159 (1977).

A return made by a sheriff that is false in fact, even though the officer was mistaken in the manner as to which he made his return, will nevertheless, subject him to the penalty for a false return. Albright v. Tapscott, 53 N.C. 473 (1862).

Officer Held Liable for False Return. — Where a sheriff returned upon a fieri facias two credits for money received thereon at different times, but suppressed a third credit, and marked his return not satisfied, such return was false, and subjected him to the penalty of $500.00. Martin v. Martin, 50 N.C. 346 (1858).

Officer Held Not Liable for False Return. — Where a sheriff endorsed truly the day on which he received a declaration in ejectment, returnable to a county court, and returned on the same "too late to hand," although five days intervened between the day endorsed and the return day, he was not liable for the penalty for making a false return. Hassell v. Latham, 52 N.C. 465 (1860).

Where an execution was placed in sheriff's hands and levied by him on the goods of the defendant therein named; defendant in execution, at the time of the levy, demanded that his exemptions be allotted to him and paid the sheriff $2.50 in partial satisfaction of the execution; and after keeping the goods several days and receiving the $2.50, the sheriff returned the execution, "Levy made; fees demanded for laying off exemptions and not paid; no further action taken", failure to mention the payment of $2.50 in the return made the return defective, but did not render the sheriff liable to the penalty imposed for a false return. Harrell v. Warren, 100 N.C. 259, 6 S.E. 777 (1888), overruled on other grounds in Rollins v. Gibson, 293 N.C. 73, 235 S.E.2d 159 (1977).

Where a deputy sheriff who had an order of arrest to be executed went to the house of the person named therein and, after reading to him the summons in the action, told him that he had an order of arrest for him, but after some talk, left the bond with him, on his promise to call next day and fix the matter up, as the deputy did not have or attempt to have within his control in any way the party named in the order, there was no arrest, and a return of the order "Not served" did not render the officer liable for a false return. State ex rel. Lawrence v. Buxton, 102 N.C. 129, 8 S.E. 774 (1889).

Where a sheriff, having in hand an order of arrest against an individual, told him that he "had better come and go with him to Jackson, and fix the matter there", but the individual refused to go with him, and the sheriff left, without taking any further action, what passed did not constitute an arrest, and therefore the sheriff was not liable for a false return in returning "not served" on the order of arrest. State ex rel. Lawrence v. Buxton, 102 N.C. 129, 8 S.E. 774 (1889).

Penalty to Be Enforced in Civil Action. — The action for $500.00 penalty for "false return" is properly sought to be maintained by civil action. Piedmont Mfg. Co. v. Buxton, 105 N.C. 74, 11 S.E. 264 (1890).

The correct procedure under this section to recover the penalty from a sheriff for making a false return is by civil action. Crowder v. Jenkins, 11 N.C. App. 57, 180 S.E.2d 482 (1971).

Any person may sue for the penalty imposed upon sheriffs by this section for a false return, and need not mention in his complaint the other party to whom the statute gives one half of the recovery. Harrell v. Warren, 100 N.C. 259, 6 S.E. 777 (1888), overruled on other grounds, Rollins v. Gibson, 293 N.C. 73, 235 S.E.2d 159 (1977). See also Martin v. Martin, 50 N.C. 349 (1858), overruled on other grounds, Rollins v. Gibson, 293 N.C. 73, 235 S.E.2d 159 (1977); Peebles v. Newsom, 74 N.C. 473 (1876).

Power of Court to Allow Return to Be Amended. — A sheriff may move to amend his return of process so as to make it speak the truth even after suit has been brought for the penalty imposed for a false return, even though the amendment defeats plaintiff's right to recover such penalty. However, the sheriff does not as a matter of law have the right to amend his return in order to correct his error, but it is within the discretion of the presiding judge to allow such amendments in meritorious cases. Rollins v. Gibson, 293 N.C. 73, 235 S.E.2d 159 (1977).

The court has the discretionary power, in proper cases, to allow a sheriff to amend his return of process to speak the truth, even though the amendment will defeat the penalty for a false return. Crowder v. Jenkins, 11 N.C. App. 57, 180 S.E.2d 482 (1971).

Where a sheriff to whom a summons issued returned it "served," and was sued for the $500.00 penalty for false return provided for by this section, the court properly permitted him, for proper reasons set out in his affidavit, to amend this return. Swain v. Burden, 124 N.C. 16, 32 S.E. 319 (1899); Swain v. Phelps, 125 N.C. 43, 34 S.E. 110 (1899).

Amendment of Return Held Improper. — It was not proper for the trial judge to permit defendants to amend return during course of trial where plaintiff alleged and defendants admitted that the return had been marked "served by delivering a copy thereof to this plaintiff" but that the sheriff "did not serve the original order of court upon the plaintiff," and where the parties stipulated at a pretrial conference that the return showing "that it was delivered to the plaintiff was not correct." Crowder v. Jenkins, 11 N.C. App. 57, 180 S.E.2d 482 (1971).

Time For Appeal Where Return Amended. — When, in an action against a sheriff for a false return, the court permits such return to be amended, the plaintiff should note his exception and, unless the amended return is admitted to be true, proceed to try the issue. An appeal before final judgment on such admission or a verdict is premature and will be dismissed. Piedmont Mfg. Co. v. Buxton, 105 N.C. 74, 11 S.E. 264 (1890).

When the falsity of the return was alleged and not controverted, the issue of the truth or falsity of the return was removed from the case. Crowder v. Jenkins, 11 N.C. App. 57, 180 S.E.2d 482 (1971).

Statute of Limitations. — Action upon sheriff's official bond to recover the penalty for a false return made more than six years previously was barred by the statute of limitations. State ex rel. Hobbs v. Barefoot, 104 N.C. 224, 10 S.E. 170 (1889).

OPINIONS OF ATTORNEY GENERAL

Any depository for criminal process which has been legally issued and directed to sheriff must remain within control and supervision of sheriff because it is the sheriff who is responsible, by law, for its proper and timely service. See opinion of Attorney General to Honorable Frank W. Snepp, Jr., Senior Resident Superior Court Judge, Mecklenburg County, 58 N.C.A.G. 30 (1988).

§ 162-15. Imposition of penalty; procedure.

In any case in which a person aggrieved seeks the imposition of penalties against a sheriff for failure or neglect to perform any duty of office or for any default in office as provided in G.S. 162-12, he may proceed by motion in the cause, supported by an affidavit, in a pending action. Upon the filing of a motion in the cause the clerk shall deliver a copy of the motion and affidavit and an order to show cause to the sheriff. (1871-2, c. 74, s. 4; Code, s. 446; Rev., s. 2818; C.S., s. 3937; 1983, c. 670, s. 9.)

CASE NOTES

Editor's Note. — *The cases below were decided under this section as it read prior to amendment in 1983.*

Amercement as Remedy for Failure to Make Due Return. — Amercement, and not a civil action, is the remedy given against a sheriff for not making "due and proper" return of process. Piedmont Mfg. Co. v. Buxton, 105 N.C. 74, 11 S.E. 264 (1890).

Jurisdiction in Court to Which Process Returnable. — An action against a sheriff of a county other than that from which the process issued, for making a false return, is properly brought in the courts of the county to which that process was returnable. Watson v. Mitchell, 108 N.C. 364, 12 S.E. 836 (1891).

Sheriff may be amerced at a subsequent term to that at which process was return-

able, for not having made his return at a previous term. Hyatte v. Allison, 48 N.C. 533 (1856).

Failure to Make Return Not Excused by Nonpayment of Fees. — While a sheriff is not required to execute process until his fees are paid or tendered by the person at whose instance the service is to be rendered, this does not excuse him for failure to make return of the process. Jones v. Gupton, 65 N.C. 48 (1871).

Rule Nisi Granted on Prima Facie Case. — Where a prima facie case is made, either upon affidavit or other sufficient proof, a rule nisi is granted as of course. Ex parte Schenck, 63 N.C. 601 (1869).

Return Prima Facie Correct. — The return or certificate of a ministerial officer, as to what he has done out of court, is only to be taken as prima facie true, and is not conclusive; it may be contradicted by any evidence and shown to be false, antedated, etc. Smith v. Lowe, 27 N.C. 197 (1844).

Immaterial Evidence. — On the trial of an action for penalty, evidence of the true returns of the proceeds of sale endorsed upon certain other executions was immaterial and properly excluded. Finley v. Hayes, 81 N.C. 368 (1879).

For case holding sheriff entitled to relief from judgment for alleged failure to make due return of process, see Francks v. Sutton, 86 N.C. 78 (1882).

§ 162-16. Execute summons, order or judgment.

Whenever the sheriff may be required to serve or execute any summons, order or judgment, or to do any other act, he shall be bound to do so in like manner as upon process issued to him, and shall be equally liable in all respects for neglect of duty; and if the sheriff be a party, the coroner shall be bound to perform the service, as he is now bound to execute process where the sheriff is a party; and this Chapter relating to sheriffs shall apply to coroners when the sheriff is a party. Sheriffs and coroners may return process by mail. Their liabilities in respect to the execution of process shall be as prescribed by law.

In those counties where the office of coroner has been abolished, or is vacant, and in which process is required to be served or executed on the sheriff, the authority to serve or execute such process shall be vested in the clerk of court; however, the clerk of court is hereby empowered to designate and direct by appropriate order some person to act in his stead to serve or execute the same. (C.C.P., s. 354; Code, s. 598; Rev., s. 2819; C.S., s. 3938; 1971, c. 653, s. 1.)

CASE NOTES

A constable cannot serve process addressed to the sheriff, nor can a sheriff serve process addressed to a constable. McGloughan v. Mitchell, 126 N.C. 681, 36 S.E. 164 (1900).

Service by Coroner Where Sheriff Is a Codefendant. — In an action wherein the sheriff is a party defendant, it is proper that a summons issued against a codefendant should be addressed to and served by the coroner. State ex rel. Battle v. Baird, 118 N.C. 854, 24 S.E. 668 (1896).

Service By Deputy Sheriffs in an Action Against Deputy. — Where a deputy is sued for actions within the alleged scope of his duties for which the Sheriff himself may be held liable, the Sheriff clearly has an interest in the litigation, and is barred from serving process; similarly, because the Sheriff's deputies act as his agents, they cannot serve process on anyone in a case in which the Sheriff is an interested party. Goodwin v. Furr, 25 F. Supp. 2d 713 (M.D.N.C. 1998).

Residents failed to comply with G.S. 162-16, and therefore a sheriff and deputy were never properly served with summons, where another deputy served both the sheriff and the deputy; such service was improper since the clerk of court never designated that deputy as her agent to serve the sheriff and the deputy. Mabee v. Onslow County Sheriff's Dep't, 174 N.C. App. 210, 620 S.E.2d 307, 2005 N.C. App. LEXIS 2296 (2005), cert. dismissed, — N.C. —, 629 S.E.2d 854 (2006).

Authority of Coroner Where Sheriff Insane. — The county commissioners may declare the office vacant upon the insanity of the sheriff, but their failure to do so merely authorizes the coroner to perform the duties of sheriff proper, and does not cast upon him the right to collect taxes. State ex rel. Somers v. Board of Comm'rs, 123 N.C. 582, 31 S.E. 873 (1898).

If a court issuing process has general jurisdiction to issue such process and the want of jurisdiction does not appear upon the face of the paper, a sheriff and his assistants may justify under it. State v. Ferguson, 67 N.C. 219 (1872).

§ 162-17. Duties of outgoing sheriff for unexecuted process.

It shall be the duty of any sheriff who shall have received a precept, and shall go out of office before the return day thereof, without having executed the same, to deliver same to the succeeding sheriff with sufficient time allowed for it to be executed by him. (R.C., c. 105, s. 25; Code, s. 2088; Rev., s. 2820; C.S., s. 3939; 1983, c. 670, s. 10.)

CASE NOTES

Sheriff to whom a writ has been delivered, who goes out of office before the return day of the writ, has no power to make the return on it, and therefore is not liable to amercement for not doing so. State ex rel. Parker v. Woodside, 29 N.C. 296 (1847).

Duty to Make Delivery to Successor. — It is the duty of the sheriff, going out of office, to deliver all the processes remaining in his hands to his successor. State ex rel. Parker v. Woodside, 29 N.C. 296 (1847).

§ 162-18. Payment of money collected on execution.

In all cases where a sheriff has collected money upon an execution placed in his hands, if there be no bona fide contest over the application thereof, he shall immediately pay the same to the plaintiff, or into the office of the clerk of the court from which the execution issued. (Code, s. 2080; Rev., s. 2821; C.S., s. 3940; 1983, c. 670, s. 11.)

CASE NOTES

Auditing of sheriff's account by county commissioners is prima facie evidence of its correctness, and it is impeachable only for fraud or special error. Williamson v. Jones, 127 N.C. 178, 37 S.E. 202 (1900); Commissioners of Duplin County v. Kenan, 127 N.C. 181, 37 S.E. 997 (1900).

§ 162-19: Repealed by Session Laws 1953, c. 973, s. 3.

§§ 162-20, 162-21: Repealed by Session Laws 1983, c. 670, ss. 12, 13.

§ 162-22. Custody of jail.

The sheriff shall have the care and custody of the jail in his county; and shall be, or appoint, the keeper thereof.

No law-enforcement officer or jailer who shall have the care and custody of any jail shall receive any portion of any jail fee or charge paid by or for any person confined in such jail, nor shall the compensation or remuneration of such officer be affected to any extent by the costs of goods or services furnished to any person confined in such jail. (R.C., c. 105, s. 22; Code, s. 2085; Rev., s. 2824; C.S., s. 3944; 1967, c. 581, s. 3; 1969, c. 1090; 1983, c. 670, s. 14.)

Legal Periodicals. — For note as to sheriff's liability for prisoner suicide, in light of Helmly v. Bebber, 77 N.C. App. 275, 335 S.E.2d 182 (1985), see 64 N.C.L. Rev. 1520 (1986).

For note, "North Carolina County Jail Inmates' Right of Access to Courts," see 66 N.C.L. Rev. 583 (1988).

For a survey of 1996 developments in constitutional law, see 75 N.C.L. Rev. 2281 (1997).

CASE NOTES

Duties of Jailer. — The duties of a jailer are those prescribed by statute and those recognized at common law. Gowens v. Alamance County, 216 N.C. 107, 3 S.E.2d 339 (1939).

Bailiff Is "Keeper of a Jail." — Defendant fell within the definition of a "keeper of a jail" in the context of G.S. 162-55 because defendant worked as a courtroom bailiff whose duties included the care, custody, and maintenance of prisoners. State v. Shepherd, 156 N.C. App. 603, 577 S.E.2d 341, 2003 N.C. App. LEXIS 325 (2003).

Jailer Held Answerable Only to Sheriff. — Where a sheriff arrested a man on a ca. sa. and committed him to jail in custody of the jailer, and the prisoner escaped, it was held that without a bond of indemnity, the jailer was only bound to the sheriff for want of fidelity or due care in the discharge of his duty. Turrentine v. Faucett, 33 N.C. 652 (1850).

Sheriff has a right to take a bond from jailer to indemnify him for all losses to which he may be subjected by the escape of a prisoner while in custody of the jailer. Turrentine v. Faucett, 33 N.C. 652 (1850).

Liability of Sheriff for Negligence of Deputy in Charge of Jail. — Where the evidence was sufficient to be submitted to the jury as to the negligence of a deputy in charge of a jail in causing injury to a prisoner in closing the cell door on the prisoner's thumb, it was sufficient to be submitted to the jury as to the liability of the sheriff, since the act of the deputy was within the scope of his authority and in the line of his duty, and the liability of the sheriff for acts of his deputy is governed by the law applicable to the law of principal and agent. Davis v. Moore, 215 N.C. 449, 2 S.E.2d 366 (1939), overruled, 217 N.C. 279, 7 S.E.2d 563 (1940).

Cited in Sutton v. Williams, 199 N.C. 546, 155 S.E. 160 (1930); Wilkie v. Henderson County, 1 N.C. App. 155, 160 S.E.2d 505 (1968); Berch v. Stahl, 373 F. Supp. 412 (W.D.N.C. 1974); State v. Jones, 41 N.C. App. 189, 254 S.E.2d 234 (1979); Knight v. Vernon, 23 F. Supp. 2d 634 (M.D.N.C. 1998).

OPINIONS OF ATTORNEY GENERAL

Criminal Intake Center. — County manager must place Criminal Intake Center, a facility for the reception of persons charged with crime which includes detention cells for at least 48 persons, used to detain certain prisoners overnight and to house disruptive persons, drunks, etc., under the care and custody of the sheriff. See opinion of Attorney General to Honorable Frank W. Snepp, Jr., Senior Resident Superior Court Judge, Mecklenburg County, 58 N.C.A.G. 30 (1988).

§ 162-23. Prevent entering jail for lynching; county liable.

When the sheriff of any county has good reason to believe that the jail of his county is in danger of being broken or entered for the purpose of killing or injuring a prisoner placed by the law in his custody, it shall be his duty at once to call on the commissioners of the county, or some one of them, for a sufficient guard for the jail, and in such case, if the commissioner or commissioners fail to authorize the employment of necessary guards to protect the jail, and by reason of such failure the jail is entered and a prisoner killed, the county in whose jail the prisoner is confined shall be responsible in damages, to be recovered by the personal representatives of the prisoner thus killed, by action begun and prosecuted before the superior court of any county in this State. (1893, c. 461, s. 7; Rev., s. 2825; C.S., s. 3945.)

§ 162-24. Delegation of official duties.

The sheriff may not delegate to another person the final responsibility for discharging his official duties, but he may appoint a deputy or employ others to assist him in performing his official duties. (23 Hen. VI, c. 10; R.C., c. 105, s. 21; Code, s. 2084; Rev., s. 2828; C.S., s. 3946; 1983, c. 670, s. 15.)

Legal Periodicals. — For note as to sheriff's liability for prisoner suicide, in light of Helmly v. Bebber, 77 N.C. App. 275, 335 S.E.2d 182 (1985), see 64 N.C.L. Rev. 1520 (1986).

CASE NOTES

Editor's Note. *— Most of the cases below were decided under this section as it read prior to amendment in 1983, when it prohibited a sheriff from "letting to farm" his county.*

Traffic in public offices is against good morals and contrary to public policy. Basket v. Moss, 115 N.C. 448, 20 S.E. 733 (1894).

This section prohibits a sheriff from letting to farm, in any manner, his county, or any part of it. Cansler v. Penland, 125 N.C. 578, 34 S.E. 683 (1899), rehearing dismissed, 126 N.C. 793, 36 S.E. 285 (1900).

Office Cannot Be Subject of Bargain and Sale. — The public has an interest in the proper performance of their duties by public officers, and would be prejudiced by agreements tending to impair an officer's efficiency or in any way to interfere with or disturb the due execution of the duties of the office. The office of sheriff and tax collector is one of public confidence and fidelity to a public trust, and cannot be a matter of bargain and sale. It requires good faith and duty. Cansler v. Penland, 125 N.C. 578, 34 S.E. 683 (1899), rehearing dismissed, 126 N.C. 793, 36 S.E. 285 (1900).

Certain Agreements to Secure Appointment Void. — Not only an agreement by A to pay to B, a public officer, an amount equal to the emoluments of the unexpired term of his office in consideration of his resignation and his influence to secure the appointment of A to the office is void, but likewise an agreement to compensate anyone for or to pay the expenses of anyone in attempting to secure such appointment. Basket v. Moss, 115 N.C. 448, 20 S.E. 733 (1894).

A sheriff may employ a deputy to assist him, but he cannot delegate his authority to another. Cansler v. Penland, 125 N.C. 578, 34 S.E. 683 (1899), rehearing dismissed, 126 N.C. 793, 36 S.E. 285 (1900).

Cited in Harter v. Vernon, 953 F. Supp. 685 (M.D.N.C. 1996); Jenkins v. Medford, 119 F.3d 1156 (4th Cir. 1997); Knight v. Vernon, 23 F. Supp. 2d 634 (M.D.N.C. 1998).

OPINIONS OF ATTORNEY GENERAL

Criminal Intake Center. — County manager must place Criminal Intake Center, a facility for the reception of persons charged with crime which includes detention cells for at least 48 persons, used to detain certain prisoners overnight and to house disruptive persons, drunks, etc., under the care and custody of the sheriff. See opinion of Attorney General to Honorable Frank W. Snepp, Jr., Senior Resident Superior Court Judge, Mecklenburg County, 58 N.C.A.G. 30 (1988).

Any depository for criminal process which has been legally issued and directed to sheriff must remain within control and supervision of the sheriff because it is the sheriff who is responsible, by law, for its proper and timely service. See opinion of Attorney General to Honorable Frank W. Snepp, Jr., Senior Resident Superior Court Judge, Mecklenburg County, 58 N.C.A.G. 30 (1988).

§ 162-25. Obligations taken by sheriff payable to himself.

The sheriff or his deputy shall take no obligation of or from any person in his custody for or concerning any matter or thing relating to his office otherwise payable than to himself as sheriff and dischargeable upon the prisoner's appearance and rendering himself at the day and place required in the writ (whereupon he was or shall be taken or arrested), and his sureties discharging themselves therefrom as special bail of such prisoner or such person keeping within the limits and rules of any prison; and every other obligation taken by any sheriff in any other manner or form, by color of his office, shall be void, except in any special case and other obligation shall be, by law, particularly and expressly directed; and no sheriff shall demand, exact, take or receive any greater fee or reward whatsoever, nor shall have any allowance, reward or satisfaction from the public, for any service by him done, other than such sum as the court shall allow for ex officio services and the allowance given and provided by law. (1777, c. 118, s. 8, P.R.; R.C., c. 105, s. 19; Code, s. 2082; Rev., s. 2829; C.S., s. 3947.)

§§ 162-26 through 162-30: Reserved for future codification purposes.

Article 4.

County Prisoners.

§ 162-31: Repealed by Session Laws 1975, c. 166, s. 26.

§ 162-32. Bond of prisoner committed on capias in civil action.

Every bond given by any person committed in arrest and bail, or in custody after final judgment, shall be assigned by the sheriff to the party at whose instance such person was committed to jail, and shall be returned to the office of the clerk of the court where the judgment was rendered, and shall have the force of a judgment. If any person who obtains the rules of any prison, as aforesaid, escapes out of the same before he has paid the debt or damages and costs according to the condition of his bond, the court where the bond is filed, upon motion of the assignee thereof, shall award execution against such person and his sureties for the debt or damages and costs, with interest from the time of escape till payment, and no person committed to jail on such execution shall be allowed the rules of prison: Provided, the obligors have ten days' previous notice of such motion, in writing; but they shall not be admitted to deny the making of the bond in their answer, unless by affidavit they prove the truth of the plea. (1759, c. 65, ss. 2, 3, P.R.; R.C., c. 87, s. 14; Code, s. 3469; Rev., s. 1341; C.S., s. 1345; 1973, c. 822, s. 3.)

Editor's Note. — This Article was formerly Article 15, G.S. 153-177 through 153-198, of Chapter 153. It was reenacted and transferred to its present location by Session Laws 1973, c. 822, s. 3.

CASE NOTES

Cited in State v. Ahearn, 307 N.C. 584, 300 S.E.2d 689 (1983).

§ 162-33. Prisoner may furnish necessaries.

With the sheriff's approval, prisoners shall be allowed to purchase and procure such necessaries, in addition to the diet furnished by the jailer, as they may think proper. (1795, c. 433, s. 6, P.R.; R.C., c. 87, s. 8; Code, s. 3463; Rev., s. 1344; C.S., s. 1348; 1973, c. 822, s. 3; 2001-487, s. 95.)

§ 162-34. United States prisoners.

When a prisoner is delivered to the keeper of the county jail by the authority of the United States, such keeper shall receive and commit such prisoner if the jail has adequate and available housing space. The keeper of the county jail shall not be subject to any pains or penalties for refusal to receive and commit a federal prisoner. The United States shall reimburse the county for the incarceration of any federal prisoner at such rate as may be agreed upon between the county and the United States. (1790, c. 322, ss. 1, 2, P.R.; R.C., c. 87, s. 1; Code, s. 3456; Rev., s. 1342; C.S., s. 1349; 1973, c. 822, s. 3; 1983, c. 219.)

§ 162-35. Arrest of escaped persons from penal institutions.

Upon information received from the superintendent of any correctional or any penal institution, established by the laws of the State, that any person confined in such institution or assigned thereto by juvenile or other court under authority of law, has escaped therefrom and is still at large, it shall be the duty of sheriffs of the respective counties of the State, and of any peace officer in whose jurisdiction such person may be found, to take into his custody such escaped person, if to be found in his county, and to cause his return to the custody of the proper officer of the institution from which he has escaped. (1933, c. 105, s. 1; 1973, c. 822, s. 3.)

§ 162-36. Transfer of prisoners to succeeding sheriff.

The delivery of prisoners, by indenture between the late and present sheriff, or the entering on record in court the names of the several prisoners, and the causes of their commitment, delivered over to the present sheriff, shall be sufficient to discharge the late sheriff from all liability for any escape that shall happen. (1777, c. 118, s. 12, P.R.; R.C., c. 87, s. 15; Code, s. 3470; Rev., s. 1348; C.S., s. 1352; 1973, c. 822, s. 3.)

§ 162-37: Repealed by Session Laws 1983, c. 670, s. 16.

§ 162-38. Where jail unfit or insecure, courts may commit to jail of adjoining county.

Whenever there is an unfit or insecure jail in any county, the judicial officers of such county may commit any persons brought before them, whether in a criminal or civil proceeding, to the jail of any adjoining county, for the same causes and under the like regulations that they might have ordered commitments to the usual jail; and the sheriffs and other officers of such county in which there is an unfit or insecure jail, and the sheriffs or keepers of the jails of the adjoining counties, shall obey any order of commitment so made. (1835, c. 2, s. 2; R.C., c. 87, s. 3; Code, s. 3458; Rev., s. 1350; C.S., s. 1354; 1973, c. 57, s. 2; c. 822, s. 3; 1983, c. 670, s. 17.)

Local Modification. — Elizabeth City: 1973, c. 487.

§ 162-39. Transfer of prisoners when necessary for safety and security; application of section to municipalities.

(a) Whenever necessary for the safety of a prisoner held in any county jail or to avoid a breach of the peace in any county or whenever prisoners are arrested in such numbers that county jail facilities are insufficient and inadequate for the housing of such prisoners, the resident judge of the superior court or any judge holding superior court in the district or any district court judge may order the prisoner transferred to a fit and secure jail in some other county where the prisoner shall be held for such length of time as the judge may direct.

(b) Whenever necessary to avoid a security risk in any county jail, or whenever prisoners are arrested in such numbers that county jail facilities are insufficient and inadequate for the housing of such prisoners, the resident judge of the superior court or any judge holding superior court in the district or any district court judge may order the prisoner transferred to a unit of the State prison system designated by the Secretary of Correction or his authorized representative. For purposes of this subsection, a prisoner poses a security risk if the prisoner:

(1) Poses a serious escape risk;
(2) Exhibits violently aggressive behavior that cannot be contained and warrants a higher level of supervision;
(3) Needs to be protected from other inmates, and the county jail facility cannot provide such protection;
(4) Is a female or a person 18 years of age or younger, and the county jail facility does not have adequate housing for such prisoners;
(5) Is in custody at a time when a fire or other catastrophic event has caused the county jail facility to cease or curtail operations; or
(6) Otherwise poses an imminent danger to the staff of the county jail facility or to other prisoners in the facility.

(c) The sheriff of the county from which the prisoner is removed shall be responsible for conveying the prisoner to the jail or prison unit where he is to be held, and for returning him to the common jail of the county from which he was transferred. The return shall be made at the expiration of the time designated in the court order directing the transfer unless the judge, by appropriate order, shall direct otherwise. The sheriff or keeper of the jail of the county designated in the court order, or the officer in charge of the prison unit designated by the Secretary of Correction, shall receive and release custody of the prisoner in accordance with the terms of the court order. If a prisoner is transferred to a unit of the State prison system, the county from which the prisoner is transferred shall pay the Department of Correction for maintaining the prisoner for the time designated by the court at the per day, per inmate rate at which the Department of Correction pays a local jail for maintaining a prisoner. The county shall also pay the Department of Correction for the costs of extraordinary medical care incurred while the prisoner was in the custody of the Department of Correction, defined as follows:

(1) Medical expenses incurred as a result of providing health care to a prisoner as an inpatient (hospitalized);
(2) Other medical expenses when the total cost exceeds thirty-five dollars ($35.00) per occurrence or illness as a result of providing health care to a prisoner as an outpatient (nonhospitalized); and
(3) Cost of replacement of eyeglasses and dental prosthetic devices if those eyeglasses or devices are broken while the prisoner is incarcerated, provided the prisoner was using the eyeglasses or devices at the time of his commitment and then only if prior written consent of the county is obtained by the Department.

If the prisoner is transferred to a jail in some other county, the county from which the prisoner is transferred shall pay to the county receiving the prisoner in its jail the actual cost of maintaining the prisoner for the time designated by the court. Counties are hereby authorized to enter into contractual agreements with other counties to provide jail facilities to which prisoners may be transferred as deemed necessary under this section.

Whenever prisoners are arrested in such numbers that county jail facilities are insufficient and inadequate for the safekeeping of such prisoners, the resident judge of the superior court or any superior or district court judge holding court in the district may order the prisoners transferred to a unit of the State Department of Correction designated by the Secretary of Correction or his authorized representative, where the prisoners may be held for such length of time as the judge may direct, such detention to be in cell separate from that used for imprisonment of persons already convicted of crimes, except when admission to an inpatient prison medical or mental health unit is required to provide services deemed necessary by a prison health care clinician. The sheriff of the county from which the prisoners are removed shall be responsible for conveying the prisoners to the prison unit or units where they are to be held, and for returning them to the common jail of the county from which they were transferred. However, if due to the number of prisoners to be conveyed the sheriff is unable to provide adequate transportation, he may request the assistance of the Department of Correction, and the Department of Correction is hereby authorized and directed to cooperate with the sheriff and provide whatever assistance is available, both in vehicles and manpower, to accomplish the conveying of the prisoners to and from the county to the designated prison unit or units. The officer in charge of the prison unit designated by the Secretary of Correction or his authorized representative shall receive and release the custody of the prisoners in accordance with the terms of the court order. The county from which the prisoners are transferred shall pay to the Department of Correction the actual cost of transporting the prisoners and the cost of maintaining the prisoners at the per day, per inmate rate at which the Department of Correction pays a local jail for maintaining a prisoner, provided, however, that a county is not required to reimburse the State for transporting or maintaining a prisoner who was a resident of another state or county at the time he was arrested. However, if the county commissioners shall certify to the Governor that the county is unable to pay the bill submitted by the State Department of Correction to the county for the services rendered, either in whole or in part, the Governor may recommend to the Council of State that the State of North Carolina assume and pay, in whole or in part, the obligation of the county to the Department of Correction, and upon approval of the Council of State the amount so approved shall be paid from Contingency and Emergency Fund to the Department of Correction.

When, due to an emergency, it is not feasible to obtain from a judge of the superior or district court a prior order of transfer, the sheriff of the county and the Department of Correction may exercise the authority hereinafter conferred; provided, however, that the sheriff shall, as soon as possible after the emergency, obtain an order from the judge authorizing the prisoners to be held in the designated place of confinement for such period as the judge may direct. All provisions of this subsection shall be applicable to municipalities whenever prisoners are arrested in such numbers that the municipal jail facilities and the county jail facilities are insufficient and inadequate for the safekeeping of the prisoners. The chief of police is hereby authorized to exercise the authority herein conferred upon the sheriff, and the municipality shall be liable for the cost of transporting and maintaining the prisoners to the same extent as a county would be unless action is taken by the Governor and Council of State as herein provided for counties which are unable to pay such costs.

(d) Whenever a prisoner held in a county jail requires medical or mental health treatment that the county decides can best be provided by the Department of Correction, the resident judge of the superior court or any judge holding superior court in the district or any district court judge may order the prisoner transferred to a unit of the State prison system designated by the Secretary of Correction or his authorized representative. The sheriff of the county from which the prisoner is removed shall be responsible for conveying the prisoner to the prison unit where he is to be held, and for returning him to the jail of the county from which he was transferred. The prisoner shall be returned when the attending medical or mental health professional determines that the prisoner may be returned safely. The officer in charge of the prison unit designated by the Secretary of Correction shall receive custody of the prisoner in accordance with the terms of the order and shall release custody of the prisoner in accordance with the instructions of the attending medical or mental health professional. The county from which the prisoner is transferred shall pay the Department of Correction for maintaining the prisoner for the period of treatment at the per day, per inmate rate at which the Department of Correction pays a local jail for maintaining a prisoner, and for extraordinary medical expenses as set forth in subsection (c) of this section.

(e) The number of county prisoners incarcerated in the State prison system pursuant to safekeeping orders from the various counties pursuant to subsection (b) of this section or for medical or mental health treatment pursuant to subsection (d) of this section may not exceed 200 at any given time unless authorized by the Secretary of Correction. The Secretary may refuse to accept any safekeeper and may return any safekeeper transferred under a safekeeping order when this capacity limit is reached. (1957, c. 1265; 1967, c. 996, ss. 13, 15; 1969, cc. 462, 1130; 1973, c. 822, s. 3; c. 1262, s. 10; 1983, c. 165, ss. 1-4; 1985 (Reg. Sess., 1986), c. 1014, s. 198(a)-(c); 1989, c. 1, s. 7; 1991, c. 535, s. 1; 1991 (Reg. Sess., 1992), c. 983, s. 1; 2002-126, s. 17.1.)

CASE NOTES

Failure to Furnish Nonelective Medical Care to Safekeepers Upheld. — Failure to furnish nonessential, elective medical care to so-called "safekeepers," prisoners whose terms are not yet fixed by reason of appeals or because they have not yet been tried and who are considered still to be county prisoners although they may be housed in Department prisons, is both reasonable and rational and free from constitutional infirmity. Kersh v. Bounds, 501 F.2d 585 (4th Cir. 1974), cert. denied, 420 U.S. 925, 95 S. Ct. 1120, 43 L. Ed. 2d 394 (1975).

Treatment of Defendant Whose Conviction Is Reversed on Appeal. — Where the Court of Appeals reversed defendant's conviction, and where after receiving a copy of the Court of Appeals' certified judgment the Department of Correction released defendant to the custody of the county jail, but on the same day, the county jailer obtained a safekeeping order transferring defendant back to the custody of the Department of Correction, the Secretary of the Department of Correction was not responsible for failing to implement a policy directing Department of Correction employees as to the proper manner with which to deal with prisoners whose convictions had been overturned on appeal; the Department personnel were not on notice of the circumstances leading to the issuance of the safekeeping order and had no reason to question its sufficiency, and given the lack of discretion allowed to the Department and State law, there was no reasonable way that the Secretary could have detailed a policy that would have avoided defendant's misfortunes. Allen v. Lowder, 875 F.2d 82 (4th Cir. 1989).

§ 162-40. When jail destroyed, transfer of prisoners provided for.

When the jail of any county is destroyed by fire or other accident, any judicial officer of such county may cause all prisoners then confined therein to be brought before him. Upon the production of the process under which any prisoner was confined, such judicial officer shall order his commitment to the jail of any adjacent county. The sheriff or other officer of the county deputized for that purpose shall obey the order; and the sheriff or keeper of the common jail of such adjacent county shall receive such prisoners consistent with those provisions of G.S. 162-38. (1835, c. 2, s. 1; R.C., c. 87, s. 2; Code, s. 3457; Rev., s. 1351; C.S., s. 1355; 1973, c. 57, s. 3; c. 822, s. 3; 1983, c. 670, s. 18.)

§ 162-40.1. Reimbursement for transfer of prisoners.

The county receiving prisoners pursuant to G.S. 162-38, 162-39 and 162-40 shall be reimbursed at the usual jail fee rate for each 24 hours of confinement or part thereof by the county from which the prisoner is transferred. (1983, c. 670, s. 19.)

§ 162-41: Repealed by Session Laws 1977, c. 711, s. 33.

Editor's Note. — Session Laws 1977, c. 711, which repealed this section, in s. 34, provided: "All statutes which refer to sections repealed or amended by the act shall be deemed, insofar as possible, to refer to those provisions of this act which accomplish the same or an equivalent purpose."

Session Laws 1977, c. 711, s. 35 provided: "None of the provisions of this act providing for the repeal of certain sections of the General Statutes shall constitute a reenactment of the common law."

Session Laws 1977, c. 711, s. 39, as amended by Session Laws 1977, 2nd Sess., c. 1147, s. 32, effective July 1, 1978, provided: "This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a defendant's guilt was established or when judgment was entered against him, except that the provisions of this act regarding parole shall not apply to persons sentenced before July 1, 1978."

§§ 162-42 through 162-44: Repealed by Session Laws 1983, c. 670, s. 20.

§ 162-45: Repealed by Session Laws 1977, c. 711, s. 33.

Editor's Note. — For the provisions of Session Laws 1977, c. 711, ss. 34, 35 and 39, as amended by Session Laws 1977, 2nd Sess., c. 1147, s. 32, see the Editor's Note under the repeal line to G.S. 162-41.

§ 162-46: Repealed by Session Laws 1979, c. 760, s. 4.

Editor's Note. — Session Laws 1979, c. 760, which repealed this section, in s. 6, as amended by Session Laws 1979, 2nd Sess., c. 1316, s. 47; 1981, c. 63, s. 1; and 1981, c. 179, s. 14 provided: "This act shall become effective on July 1, 1981, and shall apply only to offenses committed on or after that date, unless specific language of the act indicates otherwise."

§ 162-47: Repealed by Session Laws 1977, c. 711, s. 33.

Editor's Note. — For the provisions of Session Laws 1977, c. 711, ss. 34, 35 and 39, as amended by Session Laws 1977, 2nd Sess., c. 1147, s. 32, see the Editor's Note under the repeal line to G.S. 162-41.

§ 162-48: Repealed by Session Laws 1983, c. 670, s. 20.

§ 162-49: Repealed by Session Laws 1977, c. 711, s. 33.

Editor's Note. — For the provisions of Session Laws 1977, c. 711, ss. 34, 35 and 39, as amended by Session Laws 1977, 2nd Sess., c. 1147, s. 32, see the Editor's Note under the repeal line to G.S. 162-41.

§ 162-50. Penalties.

Upon a finding that the sheriff, personally or through his lawful deputies, has willfully failed or neglected to perform any duty imposed by this Chapter, or has made any false return, he shall be subject to damages of not more than five hundred dollars ($500.00), and such damages recovered shall be paid to the person aggrieved. Nothing in this section bars an independent action for damages by the person aggrieved. (1983, c. 670, s. 21.)

OPINIONS OF ATTORNEY GENERAL

Any depository for criminal process which has been legally issued and directed to sheriff must remain within control and supervision of sheriff, because it is the sheriff who is responsible, by law, for its proper and timely service. See opinion of Attorney General to Honorable Frank W. Snepp, Jr., Senior Resident Superior Court Judge, Mecklenburg County, 58 N.C.A.G. 30 (1988).

§§ 162-51 through 162-54: Reserved for future codification purposes.

§ 162-55. Injury to prisoner by jailer.

If the keeper of a jail shall do, or cause to be done, any wrong or injury to the prisoners committed to his custody, contrary to law, he shall not only pay treble damages to the person injured, but shall be guilty of a Class 1 misdemeanor. (1795, c. 433, s. 6, P.R.; R.C., c. 87, s. 8; Code, s. 3463; Rev., s. 3661; C.S., s. 4407; 1983, c. 631, s. 1; 1993, c. 539, s. 1098; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — This section was formerly G.S. 14-260. It was recodified by Session Laws 1983, c. 631, s. 1, as G.S. 162-55, effective June 28, 1983.

Legal Periodicals. — For note, "North Carolina County Jail Inmates' Right of Access to Courts," see 66 N.C.L. Rev. 583 (1988).

CASE NOTES

Bailiff Is "Keeper of a Jail." — Person who works as a courtroom bailiff falls within the statute's definition of a "keeper of a jail" where the person's duties include the care, custody, and maintenance of prisoners; thus, it was proper to deny defendant's motion to dismiss the charge of injury to prisoner by jailer because defendant's duties as a courtroom bailiff were such that defendant could be considered the "keeper of a jail." State v. Shepherd, 156 N.C. App. 603, 577 S.E.2d 341, 2003 N.C. App. LEXIS 325 (2003).

Criminal Negligence Required for Treble Damages. — A jailer's negligent failure to protect a prisoner from assaults by other inmates was not criminal conduct, absent any intent by jailer that the prisoner be harmed, and because only those acts amounting to crimes yield treble civil damages, prisoner would not be entitled to treble damages for such an assault. Letchworth v. Gay, 874 F. Supp. 107 (E.D.N.C. 1995).

Evidence Sufficient for Jury. — Evidence that plaintiff's thumb had inadvertently been placed against the door jamb when deputy sheriff started to close door of cell, and that when plaintiff pushed against the door to release his thumb the deputy pushed the door shut with his shoulder, thereby cutting off plaintiff's thumb, was sufficient to be submitted to the jury on the issue of the deputy's negligent injury to plaintiff. Davis v. Moore, 215 N.C. 449, 2 S.E.2d 366 (1939), overruled on other grounds in Dunn v. Swanson, 217 N.C. 279, 7 S.E.2d 563 (1940), decided under former § 14-260.

Dismissal of a claim was not warranted where a plaintiff sufficiently alleged that defendants were deliberately indifferent a pretrial detainee's rights to receive adequate medical care following a head injury incurred while in jail, which resulted in the pretrial detainee suffering severe and permanent brain damage; plaintiff alleged that defendants knew or should have known of the explicit instructions not to permit the pretrial detainee to go to sleep, and an order from the emergency physician to transport the pretrial detainee to the hospital. Layman v. Alexander, 294 F. Supp. 2d 784, 2003 U.S. Dist. LEXIS 22056 (W.D.N.C. 2003).

Summary judgment was denied to defendant sheriff and officers, where plaintiff suffered a severe brain injury while in their custody, and there was sufficient evidence of deliberate and reckless indifference to his medical needs under State and federal law. Layman v. Alexander, 343 F. Supp. 2d 483, 2004 U.S. Dist. LEXIS 23464 (W.D.N.C. 2004).

Cited in Knight v. Vernon, 23 F. Supp. 2d 634 (M.D.N.C. 1998).

§ 162-56. Place of confinement.

Persons committed to the custody of a sheriff shall be confined in the facilities designated by law for such confinement, and shall not be confined in any other place. Nothing herein shall be construed to prohibit or limit the authority of a sheriff to house prisoners committed to his custody in quarters, approved by the Department of Health and Human Services, other than the county jail. (1795, c. 433, s. 4; R.C., c. 87, s. 16; Code, s. 3471; Rev., s. 3660; C.S., s. 4408; 1983, c. 631, s. 2; 1997-443, s. 11A.118(a).)

Editor's Note. — This section was formerly G.S. 14-261. It was rewritten and recodified as G.S. 162-56 by Session Laws 1983, c. 631, s. 2, effective June 28, 1983.

OPINIONS OF ATTORNEY GENERAL

Criminal Intake Center. — County manager must place Criminal Intake Center, a facility for the reception of persons charged with crime, which includes detention cells for at least 48 persons, and is used to detain certain prisoners overnight and to house disruptive persons, drunks, etc., under the care and custody of the sheriff. See opinion of Attorney General to Honorable Frank W. Snepp, Jr., Senior Resident Superior Court Judge, Mecklenburg County, 58 N.C.A.G. 30 (1988).

§ 162-57. Record to be kept; items of record.

The superintendent or other person having charge of prisoners shall keep a record showing, the name, age, date of sentence, length of sentence, crime for which convicted, home address, next of kin, and the conduct of each prisoner received. (1927, c. 178, s. 2; 1983, c. 631, s. 3.)

Editor's Note. — This section was formerly G.S. 14-264. It was recodified by Session Laws 1983, c. 631, s. 3, as G.S. 162-57, effective June 28, 1983.

§ 162-58. Counties may work prisoners.

The board of commissioners of the several counties may enact by resolution all necessary rules and regulations for work on projects to benefit units of State or local government by persons convicted of misdemeanors or felonies and imprisoned in the local confinement facilities or satellite jail/work release units of their respective counties. The sheriff shall approve rules and regulations enacted by the board. Prisoners working under this section shall be supervised by county employees or by the sheriff. The rules enacted by the board of county commissioners and approved by the sheriff shall specify a procedure for ensuring that county employees supervising prisoners pursuant to this section be provided with notice that the persons placed under their supervision are inmates from a local confinement facility or a satellite jail/work release unit. (1991 (Reg. Sess., 1992), c. 841, s. 1; 2002-159, s. 54.)

CASE NOTES

Suspension of Workers' Compensation Benefits During Incarceration. — Imprisonment of a person already receiving worker's compensation disability payments cuts off the employer's duty to make payments during the period of confinement. Parker v. Union Camp Corp., 107 N.C. App. 505, 422 S.E.2d 585 (1992).

Cited in Harris v. Thompson Contractors, 148 N.C. App. 472, 558 S.E.2d 894, 2002 N.C. App. LEXIS 26 (2002).

§ 162-59. Person having custody to approve prisoners for work.

No prisoner shall perform work pursuant to G.S. 162-58 unless the prisoner has been approved for the work by the person having custody of the prisoner. The decision to approve a prisoner for work shall be based on the prisoner's history of violence, if any, past criminal convictions, and current sentence. For purposes of this section, the person having custody of the prisoner is the sheriff, except that when the prisoner is confined in a district confinement facility the person having custody of the prisoner is the jail administrator. The person having custody of the prisoner may use his discretion to revoke his approval at any time and to return the prisoner to the local confinement facility or satellite jail/work release unit. Neither the person having custody of the prisoner nor any jailer may be held liable for the actions of any prisoner, including those actions committed during and after the escape of a prisoner, while the prisoner is outside their supervision pursuant to this section. (1991 (Reg. Sess., 1992), c. 841, s. 1.)

§ 162-59.1. Person having custody to approve prisoners for participation in education and other programs.

The person having custody of a prisoner convicted of a misdemeanor offense may approve that prisoner's participation in a general education development diploma program (GED program) or in any other education, rehabilitation, or training program. The person having custody of the prisoner may revoke this approval at any time. For purposes of this section, the person having custody of the prisoner is the sheriff, except that when the prisoner is confined in a district confinement facility the person having custody of the prisoner is the jail administrator. (2001-200, s. 1.)

§ 162-60. Reduction in sentence allowed for work, education, and other programs.

(a) A prisoner who has faithfully performed the duties assigned to the prisoner under G.S. 162-58 is entitled to a reduction in the prisoner's sentence of four days for each 30 days of work performed.

(b) A prisoner who is convicted of a misdemeanor offense and housed in a local confinement facility and who faithfully participates in a general education development diploma program (GED program) or in any other education, rehabilitation, or training program is entitled to a reduction in the prisoner's sentence of four days for each 30 days of classes attended, up to the maximum credit allowed under G.S. 15A-1340.20(d).

(c) The person having custody of the prisoner, as defined in G.S. 162-59, is the sole judge as to whether the prisoner has faithfully performed the assigned duties under G.S. 162-58 or has faithfully participated in a GED program or other education, rehabilitation, or training program under subsection (b) of this section. A prisoner who escapes or attempts to escape while performing work pursuant to G.S. 162-58 or while participating in a GED program or other education, rehabilitation, or training program shall forfeit any reduction in sentence that the prisoner would have been entitled to under this section. (1991 (Reg. Sess., 1992), c. 841, s. 1; 1993, c. 538, s. 36; 1994, Ex. Sess., c. 24, s. 14(b); 1993 (Reg. Sess., 1994), c. 767, s. 2; 2001-200, s. 2.)

§ 162-61. Liability of county.

The county working prisoners pursuant to G.S. 162-58 shall remain liable for emergency medical services for those prisoners pursuant to G.S. 153A-224 while the prisoners are working. The county working the prisoners shall be liable to third parties for injuries incurred by the third parties through the negligence of the working prisoners to the same extent as the county is liable for the actions of its employees. Chapters 96 and 97 of the General Statutes shall have no application to prisoners working pursuant to G.S. 162-58. (1991 (Reg. Sess., 1992), c. 841, s. 1.)

CASE NOTES

Cited in Harris v. Thompson Contractors, 148 N.C. App. 472, 558 S.E.2d 894, 2002 N.C. App. LEXIS 26 (2002).

§ 162-62. Legal status of prisoners.

(a) When any person charged with a felony or an impaired driving offense is confined for any period in a county jail, local confinement facility, district confinement facility, or satellite jail/work release unit, the administrator or other person in charge of the facility shall attempt to determine if the prisoner is a legal resident of the United States by an inquiry of the prisoner, or by examination of any relevant documents, or both.

(b) If the administrator or other person in charge of the facility is unable to determine if that prisoner is a legal resident or citizen of the United States or its territories, the administrator or other person in charge of the facility holding the prisoner, where possible, shall make a query through the Division of Criminal Information (DCI) system to the Law Enforcement Support Center (LESC) of Immigration and Customs Enforcement of the United States Department of Homeland Security. If the LESC determines that the prisoner has not been lawfully admitted to the United States, the United States Department of Homeland Security will have been notified of the prisoner's status and confinement at the facility by its receipt of the DCI query from the facility.

(c) Nothing in this section shall be construed to deny bond to a prisoner or to prevent a prisoner from being released from confinement when that prisoner is otherwise eligible for release.

(d) The administrator or other person in charge of the facility shall annually report the number of queries performed under subsection (b) of this section and the results of those queries to the Governor's Crime Commission of the Department of Crime Control and Public Safety. The Governor's Crime Commission shall make the reports available to the public. (2007-494, s. 1.)

Editor's Note. — Session Laws 2007-494, s. 2, made this section effective January 1, 2008.

Chapter 162A.

Water and Sewer Systems.

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Article 7.

Assumption of Indebtedness of Certain Districts.

162A-101. Assumption of indebtedness of certain districts.

ARTICLE 1.

Water and Sewer Authorities.

§ 162A-1. Title.

This Article shall be known and may be cited as the "North Carolina Water and Sewer Authorities Act." (1955, c. 1195, s. 1; 1971, c. 892, s. 1.)

Funds for Local Government Water and Sewer Improvement Grants. — Session Laws 2007-323, s. 13.13A, provides for the use of certain funds appropriated to the Rural Economic Development Center, Inc. for the 2007-2008 fiscal year for wastewater-related and public water system-related projects. See note at G.S. 160A-311.

Editor's Note. — Session Laws 1989, c. 708, s. 2, provided: "(a) Any contract made or entered into, prior to the date of ratification of this Act, by a city, a county, or a water and sewer authority created under Article 1 of Chapter 162A of the General Statutes which would have been valid under G.S. 160A-20, subsections (a), (b), (c), and (f), as rewritten by this Act, is hereby validated, ratified, and confirmed. Furthermore, such a contract may not be held invalid because it contains a nonsubstitution clause, or because no public hearing was advertised and held on the contract, or both.

(b) Any contract made or entered into, prior to the date of ratification of this Act, by a city, a county, or a water and sewer authority created under Article 1 of Chapter 162A of the General Statutes which would have been valid under subsection (a) of this Section 2 or under G.S. 160A-20 as it existed prior to the ratification of this Act or as rewritten by this Act, except that the Local Government Commission did not approve the contract, is hereby validated, ratified, and confirmed."

The Act was ratified August 1, 1989.

Session Laws 1989, c. 708, s. 3 provided: "Nothing in this Act shall be interpreted to limit or restrict the authority of cities, counties, or water and sewer authorities created under Article 1 of Chapter 162A of the General Statutes to purchase, improve, or finance the purchase or improvement of real or personal property pursuant to any other applicable law, whether general, special, or local."

Session Laws 2008-107, s. 13.8, provides for the use of certain funds appropriated to the Rural Economic Development Center, Inc. for the 2007-2008 fiscal year for wastewater-related and public water system-related projects. See note at G.S. 160A-311.

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

Legal Periodicals. — For survey of 1977 law on property, see 56 N.C.L. Rev. 1111 (1978).

For 1997 legislative survey, see 20 Campbell L. Rev. 443.

CASE NOTES

Agreements Not Prohibited. — Nothing in Chapter 162A indicates it was designed to restrict the broad grant of authority to local governmental units for interlocal cooperation; therefore, an agreement to construct a water distribution facility was not prohibited because units of local government were permitted to enter into contracts under G.S. 160A-461. Caswell County v. Town of Yanceyville, 170 N.C. App. 124, 611 S.E.2d 451, 2005 N.C. App. LEXIS 898 (2005).

Authority Could Discriminate Regarding Rates. — Water and Sewer Authority formed pursuant to this section was subject to the common-law rule that it could not charge rates that would constitute an unwarranted discrimination among the parties it was formed to serve; however, based on a substantial difference between the position of one county vis-a-vis the Authority and the position of the other members, the Authority had the right to charge a rate to that county different from the rate it charged other members. In re Lower Cape Fear Water & Sewer Auth., 329 N.C. 675, 407 S.E.2d 155 (1991).

Cited in Moody v. Town of Carrboro, 301 N.C. 318, 271 S.E.2d 265 (1980); Chapel Hill Country Club, Inc. v. Town of Chapel Hill, 97 N.C. App. 171, 388 S.E.2d 168 (1990); Piedmont Triad Reg'l Water Auth. v. Sumner Hills, Inc., 353 N.C. 343, 543 S.E.2d 844, 2001 N.C. LEXIS 273 (2001).

§ 162A-2. Definitions.

As used in this Article the following words and terms shall have the following meanings, unless the context shall indicate another or different meaning or intent:

(1) The word "authority" shall mean an authority created under the provisions of this Article or, if such authority shall be abolished, the board, body or commission succeeding to the principal functions

thereof or to whom the powers given by this Article to the authority shall be given by law.

(2) The word "Commission" shall mean the Environmental Management Commission.

(3) The word "cost" as applied to a water system or a sewer system shall include the purchase price of any such system, the cost of construction, the cost of all labor and materials, machinery and equipment, the cost of improvements, the cost of all lands, property, rights, easements and franchises acquired, financing charges, interest prior to and during construction and, if deemed advisable by the authority, for one year after completion of construction, cost of plans and specifications, surveys and estimates of cost and of revenues, cost of engineering and legal services, and all other expenses necessary or incident to determining the feasibility or practicability of such construction, administrative expense and such other expenses, including reasonable provision for working capital, as may be necessary or incident to the financing herein authorized. Any obligation or expense incurred by the authority or by any political subdivision prior to the issuance of bonds under the provisions of this Article in connection with any of the foregoing items or cost may be regarded as a part of such cost.

(4) The term "governing body" shall mean the board, commission, council or other body, by whatever name it may be known, in which the general legislative powers of the political subdivision are vested.

(5) The word "improvements" shall mean such repairs, replacements, additions, extensions and betterments of and to a water system or a sewer system as are deemed necessary by the authority to place or to maintain such system in proper condition for its safe, efficient and economic operation or to meet requirements for service in areas which may be served by the authority and for which no existing service is being rendered.

(6) The word "person" shall mean any and all persons, including individuals, firms, partnerships, associations, public or private institutions, municipalities, or political subdivisions, governmental agencies, or private or public corporations organized and existing under the laws of this State or any other state or country.

(7) The term "political subdivision" shall mean any county, city, town, incorporated village, sanitary district or other political subdivision or public corporation of this State now or hereafter incorporated.

(7a) The word "revenues" shall mean all moneys received by an authority from or in connection with any sewer system or water system including, without limitation, any moneys received as interest grants.

(8) The word "sewage" shall mean the water-carried wastes created in and carried or to be carried away from residences, hotels, schools, hospitals, industrial establishments, commercial establishments or any other private or public building together with such surface or groundwater or household and industrial wastes as may be present.

(9) The term "sewage disposal system" shall mean and shall include any plant, system, facility, or property used or useful or having the present capacity for future use in connection with the collection, treatment, purification or disposal of sewage (including industrial wastes resulting from any processes of industry, manufacture, trade or business or from the development of any natural resources), or any integral part thereof, including but not limited to septic tank systems or other on-site collection or disposal facilities or systems, treatment plants, pumping stations, intercepting sewers, trunk sewers, pressure lines,

mains and all necessary appurtenances and equipment, and all property, rights, easements and franchises relating thereto and deemed necessary or convenient by the authority for the operation thereof.

(10) The word "sewers" shall include mains, pipes and laterals for the reception of sewage and carrying such sewage to an outfall or some part of a sewage disposal system, including pumping stations where deemed necessary by the authority.

(11) The term "sewer system" shall embrace both sewers and sewage disposal systems and all property, rights, easements and franchises relating thereto.

(12) The term "water system" shall mean and include all plants, systems, facilities or properties used or useful or having the present capacity for future use in connection with the supply or distribution of water or the control and drainage of stormwater runoff and any integral part thereof, including but not limited to water supply systems, water distribution systems, stormwater management programs designed to protect water quality by controlling the level of pollutants in, and the quantity and flow of, stormwater and structural and natural stormwater and drainage systems of all types, sources of water supply including lakes, reservoirs and wells, intakes, mains, laterals, aqueducts, pumping stations, standpipes, filtration plants, purification plants, hydrants, meters, valves, and all necessary appurtenances and equipment and all properties, rights, easements and franchises relating thereto and deemed necessary or convenient by the authority for the operation thereof. (1955, c. 1195, s. 2; 1969, c. 850; 1971, c. 892, s. 1; 1979, c. 619, s. 8; 1989 (Reg. Sess., 1990), c. 1004, s. 43; 1991, c. 591, s. 3; 2000-70, s. 5.)

Cross References. — As to provisions for the temporary implementation of federal Phase II Stormwater Management requirements, see Session Laws 2004-163, noted under G.S. 143-214.7.

CASE NOTES

Applied in Orange Water & Sewer Auth. v. Town of Carrboro, 58 N.C. App. 676, 294 S.E.2d 757 (1982).

Cited in In re Environmental Mgt. Comm'n, 80 N.C. App. 1, 341 S.E.2d 588 (1986).

§ 162A-3. Procedure for creation; certificate of incorporation; certification of principal office and officers.

(a) The governing body of a single county or the governing bodies of any two or more political subdivisions may by resolution signify their determination to organize an authority under the provisions of this Article. Each of such resolutions shall be adopted after a public hearing thereon, notice of which hearing shall be given by publication at least once, not less than 10 days prior to the date fixed for such hearing, in a newspaper having a general circulation in the political subdivision. Such notice shall contain a brief statement of the substance of the proposed resolution, shall set forth the proposed articles of incorporation of the authority and shall state the time and place of the public hearing to be held thereof. No such political subdivision shall be required to make any other publication of such resolution under the provisions of any other law.

(a1) If an authority is organized by three or more political subdivisions, it may include in its organization nonprofit water corporations. The board of directors of a nonprofit water corporation must signify the corporation's determination to participate in the organization of the authority by adopting a resolution that meets the requirements of subsection (b) of this section. The nonprofit water corporation is not subject to the notice and public hearing requirements of subsection (a) of this section. For all other purposes of this Article, the nonprofit water corporation shall be considered to be a political subdivision.

(a2) If an authority is organized by three or more political subdivisions, it may include in its organization the State of North Carolina. The State of North Carolina is not subject to the notice and public hearing requirements of subsection (a) of this section. For purposes of this Article, the State of North Carolina shall be a political subdivision and its governing body shall be the Council of State.

(b) Each such resolution shall include articles of incorporation which shall set forth:

(1) The name of the authority;
(2) A statement that such authority is organized under this Article;
(3) The names of the organizing political subdivisions; and
(4) The names and addresses of the first members of the authority appointed by the organizing political subdivisions.

(c) A certified copy of each of such resolutions signifying the determination to organize an authority under the provisions of this Article shall be filed with the Secretary of State of North Carolina, together with proof of publication of the notice of hearing on each of such resolutions. If the Secretary of State finds that the resolutions, including the articles of incorporation, conform to the provisions of this Article and that the notices of hearing were properly published, he shall file such resolutions and proofs of publication in his office and shall issue a certificate of incorporation under the seal of the State and shall record the same in an appropriate book of record in his office. The issuance of such certificate of incorporation by the Secretary of State shall constitute the authority a public body and body politic and corporate of the State of North Carolina. Said certificate of incorporation shall be conclusive evidence of the fact that such authority has been duly created and established under the provisions of this Article.

(d) When the authority has been duly organized and its officers elected as herein provided the secretary of the authority shall certify to the Secretary of State the names and addresses of such officers as well as the address of the principal office of the authority. (1955, c. 1195, s. 3; 1971, c. 892, s. 1; 1991, c. 516, s. 1; 2001-224, s. 1; 2002-76, s. 1.)

Editor's Note. — Session Laws 2001-224, s. 3, provides: "The creation of any Water and Sewer Authority under Article 1 of Chapter 162A of the General Statutes on or after July 1, 2000, but before this act became law, that would have been permitted under that Article, as amended by Sections 1 and 2 of this act, is validated and confirmed as to the membership of nonprofit water corporations."

CASE NOTES

Cited in Caswell County v. Town of Yanceyville, 170 N.C. App. 124, 611 S.E.2d 451, 2005 N.C. App. LEXIS 898 (2005).

§ 162A-3.1. Alternative procedure for creation.

(a) As an alternative to the procedure set forth in G.S. 162A-3, the governing body of a single county or the governing bodies of any two or more political subdivisions may by resolution signify their determination to organize an authority under the provisions of this section of this Article. Each of such resolutions shall be adopted after a public hearing thereon, notice of which hearing shall be given by publication at least once, not less than 10 days prior to the date fixed for such hearing, in a newspaper having a general circulation in the political subdivision. Such notice shall contain a brief statement of the substance of the proposed resolution, shall set forth the proposed articles of incorporation of the authority and shall state the time and place of the public hearing. No such political subdivision shall be required to make any other publication of such resolution under the provisions of any other law.

(a1) If an authority is organized by three or more political subdivisions, it may include in its organization nonprofit water corporations. The board of directors of a nonprofit water corporation must signify the corporation's determination to participate in the organization of the authority by adopting a resolution that meets the requirements of subsection (b) of this section. The nonprofit water corporation is not subject to the notice and public hearing requirements of subsection (a) of this section. For all other purposes of this Article, the nonprofit water corporation shall be considered to be a political subdivision.

(a2) If an authority is organized by three or more political subdivisions, it may include in its organization the State of North Carolina. The State of North Carolina is not subject to the notice and public hearing requirements of subsection (a) of this section. For purposes of this Article, the State of North Carolina shall be a political subdivision and its governing body shall be the Council of State.

(b) Each such resolution shall include articles of incorporation which shall set forth:

(1) The name of the authority;
(2) A statement that such authority is organized under this section of this Article;
(3) The names of the organizing political subdivisions;
(4) The names and addresses of the members of the authority appointed by the organizing political subdivisions; and
(5) A statement that members of the authority will be limited to such members as may be appointed from time to time by the organizing political subdivisions.

(c) A certified copy of each of such resolutions signifying the determination to organize an authority under the provisions of this section of this Article shall be filed with the Secretary of State of North Carolina, together with proof of publication of the notice of hearing on each of such resolutions. If the Secretary of State finds that the resolutions, including the articles of incorporation, conform to the provisions of this section of this Article and that the notices of hearing were properly published, he shall file such resolutions and proofs of publication in his office and shall issue a certificate of incorporation under the seal of the State and shall record the same in an appropriate book of record in his office. The issuance of such certificate of incorporation by the Secretary of State shall constitute the authority a public body and body politic and corporate of the State of North Carolina. Said certificate of incorporation shall be conclusive evidence of the fact that such authority has been duly created and established under the provisions of this section of this Article.

(d) When the authority has been duly organized and its officers elected as herein provided the secretary of the authority shall certify to the Secretary of

State the names and addresses of such officers as well as the address of the principal office of the authority. (1975, c. 224, s. 1; 1991, c. 516, s. 2; 2001-224, s. 2; 2002-76, s. 2.)

Editor's Note. — Session Laws 2001-224, s. 3, provides: "The creation of any Water and Sewer Authority under Article 1 of Chapter 162A of the General Statutes on or after July 1, 2000, but before this act became law, that would have been permitted under that Article, as amended by Sections 1 and 2 of this act, is validated and confirmed as to the membership of nonprofit water corporations."

CASE NOTES

Cited in Piedmont Triad Reg'l Water Auth. v. Sumner Hills, Inc., 136 N.C. App. 425, 524 S.E.2d 375, 2000 N.C. App. LEXIS 7 (2000).

§ 162A-4. Withdrawal from authority; joinder of new subdivision.

(a) Whenever an authority has been organized under the provisions of this Chapter, any political subdivision may withdraw therefrom at any time prior to the creation of any obligations by the authority, and any political subdivision not having joined in the original organization may, with the consent of the authority, join the authority; provided, that any political subdivision not having joined the original organization shall have the right upon reasonable terms and conditions, whether the authority shall consent thereto or not, to join the authority if the authority's water system or sewer system, or any part thereof is situated within the boundaries of the political subdivision or of the county within which the political subdivision is located; provided, further, that any political subdivision authorized to join the authority by G.S. 162A-5.1 may do so without the consent of the authority.

(b) Any political subdivision desiring to withdraw from or to join an existing authority shall signify its desire by resolution adopted after a public hearing thereon, notice of which hearing shall be given in the manner and at the time provided in G.S. 162A-3 or 162A-3.1, as appropriate. Such notice shall contain a brief statement of the substance of said resolution and shall state the time and place of the public hearing to be held thereon. In the case of a political subdivision desiring to join the authority, the resolution shall set forth all of the information required under G.S. 162A-3 or 162A-3.1, as appropriate, in connection with the original organization of the authority, including the name and address of the first member of the authority from the joining political subdivision if the authority was organized under G.S. 162A-3.

(c) A certified copy of each such resolution signifying the desire of a political subdivision to withdraw from or to join an existing authority, together with proof of publication of the notice of hearing on each such resolution and, in cases where such resolution provides for the political subdivision joining the authority, certified copies of the resolution of the governing bodies creating the authority consenting to such joining shall be filed with the Secretary of State of North Carolina. If the Secretary of State finds that the resolutions conform to the provisions of this Article and that the notices of hearing were properly published, he shall file such resolutions and proofs of publication in his office and shall issue a certificate of withdrawal, or a certificate of joinder, as the case may be, and shall record the same in an appropriate book of record in his office. The withdrawal or joining shall become effective upon the issuance of such certificate, and such certificate shall be conclusive evidence thereof. (1955, c. 1195, s. 4; 1969, c. 850; 1971, c. 892, s. 1; c. 1093, s. 6; 1975, c. 224, s. 2; 1995, c. 207, s. 2; c. 509, s. 135.2(c).)

CASE NOTES

Cited in Caswell County v. Town of Yanceyville, 170 N.C. App. 124, 611 S.E.2d 451, 2005 N.C. App. LEXIS 898 (2005).

§ 162A-5. Members of authority; organization; quorum.

(a) Each authority organized under this Article shall consist of the number of members as may be agreed upon by the participating political subdivisions, such members to be selected by the respective political subdivision. A proportionate number (as nearly as can be) of members of the authority first appointed shall have terms expiring one year, two years and three years respectively from the date on which the creation of the authority becomes effective. Successor members and members appointed by a political subdivision subsequently joining the authority shall each be appointed for a term of three years, but any person appointed to fill the vacancy shall be appointed to serve only for the unexpired term and any member may be reappointed; provided, however, that a political subdivision subsequently joining an authority created under G.S. 162A-3.1, or under the provisions of G.S. 162A-3 other than subsection (a1), shall not have the right to appoint any members to such authority. Appointments of successor members shall, in each instance, be made by the governing body of the political subdivision appointing the member whose successor is to be appointed. Any member of the authority may be removed, with or without cause, by the governing body appointing said member. This subsection does not apply in the case of an authority that a city joins under G.S. 162A-5.1.

(b) Each authority organized under this Article that a city has joined under G.S. 162A-5.1 shall consist of the number of members provided by that section, such members to be selected as provided by that section. Two each of the members of the authority first appointed after a city has joined under G.S. 162A-5.1 shall have terms expiring one year and two years respectively from the date on which the certificate of joinder was issued, and three of the members of the authority first appointed after a city has joined under G.S. 162A-5.1 shall have terms expiring three years from the date on which the certificate of joinder was issued. Such designation shall be made by the authority by lot at the meeting where members take their oaths of office. Successor members shall each be appointed for a term of three years to commence on the day that the terms of the prior members' terms expire, but any person appointed to fill a vacancy shall be appointed to serve only for the unexpired term and any member may be reappointed. Appointments of successor members shall, in each instance, be made by the governing body of the political subdivision appointing the member whose successor is to be appointed. Any member of the authority may be removed, with or without cause, by the governing body appointing said member.

(c) Each member of the authority before entering upon his duties shall take and subscribe an oath or affirmation to support the Constitution of the United States and of this State and to discharge faithfully the duties of his office, and a record of each such oath shall be filed with the secretary of the authority.

The authority shall select one of its members as chairman and another as vice-chairman and shall also select a secretary and a treasurer who may but need not be members of the authority. The offices of secretary and treasurer may be combined. The terms of office of the chairman, vice-chairman, secretary and treasurer shall be as provided in the bylaws of the authority.

A majority of the members of the authority shall constitute a quorum and the affirmative vote of a majority of all of the members of the authority shall be necessary for any action taken by the authority. No vacancy in the membership of the authority shall impair the right of a quorum to exercise all the rights and perform all of the duties of the authority. The members of the authority may be paid a per diem compensation set by the authority which per diem may not exceed the total amount of four thousand dollars ($4,000) annually, and shall be reimbursed for the amount of actual expenses incurred by them in the performance of their duties. (1955, c. 1195, s. 5; 1969, c. 850; 1971, c. 892, s. 1; 1975, c. 224, ss. 3, 4; 1995, c. 207, s. 3; 1999-456, s. 43; 2001-224, s. 2.1; 2005-127, s. 2; 2006-226, s. 29.)

§ 162A-5.1. Political subdivision allowed to join certain authorities.

(a) As used in this section, "city" means a city, town, or incorporated village.

(b) When an authority was organized under G.S. 162A-3.1 by one county and one city, and the majority of the authority's water customers are located within a city which is not the city that was one of the two original organizers, then that city may join the authority and appoint members as provided by this section.

(c) A city joining the authority under this section shall do so in accordance with the procedures of G.S. 162A-4. The resolution shall become effective upon the issuance of a certificate of joinder under G.S. 162A-4(c).

(d) When a city joins an authority under this section, then effective on a date set in the resolution, but not earlier than the first day of the second calendar month after the issuance of the certificate of joinder under G.S. 162A-4(c), the terms of office of all the members of the authority are terminated, and the authority shall consist of members appointed as follows:

(1) Two members appointed by the governing board of the city joining the authority under this section. These members must be residents of that city.

(2) One member appointed by the governing board of the city that was one of the two original organizers. That member must be a resident of that city.

(3) One member appointed by the board of commissioners of the county that was one of the two original organizers. This member must be a resident of a household served by the authority's water system.

(4) One member appointed by the board of commissioners of the county that was one of the two original organizers. This member must be a resident of a household served by a sewer system operated by the authority, but may not be a resident of a household served by the authority's water system.

(5) One member appointed by the board of commissioners of the county that was one of the two original organizers. This member must be a resident of a household served by the authority's water system which is located outside the corporate limits of any municipality.

(6) One member appointed by the board of commissioners of the county that was one of the two original organizers. That member must be a resident of the city that has the second highest number of residential water customers served by the authority. (1995, c. 207, s. 1.)

CASE NOTES

Cited in Caswell County v. Town of Yanceyville, 170 N.C. App. 124, 611 S.E.2d 451, 2005 N.C. App. LEXIS 898 (2005).

§ 162A-6. Powers of authority generally.

(a) Each authority created hereunder shall be deemed to be a public instrumentality exercising public and essential governmental functions to provide for the public health and welfare, and each authority is authorized and empowered:

(1) To adopt bylaws for the regulation of its affairs and the conduct of its business;

(2) To adopt an official seal and alter the same at pleasure;

(3) To maintain an office at such place or places as it may designate;

(4) To sue and be sued in its own name, plead and be impleaded;

(5) To acquire, lease as lessee or lessor, construct, reconstruct, improve, extend, enlarge, equip, repair, maintain and operate any water system or part thereof or any sewer system or part thereof or any combination thereof within or without the participating political subdivisions or any thereof;

(6) To issue revenue bonds of the authority as hereinafter provided to pay the cost of such acquisition, construction, reconstruction, improvement, extension, enlargement or equipment;

(7) To issue revenue refunding bonds of the authority as hereinafter provided;

(8) To combine any water system and any sewer system as a single system for the purpose of operation and financing;

(9) To fix and revise from time to time and to collect rates, fees and other charges for the use of or for the services and facilities furnished by any system operated by the authority;

(10) To acquire in the name of the authority by gift, grant, purchase, devise, exchange, lease, acceptance of offers of dedication by plat, or any other lawful method, to the same extent and in the same manner as provided for cities and towns under the provisions of G.S. 160A-240.1 and G.S. 160A-374, or the exercise of the right of eminent domain in accordance with the General Statutes of North Carolina which may be applicable to the exercise of such powers by municipalities or counties, any lands or rights in land or water rights in connection therewith, and to acquire such personal property, as it may deem necessary in connection with the acquisition, construction, reconstruction, improvement, extension, enlargement or operation of any water system or sewer system, and to hold and dispose of all real and personal property under its control; provided, that the taking of water from any stream or reservoir by any authority created under the provisions of this Article shall not vest in the taker any rights by prescription; provided, further, that nothing in this section shall affect rights by prescription, if any, now held by any municipality and which may be later transferred to any authority of which such municipality may become a member;

(11) To make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this Article, including a trust agreement or trust agreements securing any revenue bonds issued hereunder, and to employ such consulting and other engineers, superintendents, managers, construction and financial experts, accountants and attorneys, and such employees and agents as may, in the judgment of the authority be deemed necessary, and to fix their compensation; provided, however, that all such expenses shall be payable solely from funds made available under the provisions of this Article;

(12) To enter into contracts with the government of the United States or any agency or instrumentality thereof, or with any political subdivi-

sion, private corporation, copartnership, association or individual providing for the acquisition, construction, reconstruction, improvement, extension, enlargement, operation or maintenance of any water system or sewer system or providing for or relating to the treatment and disposal of sewage or providing for or relating to any water system or the purchase or sale of water;

(13) To receive and accept from any federal, State or other public agency and any private agency, person or other entity, donations, loans, grants, aid or contributions of any money, property, labor or other things of value for any sewer system or water system, and to agree to apply and use the same in accordance with the terms and conditions under which the same are provided;

(14) To enter into contract with any political subdivision by which the authority shall assume the payment of the principal of and interest on indebtedness of such subdivision; and

(14a) To make special assessments against benefited property within the area served or to be served by the authority for the purpose of constructing, reconstructing, extending, or otherwise improving water systems or sanitary collection, treatment, and sewage disposal systems, in the same manner that a county may make special assessments under authority of Chapter 153A, Article 9, except that the language appearing in G.S. 153A-185 reading as follows: "A county may not assess property within a city pursuant to subdivision (1) or (2) of this section unless the governing board of the city has by resolution approved the project," shall not apply to assessments levied by Water and Sewer Authorities established pursuant to Chapter 162A, Article 1, of the General Statutes. For the purposes of this paragraph, references in Chapter 153A, Article 9, to the "county," the "board of county commissioners," "the board" or a specific county official or employee are deemed to refer, respectively, to the authority and to the official or employee of the authority who performs most nearly the same duties performed by the specified county official or employee.

Assessment rolls after being confirmed shall be filed for registration in the office of the Register of Deeds of the county in which the property being assessed is located, and the term "county tax collector" wherever used in G.S. 153A-195 and G.S. 153A-196, shall mean the Executive Director or other administrative officer designated by the authority to perform the functions described in said sections of the statute.

(14b) To provide for the defense of civil and criminal actions and payment of civil judgments against employees and officers or former employees and officers and members or former members of the governing body as authorized by G.S. 160A-167, as amended.

(14c) To adopt ordinances to regulate and control the discharge of sewage or stormwater into any sewerage system owned or operated by the authority, to adopt ordinances concerning stormwater management programs designed to protect water quality by controlling the level of pollutants in and the quantity and flow of stormwater, and to adopt ordinances to regulate and control structural and natural stormwater and drainage systems of all types. Prior to the adoption of any such ordinance or any amendment to any such ordinance, the authority shall first pass a declaration of intent to adopt such ordinance or amendment. The declaration of intent shall describe the ordinance which it is proposed that the authority adopt. The declaration of intent shall be submitted to each governing body for review and comment. The authority shall consider any comment or suggestions offered by any governing body with respect to the proposed ordinance or amendment. Thereafter, the authority shall be authorized to adopt such ordinance or amendment to it at any time after 60 days following the submission of the declaration of intent to each governing body.

(14d) To require the owners of developed property on which there are situated one or more residential dwelling units or commercial establishments located within the jurisdiction of the authority and within a reasonable distance of any waterline or sewer collection line owned, leased as lessee, or operated by the authority to connect the property with the waterline, sewer connection line, or both and fix charges for the connections. The power granted by this subdivision may be exercised by an authority only to the extent that the service, whether water, sewer, or a combination thereof, to be provided by the authority is not then being provided to the improved property by any other political subdivision or by a public utility regulated by the North Carolina Utilities Commission pursuant to Chapter 62 of the General Statutes. In the case of improved property that would qualify for the issuance of a building permit for the construction of one or more residential dwelling units or commercial establishments and where the authority has installed water or sewer lines or a combination thereof directly available to the property, the authority may require payment of a periodic availability charge, not to exceed the minimum periodic service charge for properties that are connected. This subdivision applies only to a water and sewer authority whose membership includes part or all of a county that has a population of at least 40,000 according to the most recent annual population estimates certified by the State Budget Officer.

(15) To do all acts and things necessary or convenient to carry out the powers granted by this Article.

(16) To purchase real or personal property as provided by G.S. 160A-20, in addition to any other method allowed under this Article.

(b) In addition to the powers given under subsection (a) of this section, an authority created under G.S. 162A-3.1 and its participating political subdivisions may enter into agreements obligating these subdivisions to make payments to the authority for treated water delivered or made available or expected to be delivered or made available by the authority, regardless of whether treated water is actually delivered or made available. Such payments may be designed to cover the authority's operating costs (including debt service and related amounts) by allocating those costs among the participating political subdivisions and by requiring these subdivisions to pay additional amounts to make up for the nonpayment of defaulting subdivisions. The participating political subdivisions may agree to budget for and appropriate such payments. Such payment obligations may be made absolute, unconditional, and irrevocable and required to be performed strictly in accordance with the terms of such agreements and without abatement or reduction under all circumstances whatsoever, including whether or not any facility of the authority is completed, operable or operating and, notwithstanding the suspension, interruption, interference, reduction or curtailment of the output of any such facility or the treated water contracted for, and such obligations may be made subject to no reduction, whether by offset or otherwise, and not conditioned upon the performance or nonperformance of the authority or any participating political subdivision under any agreement. Such payment obligations are in consideration of any output or capacity that may at any time be available from facilities of the authority. The participating political subdivisions may agree to make such payments from limited or specified sources. To the extent such payments relate to debt service of the authority and related amounts, they may not be made from any moneys derived from exercise by the participating political subdivisions of their taxing power, and such payment obligations shall not constitute a pledge of such taxing power. The participating political subdivisions may agree (i) not to pledge or encumber any source of payment and (ii) to operate (including fixing rates and charges) in a manner that enables them to make such payments from such sources. The participating political subdivisions may also secure such payment obligations with a pledge of or lien upon any such sources of payment. Notwithstanding the provisions of G.S. 162A-9 or any other law to the contrary, an authority entering into any such agreement need not fix rates, fees and other charges for its services except as provided herein, and such rates, fees and charges need not be uniform through the authority's service areas. Notwithstanding the provisions of G.S. 160A-322 or any other law to the contrary, agreements described herein may have a term not exceeding 50 years. Notwithstanding any law to the contrary, the execution and effectiveness of any agreement authorized hereby shall not be subject to any authorizations or approvals by any entity except the parties thereto. Each authority and its participating political subdivisions shall have the power to do all acts and things necessary or convenient to carry out the powers granted by this subsection.

(c) In addition to the powers given under subsection (a) of this section, an authority that holds a certificate issued after December 1, 1991, by the Environmental Management Commission under G.S. 162A-7 (repealed) may acquire property by the power of eminent domain or by gift, purchase, grant, exchange, lease, or any other lawful method for one or more of the following purposes:

(1) To relocate a road or to construct a road necessitated by construction of water supply project.

(2) To establish, extend, enlarge, or improve storm sewer and drainage systems and works, or sewer and septic tank lines and systems.

(3) To establish drainage programs and programs to prevent obstructions to the natural flow of streams, creeks and natural water channels or to improve drainage facilities. The authority contained in this subdivision is in addition to any authority contained in Chapter 156 of the General Statutes.

(4) To acquire property for wetlands mitigation. (1955, c. 1195, s. 6; 1969, c. 850; 1971, c. 892, s. 1; 1979, c. 804; 1983, c. 525, s. 5; c. 820, s. 1; 1987 (Reg. Sess., 1988), c. 981, s. 2; 1989, c. 517; 1993 (Reg. Sess., 1994), c. 696, s. 8.1; 1995, c. 509, s. 113; c. 511, s. 1; 1997-436, s. 1; 2000-70, s. 6; 2004-203, s. 5(n).)

Editor's Note. — Section 3 of Session Laws 1989, c. 517 provided that the act "shall have the effect of validating the acquisition of any property theretofore acquired by any water and sewer authority by any of the methods authorized by this revision of G.S. subdivision 162A-6(10) by Section 1 of this act."

Section 162A-7, referred to in this section, was repealed by Session Laws 1993, c. 348, s. 6, effective January 1, 1994.

Session Laws 1995, c. 511, which amended this section, in s. 5 provides: "It is the express purpose of this act to provide additional and alternative powers to political subdivisions and authorities affected by this act and to provide additional and alternative methods by which the functions affected by this act may be performed. This act is not intended, and shall not be construed, to derogate, limit, or repeal any power now existing under any other law, whether general, special, or local."

Session Laws 1995, c. 511, which amended this section, in s. 6 provides: "All general, special, or local laws, or parts thereof, inconsistent with the provisions of this act are declared to be inapplicable to the provisions of this act."

Legal Periodicals. — For 1997 legislative survey, see 20 Campbell L. Rev. 443.

CASE NOTES

Water quality is not only a permissible consideration for the Environmental Management Commission, but also one that is important, if not essential, to the responsible exercise of the police power. In re Environmental Mgt. Comm'n, 80 N.C. App. 1, 341 S.E.2d 588, cert. denied, 317 N.C. 334, 346 S.E.2d 139 (1986).

Procedures for eminent domain governing cities and counties apply to water and sewer authorities created pursuant to this Article. Orange Water and Sewer Auth. v. Estate of Armstrong, 34 N.C. App. 162, 237 S.E.2d 486, cert. denied, 293 N.C. 593, 239 S.E.2d 265 (1977).

With additional requirement that a certificate of authorization be obtained before an action in eminent domain is commenced. Orange Water and Sewer Auth. v. Estate of Armstrong, 34 N.C. App. 162, 237 S.E.2d 486, cert. denied, 293 N.C. 593, 239 S.E.2d 265 (1977).

As the power of eminent domain under subdivision (10) is subject to the provisions of § 162A-7(a). Orange Water and Sewer Auth. v. Estate of Armstrong, 34 N.C. App. 162, 237 S.E.2d 486, cert. denied, 293 N.C. 593, 239 S.E.2d 265 (1977).

But Authority May Enter and Survey Prior to Instituting Proceedings. — A water and sewer authority's right of eminent domain was not dormant before certification under former G.S. 162A-7. Because it has the power of eminent domain possessed by cities, it may enter and survey lands prior to the institution of an eminent domain proceeding. Orange Water and Sewer Auth. v. Estate of Armstrong, 34 N.C. App. 162, 237 S.E.2d 486, cert. denied, 293 N.C. 593, 239 S.E.2d 265 (1977).

Applied in Orange Water & Sewer Auth. v. Town of Carrboro, 58 N.C. App. 676, 294 S.E.2d 757 (1982).

Cited in In re Environmental Mgt. Comm'n, 80 N.C. App. 1, 341 S.E.2d 588 (1986); Piedmont Triad Reg'l Water Auth. v. Sumner Hills, Inc., 136 N.C. App. 425, 524 S.E.2d 375, 2000 N.C. App. LEXIS 7 (2000); Piedmont Triad Reg'l Water Auth. v. Sumner Hills, Inc., 353 N.C. 343, 543 S.E.2d 844, 2001 N.C. LEXIS 273 (2001).

§ 162A-6.1. Privacy of employee personnel records.

(a) Notwithstanding the provisions of G.S. 132-6 or any other law concerning access to public records, personnel files of employees, former employees, or applicants for employment maintained by an authority are subject to inspection and may be disclosed only as provided by this section. For purposes of this section, an employee's personnel file consists of any information in any form gathered by the authority with respect to that employee and, by way of illustration but not limitation, relating to his application, selection or nonselection, performance, promotions, demotions, transfers, suspension and other disciplinary actions, evaluation forms, leave, salary, and termination of employment. As used in this section, "employee" includes former employees of the authority.

(b) The following information with respect to each authority employee is a matter of public record: name; age; date of original employment or appointment to the service; the terms of any contract by which the employee is employed whether written or oral, past and current, to the extent that the authority has the written contract or a record of the oral contract in its possession; current position title; current salary; date and amount of the most recent increase or decrease in salary; date of the most recent promotion, demotion, transfer, suspension, separation, or other change in position classification; and the office to which the employee is currently assigned. For the purposes of this subsection, the term "salary" includes pay, benefits, incentives, bonuses, and deferred and all other forms of compensation paid by the employing entity. The authority shall determine in what form and by whom this information will be maintained. Any person may have access to this information for the purpose of inspection, examination, and copying, during regular business hours, subject only to such rules and regulations for the safekeeping of public records as the authority may have adopted. Any person denied access to this information may apply to the appropriate division of the

General Court of Justice for an order compelling disclosure, and the court shall have jurisdiction to issue such orders.

(c) All information contained in an authority employee's personnel file, other than the information made public by subsection (b) of this section, is confidential and shall be open to inspection only in the following instances:

(1) The employee or his duly authorized agent may examine all portions of his personnel file except (i) letters of reference solicited prior to employment, and (ii) information concerning a medical disability, mental or physical, that a prudent physician would not divulge to his patient.

(2) A licensed physician designated in writing by the employee may examine the employee's medical record.

(3) An authority employee having supervisory authority over the employee may examine all material in the employee's personnel file.

(4) By order of a court of competent jurisdiction, any person may examine such portion of an employee's personnel file as may be ordered by the court.

(5) An official of an agency of the State or federal government, or any political subdivision of the State, may inspect any portion of a personnel file when such inspection is deemed by the official having custody of such records to be inspected to be necessary and essential to the pursuance of a proper function of the inspecting agency, but no information shall be divulged for the purpose of assisting in a criminal prosecution (of the employee), or for the purpose of assisting in an investigation of (the employee's) tax liability. However, the official having custody of such records may release the name, address, and telephone number from a personnel file for the purpose of assisting in a criminal investigation.

(6) An employee may sign a written release, to be placed with his personnel file, that permits the person with custody of the file to provide, either in person, by telephone, or by mail, information specified in the release to prospective employers, educational institutions, or other persons specified in the release.

(7) The chief administrative officer, with concurrence of the authority, may inform any person of the employment or nonemployment, promotion, demotion, suspension or other disciplinary action, reinstatement, transfer, or termination of an authority employee and the reasons for that personnel action. Before releasing the information, the chief administrative officer or authority shall determine in writing that the release is essential to maintaining public confidence in the administration of authority services or to maintaining the level and quality of authority services. This written determination shall be retained in the office of the chief administrative officer or the secretary of the authority, and is a record available for public inspection and shall become part of the employee's personnel file.

(d) Even if considered part of an employee's personnel file, the following information need not be disclosed to an employee nor to any other person:

(1) Testing or examination material used solely to determine individual qualifications for appointment, employment, or promotion in the authority's service, when disclosure would compromise the objectivity or the fairness of the testing or examination process.

(2) Investigative reports or memoranda and other information concerning the investigation of possible criminal actions of an employee, until the investigation is completed and no criminal action taken, or until the criminal action is concluded.

(3) Information that might identify an undercover law enforcement officer or a law enforcement informer.

(4) Notes, preliminary drafts, and internal communications concerning an employee. In the event such materials are used for any official personnel decision, then the employee or his duly authorized agent shall have a right to inspect such materials.

(e) The authority may permit access, subject to limitations it may impose, to selected personnel files by a professional representative of a training, research, or academic institution if that person certifies that that person will not release information identifying the employees whose files are opened and that the information will be used solely for statistical, research, or teaching purposes. This certification shall be retained by the authority as long as each personnel file examined is retained.

(f) An authority that maintains personnel files containing information other than the information mentioned in subsection (b) of this section shall establish procedures whereby an employee, who objects to material in his file on grounds that it is inaccurate or misleading, may seek to have the material removed from the file or may place in the file a statement relating to the material.

(g) A public official or employee who knowingly, willfully, and with malice permits any person to have access to information contained in a personnel file, except as is permitted by this section, is guilty of a Class 2 misdemeanor and is punishable only by a fine not to exceed five hundred dollars ($500.00).

(h) Any person not specifically authorized by this section to have access to a personnel file designated as confidential, who shall:

(1) Knowingly and willfully examine in its official filing place; or
(2) Remove or copy

any portion of a confidential personnel file shall be guilty of a Class 2 misdemeanor and is punishable only by a fine not to exceed five hundred dollars ($500.00). (1993, c. 505, s. 1; 1994, Ex. Sess., c. 14, ss. 69, 70; 2007-508, s. 8.)

Editor's Note. — Session Laws 1993, c. 505, s. 2 originally enacted subsections (d) through (h) as subsections (c1) through (f). The subsections were redesignated at the direction of the Revisor of Statutes.

§ 162A-7: Repealed by Session Laws 1993, c. 348, s. 6.

Cross References. — As to regulation of surface water transfers, see now G.S. 143-215.22L.

§ 162A-8. Revenue bonds.

A water and sewer authority shall have power from time to time to issue revenue bonds under the Local Government Revenue Bond Act. (1955, c. 1195, s. 7; 1969, c. 850; 1971, c. 780, s. 32; c. 892, s. 1.)

Cross References. — For the Local Government Revenue Bond Act, see G.S. 159-43 et seq.

§ 162A-9. Rates and charges; electronic notice; contracts for water or services; deposits; delinquent charges.

(a) An authority may establish and revise a schedule of rates, fees, and other charges for the use of and for the services furnished or to be furnished by any water system or sewer system or parts thereof owned or operated by the authority. The rates, fees, and charges established under this subsection are not subject to supervision or regulation by any bureau, board, commission, or other agency of the State or of any political subdivision.

Before an authority sets or revises rates, fees, or other charges for stormwater management programs and structural or natural stormwater and drainage system service, the authority shall hold a public hearing on the matter. At least seven days before the hearing, the authority shall publish notice of the public hearing in a newspaper having general circulation in the area. An authority may impose rates, fees, or other charges for stormwater management programs and stormwater and drainage system service on a person even though the person has not entered into a contract to receive the service.

Rates, fees, and charges shall be fixed and revised so that the revenues of the authority, together with any other available funds, will be sufficient at all times:

(1) To pay the cost of maintaining, repairing, and operating the systems or parts thereof owned or operated by the authority, including reserves for such purposes, and including provision for the payment of principal of and interest on indebtedness of a political subdivision or of political subdivisions which payment shall have been assumed by the authority, and

(2) To pay the principal of and the interest on all bonds issued by the authority under the provisions of this Article as the same shall become due and payable and to provide reserves therefor.

The fees established under this subsection must be made applicable throughout the service area. Schedules of rates, fees, charges, and penalties for providing stormwater management programs and structural and natural stormwater and drainage system service may vary according to whether the property served is residential, commercial, or industrial property, the property's use, the size of the property, the area of impervious surfaces on the property, the quantity and quality of the runoff from the property, the characteristics of the watershed into which stormwater from the property drains, and other factors that affect the stormwater drainage system. Rates, fees, and charges imposed under this subsection for stormwater management programs and stormwater and drainage system service may not exceed the authority's cost of providing a stormwater management program and a structural and natural stormwater and drainage system. The authority's cost of providing a stormwater management program and a structural and natural stormwater and drainage system includes any costs necessary to assure that all aspects of stormwater quality and quantity are managed in accordance with federal and State laws, regulations, and rules.

No stormwater utility fee may be levied under this subsection whenever two or more units of local government operate separate stormwater management programs or separate structural and natural stormwater and drainage system services in the same area within a county. However, two or more units of local government may allocate among themselves the functions, duties, powers, and responsibilities for jointly operating a stormwater management program and structural and natural stormwater and drainage system service in the same area within a county, provided that only one unit may levy a fee for the service within the joint service area. For purposes of this subsection, a unit of local government shall include a regional authority providing stormwater management programs and structural and natural stormwater and drainage system services.

(a1) If an authority has a Web site maintained by one or more of its employees, the authority shall provide notice of the imposition of or increase in rates, fees, and charges under subsection (a) of this section applicable solely to the construction of development subject to Part 2 of Article 19 of Chapter 160A or Part 2 of Article 18 of Chapter 153A on the authority's Web site at least seven days prior to the first meeting where the imposition of or increase in the rates, fees, and charges is on the agenda for consideration. During the consideration of the imposition of or increase in rates, fees, or charges under this subsection, the authority shall permit a period of public comment. This subsection shall not apply if the imposition of or increase in rates, fees, and charges is contained in a budget filed in accordance with the requirements of G.S. 159-12.

(b) Notwithstanding any of the foregoing provisions of this section, the authority may enter into contracts relating to the collection, treatment or disposal of sewage or the purchase or sale of water which shall not be subject to revision except in accordance with their terms.

(c) In order to insure the payment of such rates, fees and charges as the same shall become due and payable, the authority may do the following in addition to exercising any other remedies which it may have:

(1) Require reasonable advance deposits to be made with it to be subject to application to the payment of delinquent rates, fees and charges.
(2) At the expiration of 30 days after any rates, fees and charges become delinquent, discontinue supplying water or the services and facilities of any water system or sewer system of the authority.
(3) Specify the order in which partial payments are to be applied when a bill covers more than one service. (1955, c. 1195, s. 8; 1971, c. 892, s. 1; 1989 (Reg. Sess., 1990), c. 1004, s. 45; 1991, c. 591, s. 4; 1991 (Reg. Sess., 1992), c. 1007, s. 47; 2000-70, s. 7; 2009-436, s. 4.)

Effect of Amendments. — Session Laws 2009-436, s. 4, effective September 1, 2009, inserted "electronic notice" in the section heading and added subsection (a1).

CASE NOTES

Liability of City for Hydrant Fees. — Even absent statutory or express contractual liability to pay for fire protection, justice and equity required city to pay fire hydrant fees to a water and sewer authority where the authority intended to maintain hydrants for the city's use, the city granted a 60-year franchise to the authority to install and maintain hydrants, free service was explicitly proscribed, the city knew of the hydrant charges, and the city paid such charges until the rate was increased. The law would imply a promise by the city to pay for such service. Otherwise, it would be unjustly enriched at the expense of the authority. Orange Water & Sewer Auth. v. Town of Carrboro, 58 N.C. App. 676, 294 S.E.2d 757, cert. denied, 307 N.C. 127, 297 S.E.2d 400 (1982).

Cited in Town of Spring Hope v. Bissette, 305 N.C. 248, 287 S.E.2d 851 (1982).

§ 162A-9.1. Adoption and enforcement of ordinances.

(a) An authority shall have the same power as a city under G.S. 160A-175 to assess civil fines and penalties for violation of its ordinances; and, an authority may seek and recover injunctive relief to insure compliance with its ordinances as provided by this section.

(b) An ordinance may provide that its violation shall subject the offender to a civil penalty of not more than one thousand dollars ($1,000) per violation, to be recovered by the authority in a civil action in the nature of debt if the offender does not pay the penalty within a prescribed period of time after he has been cited for violation of the ordinance. Any person assessed a civil penalty by the authority shall be notified of the assessment by registered or certified mail, and the notice shall specify the reasons for the assessment of the civil penalty. If the person assessed fails to pay the amount of the assessment to the authority within 30 days after receipt of such notice, or such longer period, not to exceed 180 days, as the authority may specify, the authority may institute a civil action in the General Court of Justice of the county in which the violation occurred, or, in the discretion of the authority, in the General Court of Justice of the county in which the person has his or its principal place of business, to recover the amount of the assessment. The validity of the authority's action in assessing the violator may be appealed directly to the General Court of Justice in the county in which the violation occurred, or may be raised at any time in the action to recover the assessment. No failure to contest directly the validity of the authority's action in levying the assessment shall preclude the person assessed from later raising the issue of validity in any action to collect the assessment.

(c) An ordinance may provide that it may be enforced, and it may be enforced, by any appropriate equitable remedy issuing from a court of competent jurisdiction. In such cases, the General Court of Justice shall have jurisdiction and authority to issue such orders as may be appropriate to enforce the ordinances of the authority, and it shall not be a defense to the application made by the authority therefor that there is an adequate remedy at law.

(d) Subject to the express terms of any ordinance, an ordinance adopted by the authority may be enforced by any one, all or a combination of the remedies authorized and prescribed by this section.

(e) An ordinance may provide, when appropriate, that each day's continuing violation thereof shall constitute and be a separate and distinct offense. (1983, c. 820, s. 2.)

§ **162A-10:** Repealed by Session Laws 1971, c. 780, s. 33.

§ 162A-11. Moneys received deemed trust funds.

All moneys received pursuant to the authority of this Article shall be deemed to be trust funds, to be held and applied solely as provided in this Article. The resolution authorizing the issuance of bonds or the trust agreement securing such bonds shall provide that any officer to whom, or bank, trust company or fiscal agent to which, such moneys shall be paid shall act as trustee of such moneys and shall hold and apply the same for the purposes hereof, subject to such regulations as this Article and such resolution or trust agreement may provide. (1955, c. 1195, s. 10; 1971, c. 892, s. 1.)

§ 162A-12. Bondholder's remedies.

Any holder of revenue bonds issued under the provisions of this Article or of any of the coupons appertaining thereto, and the trustee under any trust agreement, except to the extent the rights herein given may be restricted by the resolution authorizing the issuance of such bonds or such trust agreement, may, either at law or in equity, by suit, action, mandamus or other proceeding, protect and enforce any and all rights under the laws of the State or granted hereunder or under such resolution or trust agreement, and may enforce and compel the performance of all duties required by this Article or by such resolution or trust agreement to be performed by the authority or by any officer thereof, including the fixing, charging and collecting of rates, fees and charges for the use of or for the services and facilities furnished by a water system or sewer system. (1955, c. 1195, s. 11; 1971, c. 892, s. 1.)

§ 162A-13. Refunding bonds.

Each authority is hereby authorized to issue from time to time revenue refunding bonds for the purpose of refunding any revenue bonds of the authority then outstanding, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds. The authority is further authorized to issue from time to time revenue bonds of the authority for the combined purpose of

(1) Refunding any revenue bonds or revenue refunding bonds of the authority then outstanding, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds, and

(2) Paying all or any part of the cost of acquiring or constructing any additional water system or sewer system or part thereof, or any improvements, extensions or enlargements of any water system or sewer system.

The issuance of such bonds, the maturities and other details thereof, the rights and remedies of the holders thereof, and the rights, powers, privileges, duties and obligations of the authority with respect to the same, shall be governed by the foregoing provisions of this Article insofar as the same may be applicable. (1955, c. 1195, s. 12; 1971, c. 892, s. 1.)

§ 162A-14. Conveyances and contracts between political subdivisions and authority.

The governing body of any political subdivision is hereby authorized and empowered:

(1) Pursuant to the provisions of G.S. 160A-274 and subject to the approval of the Local Government Commission, except for action taken hereunder by any State agency, to transfer jurisdiction over, and to lease, lend, grant or convey to an authority upon the request of the authority, upon such terms and conditions as the governing body of such political subdivision may agree with the authority as reasonable and fair, the whole or any part of any existing water system or sewer system or such real or personal property as may be necessary or desirable in connection with the acquisition, construction, reconstruction, improvement, extension, enlargement, equipment, repair, maintenance or operation of any water system or sewer system or part thereof by the authority, including public roads and other property already devoted to public use;

(2) To make and enter into contracts or agreements with an authority, upon such terms and conditions and for such periods as are agreed to by the governing body of such political subdivision and the authority;

  a. For the collection, treatment or disposal of sewage by the authority or for the purchase of a supply of water from the authority;

  b. For the collecting by such political subdivision or by the authority of fees, rates or charges for water furnished to such political subdivision or to its inhabitants and for the services and facilities rendered to such political subdivision or to its inhabitants by any water system or sewer system of the authority, and for the enforcement of delinquent charges for such water, services and facilities;

  c. For shutting off the supply of water furnished by any water system owned or operated by such political subdivision in the event that the owner, tenant or occupant of any premises utilizing such water shall fail to pay any rates, fees or charges for the use of or for the services furnished by any sewer system of the authority, within the time or times specified in such contract; and

  d. For requiring the owners of developed property on which there are situated one or more residential dwelling units or commercial establishments located within the corporate limits of the political subdivision and located within a reasonable distance of any waterline or sewer connection line owned, leased as lessee, or operated by the authority to connect to the line and collecting, on behalf of the authority, charges for the connections and requiring, as a condition to the issuance of any development permit or building permit by the political subdivision, evidence that any impact fee by the authority has been paid by or on behalf of the applicant for the permit.

(3) To fix, and revise from time to time, rates, fees and other charges for water and for the services furnished or to be furnished by any water system or sewer system of the authority, or parts thereof, under any contract between the authority and such political subdivision, and to pledge all or any part of the proceeds of such rates, fees and charges to the payment of any obligation of such political subdivision under such contract; and

(4) In its discretion, to submit to the qualified electors under the election laws applicable to such political subdivision any contract or agreement which such governing body is authorized to make and enter into with the authority under the provisions of this Article. (1955, c. 1195, s. 13; 1971, c. 892, s. 1; 1975, c. 224, ss. 5, 6; 1995, c. 511, s. 2.)

Editor's Note. — Session Laws 1995, c. 511, which amended this section, in s. 5 provides: "It is the express purpose of this act to provide additional and alternative powers to political subdivisions and authorities affected by this act and to provide additional and alternative methods by which the functions affected by this act may be performed. This act is not intended, and shall not be construed, to derogate, limit, or repeal any power now existing under any other law, whether general, special, or local."

Session Laws 1995, c. 511, which amended this section, in s. 6 provides: "All general, special, or local laws, or parts thereof, inconsistent with the provisions of this act are declared to be inapplicable to the provisions of this act."

§ 162A-15. Services to authority by private water companies; records of water taken by authority; reports to the Commission.

Each private water company which is supplying water to the owners, lessees or tenants of real property which is or will be served by any sewer system of an authority is authorized to act as the billing and collecting agent of the authority for any rates, fees or charges imposed by the authority for the services rendered by such sewer system. Any such company shall, if requested by an authority furnish to the authority copies of its regular periodic meter reading and water consumption records and other pertinent data as may be required for the authority to act as its own billing and collecting agent. The authority shall pay to such water company the reasonable additional cost of clerical services and other expenses incurred by the water company in rendering such services to the authority. The authority shall by means of suitable measuring and recording devices and facilities record the quantity of water taken daily by it from any stream or reservoir and make monthly reports of such daily recordings to the Commission. (1955, c. 1195, s. 14; 1989 (Reg. Sess., 1990), c. 1004, s. 46.)

§ 162A-16. Contributions or advances to authority by political subdivisions.

Any political subdivision is hereby authorized to make contributions or advances to an authority, from any moneys which may be available for such purpose, to provide for the preliminary expenses of such authority in carrying out the provisions of this Article. Any such advances may be repaid to such political subdivisions from the proceeds of bonds issued by such authority under this Article. (1955, c. 1195, s. 15; 1971, c. 892, s. 1.)

§ 162A-17. Article regarded as supplemental.

This Article shall be deemed to provide an additional and alternative method for the doing of the things authorized hereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of or as repealing any powers now existing under any other law, either general, special or local; provided, however, that the issuance of revenue bonds or revenue refunding bonds under the provisions of this Article need not comply with the requirements of any other law applicable to the issuance of bonds. (1955, c. 1195, s. 16; 1971, c. 892, s. 1.)

§ 162A-18. Actions against authority by riparian owners.

Any riparian owner alleging an injury as a result of any act of an authority created under this Article may maintain an action for relief against the acts of the authority either in the county where the lands of such riparian owner lie or in the county in which the principal office of the authority is maintained. (1955, c. 1195, s. 161/2; 1971, c. 892, s. 1.)

§ 162A-19. Inconsistent laws declared inapplicable.

All general, special or local laws, or parts thereof, inconsistent herewith are hereby declared to be inapplicable to the provisions of this Article. (1955, c. 1195, s. 17; 1971, c. 892, s. 1.)

ARTICLE 2.

Regional Water Supply Planning.

§ 162A-20. Title.

This Article shall be known and may be cited as the "Regional Water Supply Planning Act of 1971." (1971, c. 892, s. 1.)

CASE NOTES

Cited in In re Environmental Mgt. Comm'n, 80 N.C. App. 1, 341 S.E.2d 588 (1986).

§ 162A-21. Preamble.

The Legislative Research Commission was directed by Senate Resolution 875 of the 1969 General Assembly to study and report to the 1971 General Assembly on the need for legislation "concerning local and regional water supplies (including sources of water, and organization and administration of water systems)." Pursuant to said Resolution a report was prepared and adopted by the Legislative Research Commission in 1970 concerning local and regional water supplies. In this report the Legislative Research Commission made the following findings concerning the need for planning and developing regional water supply systems in order to provide adequate supplies of high quality water to the citizens of North Carolina, of which the General Assembly hereby takes cognizance:

(1) The existing pattern of public water supply development in North Carolina is dominated by many small systems serving few customers. Of the 1,782 public water systems of record on July 1, 1970, according to Department of Health and Human Services statistics, over eighty percent (80%) were serving less than 1,000 people each. These small systems are often underfinanced, inadequately designed and maintained, difficult to coordinate with nearby regional systems, and generally inferior to systems serving larger communities as regards adequacy of source, facilities and quality. The situation which has developed reflects a need for better planning at both State and local levels.

(2) The State's population balance is steadily changing. Sparsely populated counties are losing residents to the more densely populated counties, while the State's total population is increasing. As this trend continues, small towns and communities will find it increasingly difficult to build and maintain public water supply systems. Also, as urban centers expand, and embrace relatively large geographical areas, economic factors will dictate that regional water systems be developed to serve these centers and to meet the demands of commercial and industrial development. It is estimated that countywide or regional water systems are needed now by 50 counties.

(3) If the future public water supply needs of the State are to be met, a change in the existing pattern of public water supply development and management must be undertaken. Regional planning and development is an immediate need. The creation of countywide or regional water supplies, with adequate interconnections, is necessary in order to provide an adequate supply of high quality water to the State's citizens, to make supplies less vulnerable to recurring drought conditions, and to have systems large enough to justify the costs of adequate facilities and of proper operation and maintenance.

(4) The State should provide a framework for comprehensive planning of regional water supply systems, and for the orderly coordination of local actions, so as to make the most efficient use of available water resources and economies of scale for construction, operation and maintenance. The State should also provide financial assistance to local governments and regional authorities in order to assist with the cost of developing comprehensive regional plans, and countywide plans compatible with a regional system. (1971, c. 892, s. 1; 1973, c. 476, s. 128; 1997-443, s. 11A.118(a).)

Allocation of Surface Water Resources Study. — Session Laws 2007-518, s. 1(a), as amended by Session Laws 2008-10, s. 1, provides: "The Environmental Review Commission, with the assistance of the Department of Environment and Natural Resources, shall study the allocation of surface water resources and their availability and maintenance in the State, including issues related to the transfer of water from one river basin to another, the withdrawal of water for consumptive use, and the accuracy and tolerance of equipment used to measure the flow of water transferred from one river basin to another river basin. The Commission shall evaluate the benefits of establishing formal and informal procedures for negotiating transfers of water from one river basin to another. The Commission shall also study and recommend measures to: (i) ensure that the purposes of the Regional Water Supply Planning Act of 1971, as set out in G.S. 162A-21, are fulfilled; (ii) provide for a comprehensive system for regulating surface water withdrawals for consumptive and nonconsumptive uses; (iii) provide for the establishment of a statewide plan for water resources development projects; (iv) provide for adequate resources for the Department so that it may develop and implement a comprehensive approach to water resources management; (v) ensure that all State laws regulating water resources are consistent with and fully integrated into the comprehensive system for regulating surface water withdrawals and the statewide plan for water resources development projects; and (vi) ensure that potential interstate conflicts related to water resources are avoided or minimized. In the conduct of this study, the Environmental Review Commission may employ independent consultants as provided in G.S. 120-32.02 and G.S. 120-70.44. The Environmental Review Commission may submit interim reports to the 2008 and 2009 regular sessions of the General Assembly and shall submit a final report of its findings and recommendations, including any legislative proposals, to the General Assembly on or before 1 October 2010."

Session Laws 2008-125, s. 2, provides: "As a part of the study by the Environmental Review Commission of the allocation of water resources in this State pursuant to subsection (a) of Section 1 of S.L. 2007-518, the Environmental Review Commission shall study the delineation of major river basins and subbasins within the State. The Commission shall determine whether the definition of 'river basin' set out in G.S. 143-215.22G and the accompanying map should be revised. The Commission shall report its findings and recommendations as provided in subsection (a) of Section 1 of S.L. 2007-518, as amended."

Session Laws 2008-143, s. 6, provides: "The Environmental Review Commission, as part of its ongoing study of the allocation of water resources in the State required by Section 1 of S.L. 2007-518, shall study issues related to increasing water supply, including issues related to reservoir construction and State laws and rules governing reservoir construction. The Environmental Review Commission shall report its findings and recommendations, including any legislative proposals, to the General Assembly as provided by Section 1 of S.L. 2007-518, as amended."

CASE NOTES

Cited in In re Environmental Mgt. Comm'n, 80 N.C. App. 1, 341 S.E.2d 588 (1986); Quality Water Supply, Inc. v. City of Wilmington, 97 N.C. App. 400, 388 S.E.2d 608 (1990).

§ 162A-22. Definition of regional water supply system.

For the purposes of this Article "a regional water supply system" is defined as a public water supply system of a municipality, county, sanitary district, or other political subdivision of the State, or combination thereof, which provides, is intended to provide, or is capable of providing an adequate and safe supply of water to a substantial portion of the population within a county, or to a substantial water service area in a region composed of all or parts of two or more counties, or to a metropolitan area in two or more counties. (1971, c. 892, s. 1.)

§ 162A-23. State role and functions relating to local and regional water supply planning.

(a) It should be the role of State government to provide a framework for comprehensive planning of regional water supply systems, and for the orderly coordination of local actions relating to water supply, so as to make possible the most efficient use of water resources and to help realize economies of scale in water supply systems. To these ends, it shall be the function of State government to:

(1) Identify major sources of raw water supply for regional systems, and raw water interconnections as may be desirable and feasible.
(2) Identify areas suitable for the development of regional systems.
(3) Establish priorities for regionalization.
(4) Develop plans for connecting proposed regional systems to major sources of supply, and for such finished water interconnections as may be desirable and feasible.
(5) Review and approve plans for proposed regional systems, and for proposed municipal and countywide systems which are compatible with a regional plan.
(6) Administer a State program of financial assistance to local governments and regional planning agencies for the development of comprehensive plans for regional water systems, or county systems compatible with regional plans.

(7) Provide technical assistance to local and regional planning agencies, and to consulting engineering firms.

(b) Responsibility for carrying out the role of State government in regional water supply planning shall be assigned to the Department of Environment and Natural Resources. (1971, c. 892, s. 1; 1973, c. 476, s. 128; 1989, c. 727, s. 212; 1997-443, s. 11A.123.)

§ 162A-24. Regional Water Supply Planning Revolving Fund established; conditions and procedures.

(a) There is established under the control and direction of the Department of Administration a Regional Water Supply Planning Revolving Fund, to consist of any moneys that may be appropriated for use through the fund by the General Assembly or that may be made available to it from any other source. The Department may make advances from the fund to any county, municipality, sanitary district, or to counties and municipalities acting collectively or jointly as a regional water authority, for the purpose of meeting the cost of advance planning and engineering work necessary or desirable for the development of a comprehensive plan for a regional water supply system as defined in this Article. Such advances shall be subject to repayment by the recipient to the Department from the proceeds of bonds or other obligations for the regional water supply system, or from other funds available to the recipient including grants, except when, in the judgment of the Department of Environment and Natural Resources, a proposed plan for development and construction of a countywide or other regional water system is not feasible because of design and construction factors or because available sources of raw water supply are inadequate or because construction of a proposed system is not economically feasible, (but not if the applicant decides not to proceed with construction that has been planned and which the Department of Environment and Natural Resources have declared to be feasible).

(b) The Department of Administration shall not make any advance pursuant to this section without first referring the application and proposal to the Department of Environment and Natural Resources for determination as to whether the following conditions have been met:

(1) The proposed area is suitable for development of a regional water supply system from the standpoint of present and projected populations, industrial growth potential, and present and future sources of raw water.

(2) The applicant proposes to undertake long-range comprehensive planning to meet present and projected needs for high quality water service through the construction of a regional water supply system as defined in this Article. The determination by the Department of Environment and Natural Resources that the proposed system would be a "regional system," as defined by this Article, shall be conclusive.

(3) The applicant proposes to coordinate planning of the regional water supply with land-use planning in the area, in order that both planning efforts will be compatible.

(4) The applicant proposes to employ an engineer licensed to practice in the State of North Carolina to prepare a comprehensive regional water supply plan, which plan will provide detailed information on source or sources of water to meet projected domestic and industrial water demands; proposed system, including raw water intake(s), treatment plant, storage facilities, distribution system, and other waterworks appurtenances; proposed interconnections with existing systems, and provisions for interconnections with other county, municipal and regional systems; phased development of systems to

achieve ultimate objectives if economic feasibility is in question; projected water service areas; proposed equipment; estimates of cost and projected revenues; and methods of financing.

(c) In addition to the above conditions, the Department of Administration shall not make any advance to any applicant until the following conditions have also been met:

(1) The Department has determined that there is a reasonable prospect of federal (or State) aid in the financing of the projected work if the undertaking is one that will be dependent upon federal (or State) aid.

(2) The Department has received firm assurances from the applicant that the works or project, if feasible, will be undertaken.

(d) All advances made pursuant to this section shall be repaid in full, within one year of the start of construction on the projected system, or within six months after the issuance of bonds for the financing of construction of the system, or within six years from the date of the making of the advance, whichever comes first. The Department may, in its discretion, require the repayment of any advance in installments.

(e) The Department of Administration may adopt such rules and regulations with respect to the making of applications or the receipt of advances as are consistent with the terms and purpose of this section.

(f) The provisions of Chapter 159 of the General Statutes of North Carolina (Local Government Acts) shall not apply to advances made from the Regional Water Supply Planning Revolving Fund as authorized in this Article. (1971, c. 892, s. 1; 1973, c. 476, s. 128; 1989, c. 727, ss. 213, 214; 1997-443, s. 11A.123.)

§ 162A-25. Construction of Article.

This Article shall be construed as providing supplemental authority in addition to the powers of the Department of Environment and Natural Resources under Chapter 130A and Articles 21 and 38 of Chapter 143 of the General Statutes, the powers of the North Carolina Utilities Commission under Chapter 62 of the General Statutes, and any other provisions of law concerning local and regional water supplies. (1971, c. 892, s. 1; 1973, c. 476, s. 128; 1989, c. 727, s. 215; 1997-443, s. 11A.123.)

Article 3.

Regional Sewage Disposal Planning.

§ 162A-26. Title.

This Article shall be known and may be cited as the "Regional Sewage Disposal Planning Act of 1971." (1971, c. 870, s. 1.)

Cross References. — As to provisions for the temporary implementation of federal Phase II Stormwater Management requirements, see Session Laws 2004-163, noted under G.S. 143-214.7.

§ 162A-27. Definitions of "regional sewage disposal system" and "comprehensive planning."

For the purposes of this Article "regional sewage disposal system" is defined as a public sewage disposal system of a municipality, county, sanitary district, or other political subdivision of the State, or combination thereof, which provides, is intended to provide, or is capable of providing adequate collection, treatment, purification and disposal of sewage to a substantial portion of the population within a county, or a region composed of all or parts of two or more counties, or to a metropolitan area in two or more counties. "Comprehensive planning" is defined as that planning which is a prerequisite for qualifying for receipt of federal and/or State grant funds for preparation of plans and specifications and for actual construction of regional sewage disposal systems. (1971, c. 870, s. 1; 1975, c. 251, s. 1.)

§ 162A-28. Role and function of Environmental Management Commission.

The North Carolina Environmental Management Commission, in order to provide a framework for comprehensive planning of regional sewage disposal systems and for orderly coordination of local actions relating to sewage disposal, to make possible the most efficient disposal of sewage and to help realize economies of scale in sewage disposal systems, shall perform the following functions:

(1) Identify major sources of sewage for regional systems and sewer system interconnections as may be desirable and feasible.
(2) Identify geographical areas of the State suitable for the development of regional sewage disposal systems that meet federal and State grant requirements.
(3) Establish priorities for regionalization.
(4) Develop plans for connecting proposed regional sewage disposal systems to major sources of sewage and for such sewer system interconnections as may be desirable and feasible.
(5) Review and approve plans for proposed regional sewage disposal systems and for proposed municipal and countywide systems which are compatible with a regional plan.
(6) Administer a State program of financial assistance to local governments and regional planning agencies for the development of comprehensive plans for regional sewage disposal systems or county systems compatible with regional plans.
(7) Provide technical assistance to local and regional planning agencies and to consulting engineering firms. (1971, c. 870, s. 1; 1973, c. 1262, s. 23; 1975, c. 251, s. 2.)

§ 162A-29. Regional Sewage Disposal Planning Revolving Fund established; conditions and procedures.

(a) There is established under the control and direction of the Department of Administration a Regional Sewage Disposal Planning Revolving Fund, to consist of any moneys that may be appropriated for use through the fund by the General Assembly or that may be made available to it from any other source. The Department may make advances from the fund to any county, municipality, or sanitary district, or to counties and municipalities acting collectively or jointly as a regional sewer authority, for the purpose of meeting the cost of advance planning and engineering work necessary or desirable for the development of a comprehensive plan for a regional sewage disposal system as defined in this Article. Such advances shall be subject to repayment by the recipient to the Department from the proceeds of bonds or other obligations for the regional sewage disposal system, or from other funds available to the recipient including grants, except when, in the judgment of the Department of Environment and Natural Resources, a proposed plan for development and construction of a countywide or other regional sewage disposal system is not feasible because of design and construction factors, or because of the effect that the sewage disposal system discharge will have upon water quality standards, or because construction of a proposed system is not economically feasible, (but not if the applicant decides not to proceed with construction that has been planned and which the Department of Environment and Natural Resources has declared to be feasible).

(b) The Department of Administration shall not make any advance pursuant to this section without first referring the application and proposal to the Department of Environment and Natural Resources for determination as to whether the following conditions have been met:

(1) The proposed area is suitable for development of a regional sewage disposal system from the standpoint of present and projected populations, industrial growth potential, and present and future sources of sewage.

(2) The applicant proposes to undertake long-range comprehensive planning to meet present and projected needs for high quality sewage disposal through the construction of a regional sewage disposal system as defined in this Article. The determination by the Department of Environment and Natural Resources, that the proposed system would be a "regional system," as defined by this Article, shall be conclusive.

(3) The applicant proposes to coordinate planning of the regional sewage disposal system with land-use planning in the area, in order that both planning efforts will be compatible.

(4) The applicant proposes to employ an engineer licensed to practice in the State of North Carolina to prepare a comprehensive regional sewage disposal plan, which plan will provide detailed information on the source or sources of sewage; the proposed system, including all facilities and appurtenances thereto for the collection, transmission, treatment, purification and disposal of sewage; any proposed interconnection with existing systems, and provisions for interconnections with other county, municipal and regional systems; the phased development of systems to achieve ultimate objectives if economic feasibility is in question; projected sewage disposal service areas; proposed equipment; estimates of cost and projected revenues; and methods of financing.

(c) In addition to the above conditions, the Department of Administration shall not make any advance to any applicant until the following conditions have also been met:

(1) The Department has determined that there is a reasonable prospect of federal (or State) aid in the financing of the projected work if the undertaking is one that will be dependent upon federal (or State) aid.

(2) The Department has received firm assurances from the applicant that the work or project, if feasible, will be undertaken.

(3) The applicant has furnished evidence that it does not have funds available to finance the plan.

(d) All advances made pursuant to this section shall be repaid in full, upon receipt of any sewage disposal facilities planning grant funds from federal or State sources, or within one year of the start of construction on the projected system, or within six months after the issuance of bonds for the financing of construction of the system, or within six years from the date of the making of the advance, whichever comes first. The Department may, in its discretion, require the repayment of any advance in installments.

(e) The Department of Administration may adopt such rules and regulations with respect to the making of applications or the receipt of advances as are consistent with the terms and purpose of this section.

(f) The provisions of Chapter 159 of the General Statutes of North Carolina (Local Government Acts) shall not apply to advances made from the Regional

Sewage Disposal Planning Revolving Fund as authorized in this Article. (1971, c. 870, s. 1; 1975, c. 251, ss. 3, 4; 1989, c. 727, ss. 216, 217; 1997-443, s. 11A.123.)

§ 162A-30. Construction of Article.

This Article shall be construed as providing supplemental authority in addition to the powers of the North Carolina Utilities Commission under Chapter 62 of the North Carolina General Statutes, the North Carolina Environmental Management Commission under Articles 21 and 38 of Chapter 143 of the North Carolina General Statutes, and the North Carolina Department of Environment and Natural Resources under General Statutes Chapter 130A, and any other provisions of law concerning local and regional sewage disposal. (1971, c. 870, s. 1; 1973, c. 476, s. 128; c. 1262, s. 23; 1997-443, s. 11A.116.)

ARTICLE 4.

Metropolitan Water Districts.

§ 162A-31. Short title.

This Article shall be known and may be cited as the Metropolitan Water Districts Act. (1971, c. 815, s. 1.)

Funds for Local Government Water and Sewer Improvement Grants. — Session Laws 2007-323, s. 13.13A, provides for the use of certain funds appropriated to the Rural Economic Development Center, Inc. for the 2007-2008 fiscal year for wastewater-related and public water system-related projects. See note at G.S. 160A-311.

Session Laws 2008-107, s. 13.8, provides for the use of certain funds appropriated to the Rural Economic Development Center, Inc. for the 2007-2008 fiscal year for wastewater-related and public water system-related projects. See note at G.S. 160A-311.

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

§ 162A-32. Definitions; description of boundaries.

(a) As used in this Article the following words and terms shall have the following meanings, unless the context shall indicate another or different meaning or intent:

(1) "Board of commissioners" or "commissioners" shall mean the duly elected board of commissioners of the county in which a metropolitan water district shall be created under the provisions of this Article.

(2) "City council" or "council" shall mean the duly elected city council of any municipality located within the State.

(3) "Cost" as applied to a water system or sewerage system shall mean the cost of acquiring, constructing, reconstructing, improving, extending, enlarging, repairing and equipping any such system, and shall include the cost of all labor and materials, machinery and equipment, lands, property, rights, easements and franchises, plans and specifications, surveys and estimates of cost and of revenues, and planning, engineering, financial advice, and legal services, financing charges,

interest prior to and during construction and, if deemed advisable by a district board, for one year after the estimated date of completion of construction, and all other expenses necessary or incident to determining the feasibility or practicability of any such undertaking, administrative expense and such other expenses, including reasonable provision for working capital and a reserve for debt service, as may be necessary or incident to the financing herein authorized, and may also include any obligation or expense incurred by a district or by any political subdivision prior to the issuance of bonds under the provisions of this Article in connection with any such undertaking or any of the foregoing items of cost.

(4) "District" shall mean a metropolitan water district created under the provisions of this Article.

(5) "District board" shall mean the district board of the metropolitan water district created under the provisions of this Article.

(6) "General obligation bonds" shall mean bonds of a metropolitan water district for the payment of which and the interest thereon all the taxable property within said district is subject to the levy of an ad valorem tax without limitation of rate or amount.

(7) "Governing body" shall mean the board, board of trustees, commission, board of commissioners, council or other body, by whatever name it may be known, of a political subdivision including, but without limitation, other water or sewer districts or the trustees thereof within the State of North Carolina in which the general legislative powers thereof are vested.

(8) "Person" shall mean any and all persons including individuals, firms, partnerships, associations, public or private institutions, municipalities or political subdivisions, governmental agencies or private or public corporations organized and existing under the laws of the State or any other state or county.

(9) "Political subdivision" shall mean any county, city, town, incorporated village, sanitary district, water district, sewer district, special purpose district or other political subdivision or public corporation of this State now or hereafter created or established.

(10) "Revenue bonds" shall mean bonds the principal of and the interest on which are payable solely from revenues of a water system or systems or a sewerage system or systems or both owned or operated by a metropolitan water district created under the provisions of this Article.

(11) "Revenues" shall mean all moneys received by a metropolitan water district from, in connection with, or as a result of its ownership or control or operation of a water system or systems or a sewerage system or systems, or both, including, without limitation and as deemed advisable by the district board, moneys received from the United States of America or any agency thereof, pursuant to an agreement with the district board pertaining to the water system or the sewerage system or both.

(12) "Sewerage system" shall embrace sewage collection and disposal systems of all types, including septic tank systems or other on-site collection or disposal facilities or systems and any part or parts thereof, either within or without the limits of a district, all property, rights, easements and franchises relating thereto, and any and all buildings and other structures deemed necessary or useful by a district board in connection with the operation or maintenance thereof.

(13) "Sewers" shall mean any mains, pipes and laterals, including pumping stations for the reception of sewage and carrying such sewage to

an outfall or some part of a sewage disposal system, and all property, rights, easements, and franchises related thereto and deemed necessary or convenient by a district board for the operation and maintenance thereof.

(14) "Water distribution system" shall include aqueducts, mains, laterals, pumping stations, distributing reservoirs, standpipes, tanks, hydrants, services, meters, valves, and all necessary appurtenances, and all property, rights, easements, and franchises related thereto and deemed necessary or convenient by a district board for the operation and maintenance thereof.

(15) "Water system" shall mean and include all plants, systems, facilities or properties used or useful or having the present capacity for future use in connection with the supply or distribution of water, and any integral part thereof, including but not limited to water supply systems, water distribution systems, sources of water supply including lakes, reservoirs and wells, intakes, mains, laterals, aqueducts, pumping stations, standpipes, filtration plants, purification plants, hydrants, meters, valves, and all necessary appurtenances and equipment and all properties, rights, easements and franchises relating thereto and deemed necessary or convenient by a district board for the operation or maintenance thereof.

(16) "Water treatment or purification plant" shall mean any plant, system, facility, or property, used or useful or having the present capacity for future use in connection with the treatment or purification of water, or any integral part thereof; and all necessary appurtenances or equipment, and all property, rights, easements and franchises relating thereto and deemed necessary or convenient by a district board for the operation thereof.

(b) Whenever this Article requires that the boundaries of an area be described, it shall be sufficient if the boundaries are described in a manner which conveys an understanding of the location of the land and may be

(1) By reference to a map,

(2) By metes and bounds,

(3) By general description referring to natural boundaries, boundaries of political subdivisions, existing water or sewer districts, or portions thereof, or boundaries of particular tracts or parcels of land, or

(4) Any combination of the foregoing. (1971, c. 815, s. 2; 1979, c. 619, s. 9.)

§ 162A-33. Procedure for creation; resolutions and petitions for creation; notice to and action by Commission for Public Health; notice and public hearing; resolutions creating districts; actions to set aside proceedings.

Any two or more political subdivisions in a county, or any political subdivision or subdivisions, including any existing water or sewer district, and any unincorporated area or areas located within the same county, which political subdivisions or areas need not be contiguous, may petition the board of commissioners for the creation of a metropolitan water district under the provisions of this Article by filing with the board of commissioners:

(1) A resolution of the governing body of each such political subdivision stating the necessity for the creation of a metropolitan water district under the provisions of this Article in order to preserve and promote the public health and welfare within the area of the proposed district, and requesting the creation of a metropolitan water district having the boundaries set forth in said resolution, and

(2) If any unincorporated area is to be included in such district, a petition, signed by not less than fifteen per centum (15%) of the voters resident within such area, defining the boundaries of such area, stating the necessity for the creation of a metropolitan water district under the provisions of this Article in order to preserve and promote the public health and welfare within the proposed district, and requesting the creation of a metropolitan water district having the boundaries set forth in such petition for such district.

If any water district, sewer district or special purpose district shall encompass wholly or in part within its boundaries a city or town, no such water district, sewer district or special purpose district may petition for inclusion within a metropolitan water district unless the governing body of such city or town shall approve such petition or shall also petition for its inclusion within such metropolitan water district.

Upon the receipt of such resolutions and petitions requesting the creation of a metropolitan water district, the board of commissioners, through its chairman shall notify the Department of Environment and Natural Resources of the receipt of such resolutions and petitions, and shall request that a representative of the Department of Environment and Natural Resources hold a joint public hearing with the board of commissioners concerning the creation of the proposed metropolitan water district. The Secretary of Environment and Natural Resources and the chairman of the board of commissioners shall name a time and place within the proposed district at which the public hearing shall be held. The chairman of the board of commissioners shall give prior notice of such hearing by posting a notice at the courthouse door of the county and also by publication in a newspaper circulating in the proposed district at least once a week for four successive weeks, the first publication to be at least 30 days prior to such hearing. In the event all matters pertaining to the creation of such metropolitan water district cannot be concluded at such hearing, such hearing may be continued to a time and place within the proposed district determined by the board of commissioners with the concurrence of the representative of the Department of Environment and Natural Resources.

If, after such hearing, the Commission for Public Health and the board of commissioners shall deem it advisable to comply with the request of such resolutions and petitions, and determine that the preservation and promotion of the public health and welfare in the area or areas described in such resolutions and petitions require that a metropolitan water district should be created and established, the Commission for Public Health shall adopt a resolution to that effect, defining the boundaries of such district and declaring the territory within such boundaries to be a metropolitan water district under the name and style of "________ Metropolitan Water District of ________ County"; provided that the Commission for Public Health may make minor deviations in the boundaries from those prescribed in the resolutions and petitions upon the Commission for Public Health determining that such deviations are advisable in the interest of the public health, provided no such district shall include any political subdivision which has not petitioned for inclusion as provided for in this Article.

The Commission for Public Health shall cause copies of the resolution creating the metropolitan water district to be sent to the board of commissioners and to the governing body of each political subdivision included in the district. The board of commissioners shall cause a copy of such resolution of the Commission for Public Health to be published in a newspaper circulating within the district once in each of two successive weeks, and a notice substantially in the following form shall be published with such resolution:

> "The foregoing resolution was passed by the Commission for Public Health on the ________ day of ________, ________, and was first published on the ________ day of ________, ________.

> Any action or proceeding questioning the validity of said resolution or the creation of the metropolitan water district therein described must be commenced within 30 days after the first publication of said resolution.
>
> ______________________
> Clerk, Board of Commissioners for
> ______________________ County."

Any action or proceeding in any court to set aside a resolution creating a metropolitan water district or to obtain any other relief upon the ground that such resolution or any proceeding or action taken with respect to the creation of such district is invalid, must be commenced within 30 days after the first publication of the resolution and said notice. After the expiration of such period of limitation, no right of action or defense founded upon the invalidity of the resolution or the creation of the metropolitan water district therein described shall be asserted, nor shall the validity of the resolution or of the creation of such metropolitan water district be open to question in any court upon any ground whatever, except in an action or proceeding commenced within such period.

Notwithstanding the provisions of G.S. 160-2(6), after the creation of a water district pursuant to the provisions of this Article a municipality or other political subdivision which owns or operates an existing water system or sewer system may lease, contract, assign or convey such system or systems to the district under and subject to such terms and conditions and for such considerations as it may deem advisable for the general welfare and benefit of its citizens. (1971, c. 815, s. 3; 1973, c. 476, s. 128; 1985, c. 462, s. 16; 1989, c. 727, s. 219(40); 1989 (Reg. Sess., 1990), c. 1004, s. 19(b); 1997-443, s. 11A.123; 1999-456, s. 59; 2007-182, s. 2.)

Editor's Note. — Section 160-2, referred to in this section, was repealed by Session Laws 1971, c. 698, s. 2. See now Chapter 160A.

§ 162A-34. District board; composition, appointment, term, oaths and removal of members; organization; meetings; quorum; compensation and expenses of members.

(a) Immediately after the creation of the district, the board of commissioners shall appoint three members of the district board and the governing body of each political subdivision included in the district shall appoint one member, except that if any city or town has a population, according to the latest decennial census, in excess of the total population of the remaining cities and towns within the district, or where there are no other cities or towns involved, if the census population is in excess of the total population of the remainder of the district, the governing body shall appoint three members. No appointment of a member of the district board shall be made by or in behalf of any political subdivision of which the board of commissioners shall be the governing body, the three appointees designated by the board of commissioners shall be selected from within the district and shall be deemed to represent all such political subdivisions. The members of the district board first appointed shall have terms expiring one year, two years and three years, respectively, from the date of adoption of the resolution of the Commission for Public Health creating the district, as the board of commissioners shall determine, provided that of the three members appointed by any governing body, not more than one such member shall be appointed for a three-year term. Successive members shall each be appointed to serve only for the unexpired term and any member of the district board may be reappointed. Appointments of successor members shall, in each instance, be made by the governing body making the initial appointment or appointments. All members shall serve until their successors have been duly appointed and qualified, and any member of the district board may be removed for cause by the governing body appointing him.

Each member of the district board before entering upon his duties shall take and subscribe an oath or affirmation to support the Constitution and laws of the United States and of this State and to discharge faithfully the duties of his office, and a record of each such oath shall be filed with the clerk of the board of commissioners.

The district board shall elect one of its members as chairman and another as vice-chairman and shall appoint a secretary and a treasurer who may but need not be members of the district board. The offices of secretary and treasurer may be combined. The terms of office of the chairman, vice-chairman, secretary and treasurer shall be as provided in the bylaws of the district board.

The district board shall meet regularly at such places and dates as determined by the board. Special meetings may be called by the chairman on his own initiative and shall be called by him upon request of two or more members of the board. All members shall be notified in writing at least 24 hours in advance of such meeting. A majority of the members of the district board shall constitute a quorum and the affirmative vote of a majority of the members of the district board present at any meeting thereof shall be necessary for any action taken by the district board. No vacancy in the membership of the district board shall impair the right of a quorum to exercise all the rights and perform all the duties of the district board. Each member including the chairman shall be entitled to vote on any question. The members of the district board may receive compensation in an amount to be determined by the board, but not to exceed ten dollars ($10.00) for each meeting attended, and may be reimbursed the amount of actual expenses incurred by them in the performance of their duties.

(b) Any metropolitan water district wholly within the corporate limits of two or more municipalities shall be governed by a district board consisting of members appointed by the governing body of each political subdivision (municipal corporation) included wholly or partially in the district and an additional at-large member appointed by the other members of the district board as provided in this subsection. The governing body of each constituent municipality shall initially appoint two members from its qualified electors, one for a term expiring the first day of July after the first succeeding regular election in which municipal officers shall be elected by the municipality from which he is appointed, and the other for a term expiring the first day of July after the second succeeding regular election of municipal officers in the municipality. Thereafter, subsequent to each ensuing regular election of municipal officers the governing body of each municipal corporation composing any part of the metropolitan water district shall appoint one member to the district board for a term of four years beginning on the first day of July. The one additional at-large member of the district board shall be a qualified elector of a constituent municipality of the district and appointed initially and quadrennially thereafter by majority vote of the other district board membership for a term of four years which shall expire on the first day of August in every fourth calendar year thereafter.

Any vacancy in district board membership shall be filled by appointment of the original appointing authority for the remainder of the unexpired term.

The provisions of subsection (a) in particular and of this Article generally not inconsistent with this subsection shall also apply.

(c) In those cases where a district is created which includes a municipality which owns an existing water and sewer system and where the county commissioners are acting as or have been appointed as trustees of a separate water or sewer system, or both which will be included within the district along with an existing municipal system, the district board shall be comprised of seven members designated as follows: three county commissioners and three members of the city council of the municipality, said members to be selected by majority vote of the governing body on which they serve. These six members of the district board shall appoint a seventh member who shall also serve as chairman of the district board and whose term shall automatically expire upon the seating of either a new board of commissioners, or of a new council of the municipality.

The chairman of the district board will be eligible, however, for reappointment, upon the expiration of his or her current term, by the next district board selected upon and after the seating of either a new board of commissioners or new council of the municipality. The chairman of the district board shall take and subscribe an oath or affirmation to support the Constitution and laws of the United States and of this State, and to discharge faithfully the duties of his office, and a record of each such oath shall be filed with the clerk of the board of commissioners and the clerk of the municipality. The other six members will serve upon said board corollary to the responsibilities and duties of their respective elective offices and such service upon the district board will not constitute the holding of a public office. No compensation shall be paid to any member of the district board except for the chairman, and his compensation shall be fixed by the remaining six members. Except as provided above, no additional oath or affirmation shall be required of the members of the district board. No county commissioner or member of the council of the municipality shall continue to serve upon the district board subsequent to the termination of his or her current elective term, except upon reelection to said office.

The district board shall appoint a secretary and a treasurer who will not be members of the district board. The terms of office of the secretary and treasurer shall be as provided in the bylaws of the district board and the compensation of said officers shall be fixed by the district board. The treasurer shall furnish bond in some security company authorized to do business in North Carolina, the amount to be fixed by the district board in a sum not less than five thousand dollars ($5,000), which bond shall be approved by the district board and shall be continued upon the faithful performance of his duties. Every official, employee or agent of the district who handles or has custody of more than one hundred dollars ($100.00) of such district funds at any time, shall before assuming his duties as such be required to furnish bond in some security company authorized to do business in North Carolina, the amount to be fixed by the district board, which bond shall be approved by the district board and shall be continued upon the faithful performance of his duties in an amount sufficient to protect the district. All bonds required by this section shall be filed with the clerk of the municipality.

The district board shall meet regularly and no less than monthly, at such places and dates as determined by the board. Special meetings may be called by the chairman on his own initiative and shall be called by him upon request of two or more members of the board. All members shall be notified in writing at least 24 hours in advance of any meeting. A majority of the members of the district board shall constitute a quorum and the affirmative vote of a majority of the district board present at any meeting thereof shall be necessary for any action taken by the district board. No vacancy in the membership of the district board shall impair the right of a quorum to exercise all the rights and perform all the duties of the district board. Each member, including the chairman, shall be entitled to vote upon any question.

Any vacancy in district board membership, except that of the chairman, shall be filled by appointment of the original appointing authority for the remainder of the unexpired term. Each governing body may, by majority vote, replace at any time its representatives on said district board. (1971, c. 815, s. 4; 1973, c. 476, s. 128; 2007-182, s. 2.)

§ 162A-35. Procedure for inclusion of additional political subdivision or unincorporated area; notice and hearing; elections; actions questioning validity of elections.

If, at any time subsequent to the creation of a district, there shall be filed with the district board a resolution of the governing body of a political subdivision, or a petition, signed by not less than fifteen per centum (15%) of the voters resident within an unincorporated area, requesting inclusion in the district of such political subdivision or unincorporated area, and if the district board shall favor the inclusion in the district of such political subdivision or unincorporated area, the district board shall notify the board of commissioners and the board of commissioners, through its chairman, shall thereupon request that a representative of the Department of Environment and Natural Resources hold a joint public hearing with the board of commissioners concerning the inclusion of such political subdivision or unincorporated area in the district. The Secretary of Environment and Natural Resources and the chairman of the board of commissioners shall name a time and place within the district at which the public hearing shall be held. The chairman of the board of commissioners shall give prior notice of such hearing by posting a notice at the courthouse door of the county and also by publication in a newspaper circulating in the district and in any such political subdivision or unincorporated area at least once a week for four successive weeks, the first publication to be at least 30 days prior to such hearing. In the event all matters pertaining to the inclusion of such political subdivision or unincorporated area cannot be included at such hearing, such hearing may be continued to a time and place within the district determined by the board of commissioners with the concurrence of the representative of the Department of Environment and Natural Resources.

If, after such hearing, the Commission for Public Health and the board of commissioners shall determine that the preservation and promotion of the public health and welfare require that such political subdivision or unincorporated area be included in the district, the Commission for Public Health shall adopt a resolution to that effect, defining the boundaries of the district including such political subdivision or unincorporated area which has filed a resolution or petition as provided for in this section, and declaring such political subdivision or unincorporated area to be included in the district, subject to the approval, as to the inclusion of such political subdivision, of a majority of the qualified voters of such political subdivision, or as to the inclusion of such unincorporated area, of a majority of the qualified voters of such unincorporated area, voting at an election thereon to be called and held in such political subdivision or unincorporated area. When an election is required to be held within both a political subdivision and an unincorporated area, a separate election shall be called and held for the unincorporated area and a separate election shall be called and held for the political subdivision. Such separate elections, although independent one from the other, shall be called and held within each political subdivision and within the unincorporated area simultaneously on the same date.

If, at or prior to such public hearing, there shall be filed with the district board a petition signed by not less than fifteen percent (15%) of the registered voters of the district requesting an election to be held on the question of including the political subdivision or unincorporated area in the district, the district board shall certify the petition and if found adequate, shall request the county board of elections to hold the election in the district. The election in the district may be held at the same time as the election in the political subdivision or unincorporated area seeking to become a part of the district.

The county board of elections shall give notice of the elections as required in G.S. 163-33(8) and shall conduct the election in the unincorporated area and within the political subdivision unless there is a municipal board of elections which conducts the elections for the municipality.

The cost of the election in the district shall be paid by the district board and the cost of the municipal election by the municipality. The county shall pay the cost of an election in the unincorporated area. The governing body of the political subdivision shall file an accurate description of its boundaries, and those persons signing the petition for an unincorporated area shall file an accurate description of its boundaries with the board of elections at the time the petition is filed with the district board.

The elections shall be held and conducted in accordance with the applicable provisions of Articles 23 and 24 of Chapter 163 of the General Statutes.

The ballot shall contain the words:

"FOR inclusion in the ______ Metropolitan Water District of ______ County that area known as ______."

"AGAINST inclusion in the ______ Metropolitan Water District of ______ County that area known as ______."

If a majority of the votes cast in a political subdivision or unincorporated areas proposed to be included are in favor of inclusion, and a majority of the votes cast in the district favor inclusion, then from and after the date of the certification of the results such area or areas shall be a part of the district and subject to the debts of the district.

The results of the elections shall be certified to the district board.

If no election is required to be held in the district, then a favorable vote for inclusion in the political subdivision or unincorporated area shall be deemed to include such area or political subdivision as a part of the district and they shall be subject to the debts of the district.

No right of action or defense founded upon the invalidity of any such election shall be asserted, or open to question in any court upon any grounds unless the action or proceeding is commenced within 30 days after the results have been certified by the board of elections. (1971, c. 815, s. 5; 1973, c. 476, s. 128; 1981, c. 185; 1985, c. 462, s. 17; 1989, c. 727, s. 219(41); 1997-443, s. 11A.123; 2007-182, s. 2.)

§ 162A-36. Powers generally; fiscal year.

(a) Each district shall be deemed to be a public body and body politic and corporate, exercising public and essential governmental functions, to provide for the preservation and promotion of the public health and welfare, and said district is hereby authorized and empowered:

(1) To adopt bylaws for the regulation of its affairs and the conduct of its business not in conflict with this or other law;

(2) To adopt an official seal and alter the same at pleasure;

(3) To maintain an office or offices at such place or places in the district as it may designate;

(4) To sue and be sued in its own name, plead and be impleaded;

(5) To acquire, lease as lessor or lessee, construct, reconstruct, improve, extend, enlarge, equip, repair, maintain and operate any water system or part thereof, and any sewerage system or part thereof, except interceptors, treatment plants and facilities constituting a system operated by a metropolitan sewage district within or without

the district; provided, however, that no such water or sewerage system or part thereof, shall be located in any city, town or incorporated village except with the consent of the governing body thereof, and each such governing body is hereby authorized to grant such consent;

(6) To issue general obligation bonds and revenue bonds of the district as hereinafter provided, to pay the costs of a water or sewerage system or systems;

(7) To issue general obligation refunding bonds and revenue refunding bonds of the district as hereinafter provided;

(8) To fix and revise from time to time and to collect rents, rates, fees and other charges for the use of the services and facilities furnished by any water or sewerage system;

(9) To cause taxes to be levied and collected upon all taxable property within the district sufficient to meet the obligations of the district, to pay the costs of maintaining, repairing and operating any water or sewerage system or systems, and to pay all obligations incurred by the district in the performance of its legal undertakings and functions;

(10) To acquire in the name of the district, either within or without the corporate limits of the district, by gift, purchase, lease or the exercise of the right of eminent domain, which right shall be exercised in accordance with the provisions of Chapter 40A of the General Statutes, any improved or unimproved lands or rights in lands, and to acquire by lease or purchase such personal property as it may deem necessary in connection with the acquisition, construction, reconstruction, improvement, extension, enlargement, repair, equipment, maintenance or operation of any water or sewerage system or systems, and to hold and dispose of real and personal property under its control;

(11) To make and enter into all contracts, leases and agreements necessary or incidental to the performance of its duties and the execution of its powers under this Article, including a trust agreement or trust agreements securing any revenue bonds issued hereunder;

(12) To employ such consulting and other engineers, superintendents, managers, construction and financial experts, accountants, attorneys, employees and agents as may, in the judgment of the district board, be deemed necessary, and to fix their compensation; provided, however, that the provisions of G.S. 159-20 shall be complied with to the extent that the same shall be applicable;

(13) To receive and accept from the United States of America or the State of North Carolina, or any agency or instrumentality thereof loans, grants, advances or contributions for or in aid of the planning, acquisition, construction, reconstruction, improvement, extension, enlargement, repair, equipment, maintenance or operation of any water or sewerage system or systems, to agree to such reasonable conditions or requirements as may be imposed, and to receive and accept contributions from any source of either money, property, labor or other things of value, to be held, used and applied only for the purposes of which such loans, grants, advances or contributions may be made;

(14) To negotiate and pay close-out costs involved in the acquisition or lease of existing water supply or sewerage systems;

(15) To determine the extent to which local water distribution system and local sewerage system improvements will be financed out of district revenues and to contract with other political subdivisions for construction of facilities to be jointly financed and whose title would be vested in the district;

(16) To lease from any city or town or any other municipal corporation, or from any water or sewage district, any water or sewerage system or portions thereof upon such terms and conditions and for such considerations as may to the district board be deemed fair and reasonable;

(17) The metropolitan water district is authorized and empowered, through its district board, officers, agents and employees, to cause any user of water who shall fail to pay promptly his water rent or use bill for any month to be cut off, and his right to further use of water from said district to be discontinued until payment of any water rent or use arrearages;

(18) To do all acts and things necessary or convenient to carry out the powers granted by this Article.

(b)(1) Each metropolitan water district shall publish an annual financial report and its books shall be open for public inspection.

(2) Each district shall keep its accounts on the basis of a fiscal year commencing on the first day of July and ending on the thirtieth day of June of the following year.

(3) District revenues shall be used solely for the operation, improvement or benefit of the district's water and sewerage systems and the leasing of any portion thereof and to pay the principal and interest on bonds issued by the district. Said revenues shall not be used for the payment of interest or amortization of any utility bonds previously issued by any city, town or water or sewerage district.

(4) A district may provide water to a city or county or portion thereof within the district for governmental purposes without charge or at reduced rates. (1971, c. 815, s. 6; 1981, c. 919, s. 31.)

Editor's Note. — The reference in subsection (a)(12) of this section to G.S. 159-20 is to that section in Chapter 159 before its revisions by Session Laws 1971, c. 780. For similar provisions, see now G.S. 159-131.

§ 162A-37. Bonds and notes authorized.

A metropolitan water district may from time to time issue bonds and notes under the Local Government Finance Act. (1971, c. 780, s. 37.5; c. 815, s. 7; 1973, c. 494, s. 46.)

§§ 162A-38 through 162A-44: Repealed by Session Laws 1971, c. 780, s. 37.5; 1973, c. 494, s. 46.

§ 162A-45. Determination of tax rate by district board; levy and collection of tax; remittance and deposit of funds.

After each assessment for taxes following the creation of the district, the board of commissioners shall file with the district board the valuation of assessable property within the district. The district board shall then determine the amount of funds to be raised by taxation for the ensuing year in excess of available funds to provide for the payment of the interest on and the principal of all outstanding general obligation bonds as the same shall become due and payable, to pay the cost of maintaining, repairing and operating any water system or sewerage system or both, and to pay all obligations incurred by the district in the performance of its lawful undertakings and functions.

The district board shall determine the number of cents per one hundred dollars ($100.00) necessary to raise said amount and certify such rate to the board of commissioners. The board of commissioners in its next annual levy shall include the number of cents per one hundred dollars ($100.00) certified by the district board in the levy against all taxable property within the district, which tax shall be collected as other county taxes are collected, and every month the amount of tax so collected shall be remitted to the district board and deposited by the district board in a separate account in a bank in the State of North Carolina. Such levy may include an amount for reimbursing the county for the additional cost to the county of levying and collecting such taxes, pursuant to such formula as may be agreed upon by the district board and the board of commissioners, to be deducted from the collections and stated with each remittance to the district board. The officer or officers having charge or custody of the funds of the district shall require such bank to furnish security for protection of such deposits as provided in G.S. 159-31. (1971, c. 815, s. 15; 1973, c. 1446, s. 13.)

§§ 162A-46 through 162A-48: Repealed by Session Laws 1971, c. 780, s. 37.5; 1973, c. 494, s. 46.

§ 162A-49. Rates and charges for services.

The district board may fix, and may revise from time to time, rents, rates, fees and other charges for the use of land for the services furnished or to be furnished by any water system or sewerage system or both. Such rents, rates, fees and charges shall not be subject to supervision or regulation by any bureau, board, commission, or other agency of the State or of any political subdivision. Any such rents, rates, fees and charges pledged to the payment of revenue bonds of the district shall be fixed and revised so that the revenues of the water system or sewerage system or both, together with any other available funds, shall be sufficient at all times to pay the cost of maintaining, repairing and operating the water system or the sewerage system or both, the revenues of which are pledged to the payment of such revenue bonds, including reserves for such purposes, and to pay the interest on and the principal of such revenue bonds as the same shall become due and payable and to provide reserves therefor. If any such rents, rates, fees and charges are pledged to the payment of any general obligation bonds issued under this Article, such rents, rates, fees and charges shall be fixed and revised so as to comply with the requirements of such pledge. The district board may provide methods for collection of such rents, rates, fees and charges and measures for enforcement of collection thereof, including penalties and the denial or discontinuance of service. (1971, c. 815, s. 19.)

§§ 162A-50 through 162A-52: Repealed by Session Laws 1971, c. 780, s. 37.5; 1973, c. 494, s. 46.

§ 162A-53. Authority of governing bodies of political subdivisions.

The governing body of any political subdivision is hereby authorized and empowered:

(1) Subject to the approval of the Local Government Commission, to transfer jurisdiction over, and to lease, lend, sell, grant or convey to a district, upon such terms and conditions as the governing body of such political subdivision may agree upon with the district board, the whole or any part of any water system or sewerage system or both, and such real or personal property as may be necessary or useful in connection with the acquisition, construction, reconstruction, im-

provement, extension, enlargement, equipment, repair, maintenance or operation of any new water system or sewerage system or both by the district, including public roads and other property already devoted to public use;

(2) To make and enter into contracts or agreements with a district, upon such terms and conditions and for such periods as such governing body and the district board may determine:
  a. For the collection, treatment or disposal of sewage;
  b. For the collecting by such political subdivision or by the district of rents, rates, fees or charges for the services and facilities provided to or for such political subdivision or its inhabitants by any water system or sewerage system or both and for the enforcement of collection of such rents, rates, fees and charges; and
  c. For the imposition of penalties, including the shutting off of the supply of water furnished by any water system owned or operated by such political subdivision, in the event that the owner, tenant or occupant of any premises utilizing such water shall fail to pay any such rents, rates, fees or charges;
  d. For the supply of raw or treated water on a regular retail or wholesale basis;
  e. For the supply of raw or treated water on a standby wholesale basis;
  f. For the construction of jointly financed facilities whose title shall be vested in the district.

(3) To fix, and revise from time to time, rents, rates, fees and other charges for the services furnished or to be furnished by a water system or sewerage system or both under any contract between the district and such political subdivision, and to pledge all or any part of the proceeds of such rents, rates, fees and charges to the payment of any obligation of such political subdivision to the district under such contract;

(4) To pay any obligation of such political subdivision to the district under such contract from any available funds of the political subdivision and to levy and collect a tax ad valorem for the making of any such payment; and

(5) In its discretion or if required by law, to submit to its qualified electors under the election laws applicable to such political subdivision any contract or agreement which such governing body is authorized to make and enter into with the district under the provisions of this Article.

Any such election upon a contract or agreement, may, at the discretion of the governing body, be called and held under the election laws applicable to the issuance of bonds by such political subdivision. (1971, c. 815, s. 23.)

§ 162A-54. Rights-of-way and easements in streets and highways.

A right-of-way or easement in, along, or across any State highway system road, or street, and along or across any city or town street within a district is hereby granted to a district in case such right-of-way is found by the district board to be necessary or convenient for carrying out any of the work of the district. Any work done in, along, or across any State highway system, road, street, or property shall be done in accordance with the rules and regulations and any reasonable requirements of the Department of Transportation, and any work done in, along, or across any municipal street or property shall be done in accordance with any reasonable requirements of the municipal governing body. (1971, c. 815, s. 24; 1973, c. 507, s. 5; 1977, c. 464, s. 34.)

§ 162A-55. Submission of preliminary plans to planning groups; cooperation with planning agencies.

Prior to the time final plans are made for the location and construction of any water system or sewerage system or both, the district board shall present preliminary plans for such improvement to the county, municipal or regional planning board for their consideration, if such facility is to be located within the planning jurisdiction of any such county, municipal or regional planning group. The district board shall make every effort to cooperate with the planning agency, if any, in the location and construction of a proposed facility authorized under this Article. The district board created under the authority of this Article is hereby directed, wherever possible, to coordinate its plans for the construction of a water system or sewerage system or both, with the overall plans for the development of the planning area, if such district is located wholly or in part within a county, municipal or regional planning area; provided, however, that the approval of any such county, municipal or regional planning board as to any such plan of the district shall not be required. (1971, c. 815, s. 25.)

§ 162A-56. Advances by political subdivisions for preliminary expenses of districts.

Any political subdivision is hereby authorized to make advances, from any moneys that may be available for such purpose, in connection with the creation of such district and to provide for the preliminary expenses of such district. Any such advances may be repaid to such political subdivision from the proceeds of bonds issued by said district or from other available funds of said district. (1971, c. 815, s. 26.)

§ 162A-57. Article regarded as supplemental.

This Article shall not be regarded as in derogation of or as repealing any powers now existing under any other law, either general, special or local; provided, however, that the issuance of bonds under the provisions of this Article need not comply with the requirements of any other law applicable to the issuance of bonds except as herein provided. (1971, c. 815, s. 27.)

§ 162A-58. Inconsistent laws declared inapplicable.

All general, special or local laws, or parts thereof inconsistent herewith are hereby declared to be inapplicable, unless otherwise specified, to the provisions of this Article. It is specifically provided that Chapter 399 of the 1933 Public-Local and Private Laws of North Carolina shall not be applicable to any metropolitan water district created pursuant to the provisions of this Article. (1971, c. 815, s. 28.)

§§ 162A-59 through 162A-63: Reserved for future codification purposes.

Article 5.

Metropolitan Sewerage Districts.

§ 162A-64. Short title.

This Article shall be known and may be cited as the "North Carolina Metropolitan Sewerage Districts Act." (1961, c. 795, s. 1; 1973, c. 822, s. 4.)

Editor's Note. — This Article, comprising G.S. 162A-64 through 162A-80, was formerly Article 25 of Chapter 153, G.S. 153-295 through 153-324. It was reenacted and transferred to its present location by Session Laws 1973, c. 822, s. 4.

§ 162A-65. Definitions; description of boundaries.

(a) Definitions. — As used in this Article the following words and terms shall have the following meanings, unless the context shall indicate another or different meaning or intent:

(1) The term "board of commissioners" shall mean the board of commissioners of the county in which a metropolitan sewerage district shall be created under the provisions of this Article.

(2) The word "cost" as applied to a sewerage system shall mean the cost of acquiring, constructing, reconstructing, improving, extending, enlarging, repairing and equipping any such system, and shall include the cost of all labor and materials, machinery and equipment, lands, property, rights, easements and franchises, plans and specifications, surveys and estimates of cost and of revenues, and engineering and legal services, financing charges, interest prior to and during construction and, if deemed advisable by the district board, for one year after the estimated date of completion of construction, and all other expenses necessary or incident to determining the feasibility or practicability of any such undertaking, administrative expense and such other expenses, including reasonable provision for working capital and a reserve for interest, as may be necessary or incident to the financing herein authorized, and may also include any obligation or expense incurred by the district or by any political subdivision prior to the issuance of bonds under the provisions of this Article in connection with any such undertaking or any of the foregoing items of cost.

(3) The word "district" shall mean a metropolitan sewerage district created under the provisions of this Article.

(4) The term "district board" shall mean a sewerage district board established under the provisions of this Article as the governing body of a district or, if such sewerage district board shall be abolished, any board, body, or commission succeeding to the principal functions thereof or upon which the powers given by this Article to the sewerage district board shall be given by law.

(5) The term "general obligation bonds" shall mean bonds of a district for the payment of which and the interest thereon all the taxable property within such district is subject to the levy of an ad valorem tax without limitation of rate or amount.

(6) The term "governing body" shall mean the board, commission, council or other body, by whatever name it may be known, of a political subdivision in which the general legislative powers thereof are vested, including, but without limitation, as to any political subdivision other than the county, the board of commissioners for the county when the general legislative powers of such political subdivision are exercised by such board.

(7) The word "person" shall mean any and all persons including individuals, firms, partnerships, associations, public or private institutions, municipalities, or political subdivisions, governmental agencies, or private or public corporations organized and existing under the laws of this State or any other state or county.

(8) The term "political subdivision" shall mean any county, city, town, incorporated village, sanitary district, water district, sewer district,

special purpose district or other political subdivision or public corporation of this State now or hereafter created or established.

(9) The term "revenue bonds" shall mean bonds the principal of and the interest on which are payable solely from revenues of a sewerage system or systems.

(9a) The word "revenues" shall mean all moneys received by a district from, in connection with or as a result of its ownership or operation of a sewerage system, including, without limitation and if deemed advisable by the district board, moneys received from the United States of America, or any agency thereof, pursuant to an agreement with the district board pertaining to the sewerage system.

(10) The word "sewage" shall mean the water-carried wastes created in and carried or to be carried away from residences, hotels, schools, hospitals, industrial establishments, commercial establishments or any other private or public buildings, together with such surface or groundwater or household and industrial wastes as may be present.

(11) The term "sewage disposal system" shall mean any plant, system, facility or property, either within or without the limits of the district, used or useful or having the present capacity for future use in connection with the collection, treatment, purification or disposal of sewage, or any integral part thereof, including but not limited to septic tank systems or other on-site collection or disposal facilities or systems, treatment plants, facilities for the generation and transmission of electric power and energy, pumping stations, intercepting sewers, trunk sewers, pressure lines, mains and all necessary appurtenances and equipment, and all property, rights, easements and franchises relating thereto and deemed necessary or convenient by the district board for the operation thereof.

(12) The term "sewerage system" shall embrace both sewers and sewage disposal systems and any part or parts thereof, either within or without the limits of the district, all property, rights, easements and franchises relating thereto, and any and all buildings and other structures necessary or useful in connection with the ownership, operation or maintenance thereof.

(13) The word "sewers" shall mean any mains, pipes and laterals, including pumping stations, either within or without the limits of the district, for the reception of sewage and carrying such sewage to an outfall or some part of a sewage disposal system.

(b) Description of Boundaries. — Whenever this Article requires that the boundaries of an area be described, it shall be sufficient if the boundaries are described in a manner which conveys an understanding of the location of the land and may be

(1) By reference to a map,
(2) By metes and bounds,
(3) By general description referring to natural boundaries, boundaries of political subdivisions, or boundaries of particular tracts or parcels of land, or
(4) Any combination of the foregoing. (1961, c. 795, s. 2; 1969, c. 993, s. 1; 1973, c. 822, s. 4; 1979, c. 619, s. 10; 1983, c. 333, s. 1.)

Cross References. — As to provisions for the temporary implementation of federal Phase II Stormwater Management requirements, see Session Laws 2004-163, noted under G.S. 143-214.7.

§ 162A-66. Procedure for creation; resolutions and petitions for creation; notice to and action by the Environmental Management Commission; notice and public hearing; resolutions creating districts; actions to set aside proceedings.

Any two or more political subdivisions in one or more counties, or any political subdivision or subdivisions and any unincorporated area or areas located within one or more counties, which political subdivisions or areas need not be contiguous, may petition for the creation of a metropolitan sewerage district under the provisions of this Article by filing with the board or boards of commissioners of the county or counties within which the proposed district will lie:

(1) A resolution of the governing body of each such political subdivision stating the necessity for the creation of a metropolitan sewerage district under the provisions of this Article in order to preserve and promote the public health and welfare within the area of the proposed district, and requesting the creation of a metropolitan sewerage district having the boundaries set forth in said resolution, and

(2) If any unincorporated area is to be included in such district, a petition, signed by not less than fifty-one per centum (51%) of the qualified voters resident within such area, defining the boundaries of such area, stating the necessity for the creation of a metropolitan sewerage district under the provisions of this Article in order to preserve and promote the public health and welfare within the proposed district, and requesting the creation of a metropolitan sewerage district having the boundaries set forth in such petition for such district.

Upon the receipt of such resolutions and petitions requesting the creation of a metropolitan sewerage district, the board or boards of commissioners, through the chairman thereof, shall notify the North Carolina Environmental Management Commission of the receipt of such resolutions and petitions, and shall request that a representative of the Environmental Management Commission hold a joint public hearing with the board or boards of commissioners concerning the creation of the proposed metropolitan sewerage district. The chairman of the Environmental Management Commission and the chairman or chairmen of the board or boards of commissioners shall name a time and place within the proposed district at which the public hearing shall be held; provided, however, that where a proposed district lies within more than one county, the public hearing shall be held in the county within which the greater portion of the proposed district lies. The chairman or chairmen of the board or boards of commissioners shall give prior notice of such hearing by posting a notice at least 30 days prior to the hearing at the courthouse of the county or counties within which the district will lie and also by publication at least once a week for four successive weeks in a newspaper having general circulation in the proposed district, the first publication to be at least 30 days prior to such hearing. In the event all matters pertaining to the creation of such metropolitan sewerage district cannot be concluded at such hearing, such hearing may be continued to a time and place within the proposed district determined by the board or boards of commissioners with the concurrence of the representative of the Environmental Management Commission.

If, after such hearing, the Environmental Management Commission and the board or boards of commissioners shall deem it advisable to comply with the request of such resolutions and petitions, and determine that the creation of a metropolitan sewerage district would preserve and promote the public health and welfare in the area or areas described in such resolutions and petitions, the Environmental Management Commission shall adopt a resolution to that effect, defining the boundaries of such district and declaring the territory within such boundaries to be a metropolitan sewerage district under the name and style of "______ Metropolitan Sewerage District of ______ [County] [Counties]"; provided, that the Environmental Management Commission may make minor deviations in the boundaries from those prescribed in the resolutions and petitions upon determination by the Environmental Management Commission that such deviations are advisable in the interest of the public health, and provided no such district shall include any political subdivision which has not petitioned for inclusion as provided in this Article.

The Environmental Management Commission shall cause copies of the resolution creating the metropolitan sewerage district to be sent to the board or boards of commissioners and to the governing body of each political subdivision included in the district. The board or boards of commissioners shall cause a copy of such resolution of the Environmental Management Commission to be published in a newspaper circulating within the district once in each of two successive weeks, and a notice substantially in the following form shall be published with such resolution:

The foregoing resolution was passed by the North Carolina Environmental Management Commission on the ______ day of ______, ______, and was first published on the ______ day of ______, ____.

Any action or proceeding questioning the validity of said resolution or the creation of the metropolitan sewerage district therein described must be commenced within 30 days after the first publication of said resolution.

______
Clerk, Board of Commissioners for
______ County.

Any action or proceeding in any court to set aside a resolution creating a metropolitan sewerage district, or to obtain any other relief upon the ground that such resolution or any proceeding or action taken with respect to the creation of such district is invalid, must be commenced within 30 days after the first publication of the resolution and said notice. After the expiration of such period of limitation, no right of action or defense founded upon the invalidity of the resolution or the creation of the metropolitan sewerage district therein described shall be asserted, nor shall the validity of the resolution or of the creation of such metropolitan sewerage district be open to question in any court upon any ground whatever, except in an action or proceeding commenced within such period. (1961, c. 795, s. 3; 1973, c. 512, s. 1; c. 822, s. 4; c. 1262, s. 23; 1977, c. 764, s. 1; 1999-456, s. 59.)

CASE NOTES

The legislature has the sole power to create municipal corporations. The courts do not have that power. State ex rel. Dyer v. City of Leaksville, 275 N.C. 41, 165 S.E.2d 201 (1969).

Municipal corporations are political subdivisions of the State, created as convenient agencies for exercising such of the governmental powers of the State as may be entrusted to them. State ex rel. Dyer v. City of Leaksville, 275 N.C. 41, 165 S.E.2d 201 (1969).

The number, nature, and duration of the powers conferred upon municipal corporations and the territory over which they shall be exercised rests in the absolute discretion of the State. The State, therefore, at its pleasure, may modify or withdraw all such powers, expand or contract the territorial area, unite the whole or a part of it with another municipality, or repeal the charter and destroy the corporation. In all these respects the State is supreme, and its legislative body, conforming its action to the State Constitution, may do as it will, unrestrained by any provision of the Constitution of the United States. State ex rel. Dyer v. City of Leaksville, 275 N.C. 41, 165 S.E.2d 201 (1969).

The governing body acts for the subdivision. Scarborough v. Adams, 264 N.C. 631, 142 S.E.2d 608 (1965).

If No Subdivision, Majority of Freeholders Must Sign Petition. — If there is no subdivision and no governing body to act for the subdivision, a majority of the freeholders must sign the petition. Scarborough v. Adams, 264 N.C. 631, 142 S.E.2d 608 (1965).

§ 162A-67. District board; composition, appointment, terms, oaths and removal of members; organization; meetings; quorum; compensation and expenses of members.

(a) Appointment of Board for District Lying Wholly or Partly outside City or Town Limits. — The district board of a metropolitan sewerage district lying in whole or in part outside the corporate limits of a city or town shall be appointed immediately after the creation of the district in the following manner:

(1) If the district lies entirely within one county with a population of 25,000 or more, the board of commissioners of that county shall appoint to the district board three members who are qualified voters residing within the district. The initial members so appointed shall have terms expiring one year, two years and three years, respectively, from the date of adoption of the resolution of the Environmental Management Commission creating the district, and the board of commissioners shall designate the length of the term of each initial member. Successor members shall be appointed for a term of three years.

(1a) If the district lies entirely within one county with a population of less than 25,000, the board of commissioners of that county shall appoint to the district board five members who are qualified voters residing within the district. Of the initial members so appointed, one shall have a term expiring at the end of one year, two shall have terms expiring at the end of two years, and two shall have terms expiring at the end of three years from the date of adoption of the resolution of the Environmental Management Commission creating the district. In making initial appointments, the board of commissioners shall specify whether a member is to serve a term of one, two, or three years. Successor members shall be appointed for a term of three years.

(2) If the district lies in two counties, the board of commissioners of the county in which the largest portion of the district lies shall appoint to the district board two qualified voters residing in the county and district to serve for terms of one year and three years, respectively. The board of commissioners of the county in which the lesser portion of the district lies shall appoint to the district board one qualified voter residing in the county and district to serve for a term of two years. All successor members shall be appointed for a term of three years.

(3) If the district lies in three or more counties, the board of commissioners of each such county shall appoint one member of the district board. Each member so appointed shall be a qualified voter residing in the district and of the county from which he is appointed and shall serve for a term of three years. Successor members shall be appointed for a term of three years.

(4) The governing body of each political subdivision, other than counties, lying in whole or in part within the district, shall appoint one member of the district board. No appointment of a member of the district board shall be made by or in behalf of any political subdivision of which the board or boards of commissioners shall be the governing body. If any city or town within the district shall have a population, as determined from the latest decennial census, greater than that of all other

political subdivisions (other than counties) and unincorporated areas within the district, the governing body of any such city or town shall appoint three members. All members and their successors appointed by the governing bodies of political subdivisions other than counties shall serve for a term of three years and shall be qualified voters residing in the district and the political subdivision from which they are appointed.

(b) Appointment of Board for District Lying Wholly within City or Town Limits. — Any district lying entirely within the corporate limits of two or more cities or towns shall be governed by a district board consisting solely of members appointed by the governing bodies of such cities or towns and, in addition, one member elected by the appointed members of the district board. The governing body of each constituent city or town of the district shall appoint to the district board two qualified voters residing in the district and the city or town. The members so appointed shall elect, by majority vote, one additional member who shall be a qualified voter residing in the district and one of the constituent cities or towns.

One of the two members initially appointed by the governing body of each constituent city or town shall serve for a term which shall expire 30 days following the next regular election held for election of the governing body by which the member was appointed; and the other member shall serve for a term which shall expire two years thereafter. Successor members shall serve for a term of four years.

The member elected by the district board and his successors in office shall serve for a term of four years.

(c) Reappointment; Vacancies; Removal; Term. — Members of a district board may be reappointed. If a vacancy shall occur on a district board, the governing body which appointed the member who previously filled the vacancy shall appoint a new member who shall serve for the remainder of the unexpired term. Any member of a district board may be removed for cause by the governing board that appointed him. All members shall serve until their successors have been duly appointed and qualified.

(d) District Board Procedures. — Each member of the district board, before entering upon his duties, shall take and subscribe an oath or affirmation to support the Constitution and laws of the United States and of this State and to discharge faithfully the duties of his office; and a record of each such oath shall be filed with the clerk or clerks of the board or boards of commissioners.

The district board shall elect one of its members as chairman and another as vice-chairman and shall appoint a secretary and a treasurer who may, but need not, be members of the district board. The officers [offices] of secretary and treasurer may be combined. The district board may also appoint an assistant secretary and an assistant treasurer or, if the office is combined, an assistant secretary-treasurer who may, but need not, be members of the district board. The terms of office of the chairman, vice-chairman, secretary, treasurer, assistant secretary, and assistant treasurer shall be as provided in the bylaws of the district board.

The district board shall meet regularly at such places and dates as are determined by the board. Special meetings may be called by the chairman on his own initiative and shall be called by him upon request of two or more members of the board. All members shall be notified in writing at least 24 hours in advance of such meeting. A majority of the members of the district board shall constitute a quorum, and the affirmative vote of a majority of the members of the district board present at any meeting thereof shall be necessary for any action taken by the district board. No vacancy in the membership of the district board shall impair the right of a quorum to exercise all the rights and perform all the duties of the district board. Each member, including the chairman, shall be entitled to vote on any question. The members of the district board may receive compensation in an amount to be determined by the board, but not to exceed that compensation paid to members of Occupational Licensing Boards as provided in G.S. 93B-5(a) for each meeting of the board attended and for attendance at each regularly scheduled committee meeting of the board. The members of the district board may also be reimbursed the amount of actual expenses incurred by them in the performance of their duties. (1961, c. 795, s. 4; 1963, c. 471; 1973, c. 512, s. 2; c. 822, s. 4; c. 1262, s. 23; 1979, c. 471; 1983, c. 333, s. 2; 1991, c. 351, s. 1; 1995, c. 511, s. 2.1.)

Editor's Note. — Session Laws 1995, c. 511, which amended this section, in s. 5 provides: "It is the express purpose of this act to provide additional and alternative powers to political subdivisions and authorities affected by this act and to provide additional and alternative methods by which the functions affected by this act may be performed. This act is not intended, and shall not be construed, to derogate, limit, or repeal any power now existing under any other law, whether general, special, or local."

Session Laws 1995, c. 511, which amended this section, in s. 6 provides: "All general, special, or local laws, or parts thereof, inconsistent with the provisions of this act are declared to be inapplicable to the provisions of this act."

Session Laws 1995, c. 511, effective July 29, 1995, in s. 8 provides: "The board of commissioners of a county that makes appointments to a metropolitan sewerage district board (i) that is in existence prior to the date this act becomes effective and (ii) the membership of which is increased from three to five as a result to the enactment of G.S. 162A-67(a)(1) by Section 2.1 of this act, shall appoint two additional members to the metropolitan sewerage district board within 90 days of the date this act becomes effective. The two additional members shall be appointed to initial terms:

"(1) Of at least one year each.

"(2) That expire on the same day and month that the terms of the three original members expire.

"(3) So that no more than two of the five terms shall expire in the same year."

§ 162A-68. Procedure for inclusion of additional political subdivision or unincorporated area; notice and hearing; elections; actions to set aside proceedings.

(a) If, at any time subsequent to the creation of a district, there shall be filed with the district board a resolution of the governing body of a political subdivision, or a petition, signed by not less than fifty-one per centum (51%) of the qualified voters resident within an unincorporated area, requesting inclusion in the district of such political subdivision or unincorporated area, and if the district board shall favor the inclusion in the district of such political subdivision or unincorporated area, the district board shall notify the board or boards of commissioners of the county or counties within which the district lies and shall file with the board or boards of commissioners and with the Environmental Management Commission a report setting forth the plans of the district for extending sewerage service to the political subdivision or unincorporated area. The report shall include:

(1) A map or maps of the district and adjacent territory showing the present and proposed boundaries of the district; the existing major sewer interceptors and outfalls; and the proposed extension of such interceptors and outfalls.

(2) A statement setting forth the plans of the district for extending sewerage services to the territory proposed to be included, which plans shall:

a. Provide for extending sewerage service to the territory included on substantially the same basis and in the same manner as such services are provided within the rest of the district prior to inclusion of the new territory.

b. Set forth a proposed time schedule for extending sewerage service to the territory proposed to be included.
c. Set forth the estimated cost of extending sewerage service to the territory proposed to be included; the method by which the district proposes to finance the extension; the outstanding existing indebtedness of the district, if any; and the valuation of assessable property within the district and within the territory proposed to be included.
d. Contain a declaration of intent of the district board to conform with the plans set forth in the report in extending sewerage services to the territory proposed to be included; and a certification by the chairman of the district board to the effect that the matters and things set forth in the report are true to his knowledge or belief.

(b) The board or boards of commissioners, through the chairmen thereof, shall thereupon request that a representative of the Environmental Management Commission hold a joint public meeting with the board or boards of commissioners concerning the inclusion of a political subdivision or an unincorporated area in the district. The chairman of the Environmental Management Commission and the chairman or chairmen of the board or boards of commissioners shall name a time and place within the district at which the public hearing shall be held. The chairman or chairmen of the board or boards of commissioners shall give prior notice of such hearing by posting a notice at the courthouse door of the county or counties at least 30 days prior to the hearing and also by publication at least once a week for four successive weeks in a newspaper having general circulation in the district and in any such political subdivision or unincorporated area, the first publication to be at least 30 days prior to such hearing. In the event all matters pertaining to the inclusion of such political subdivision or unincorporated area cannot be included at such hearing, such hearing may be continued to a time and place within the district determined by the board or boards of commissioners with the concurrence of the representative of the Environmental Management Commission.

(c) If, after such hearing, the Environmental Management Commission and the board or boards of commissioners shall determine that the inclusion of the political subdivision or unincorporated area in the district will preserve and promote the public health and welfare, the Environmental Management Commission shall adopt a resolution to that effect, defining the boundaries of the district, including the political subdivision or unincorporated area which has filed a resolution or petition as provided for in this section, and declaring such political subdivision or unincorporated area to be included in the district.

(d) If, at or prior to such public hearing, there shall be filed with the district board a petition, signed by not less than ten per centum (10%) of the qualified voters residing in the district, requesting an election to be held therein on the question of including the political subdivision or unincorporated area, the district board shall certify a copy of such petition to the board or boards of commissioners, and the board or boards of commissioners shall request the county board or boards of elections to submit such question to the qualified voters within the district in accordance with the applicable provisions of Chapter 163 of the General Statutes; provided, that the election shall not be held unless the Environmental Management Commission has adopted a resolution approving the inclusion of the political subdivision or unincorporated area in the district.

Notice of such election, which shall contain a statement of the boundaries of the territory proposed to be included in the district and the boundaries of the district after inclusion, shall be given by publication once a week for three successive weeks in a newspaper or newspapers having general circulation within the district, the first publication to be at least 30 days prior to the election.

(e) Notice of the resolution of the Environmental Management Commission, or in the event that an election pursuant to this section is held, notice of the results of the election, approving the inclusion of the political subdivision or unincorporated area within the district shall be published as provided in G.S. 162A-66.

(f) Any action or proceeding in any court to set aside a resolution of the Environmental Management Commission or an election approving the inclusion of a political subdivision or unincorporated area within a district or to obtain any other relief upon the ground that such resolution or election or any proceeding or action taken with respect to the inclusion of the political subdivision or unincorporated area within the district is invalid, must be commenced within 30 days after the first publication of the notice. After the expiration of such period of limitation, no right of action or defense founded upon the invalidity of the resolution or the election or the inclusion of the political subdivision or unincorporated area in the district shall be asserted, nor shall the validity of the resolution or the election or the inclusion of the political subdivision or unincorporated area be open to question in any court upon any ground whatever, except in an action or proceeding commenced within such period.

(g) Any political subdivision or unincorporated area included within an existing district by resolution of the Environmental Management Commission or by such resolution and election shall be subject to all debts of the district.

(h) The annexation by a city or town within a metropolitan sewerage district of an area lying outside such district shall not be construed as the inclusion within the district of an additional political subdivision or unincorporated area within the meaning of the provisions of this section; but any such areas so annexed shall become a part of the district and shall be subject to all debts thereof.

(i) Immediately following the inclusion of any additional political subdivision within an existing district, members representing such additional political subdivision shall be appointed to the district board in the manner provided in G.S. 162A-67. Any additional unincorporated area that is included within an existing district shall be represented by the members representing the county in which the unincorporated area lies except that:

(1) If inclusion of the additional unincorporated area extends the district into more than one county, members representing the unincorporated area in the new county shall be appointed in accordance with G.S. 162A-67(a)(2) immediately following the inclusion of the additional area.

(2) If the inclusion of the additional unincorporated area has the effect of changing the county in which the largest portion of the district lies, new members representing the county comprising the larger portion of the district shall be appointed in accordance with G.S. 162A-67(a)(2) immediately following the inclusion, and no reappointment shall be made by the county in which the lesser portion of the district lies upon expiration of the first term of a member representing that county following the inclusion.

The terms of office of the members first appointed to represent such additional subdivision or area may be varied for a period not to exceed six months from the terms provided for in G.S. 162A-67, so that the appointment of successors to such members may more nearly coincide with the appointment of successors to members of the existing board; and all successor members shall be appointed for the terms provided for in G.S. 162A-67. (1961, c. 795, s. 5; 1973, c. 512, s. 3; c. 822, s. 4; c. 1262, s. 23; 1977, c. 764, s. 2; 1991 (Reg. Sess., 1992), c. 954, s. 1.)

CASE NOTES

Sewer Service. — Trial court's judgment upholding an ordinance which the City of Asheville (North Carolina) passed to annex property was reversed because the court failed to recognize that the city's plan for providing services to the area it proposed to annex did not provide statutorily required sewer service. Briggs v. City of Asheville, 159 N.C. App. 558, 583 S.E.2d 733, 2003 N.C. App. LEXIS 1534 (2003), cert. denied, 357 N.C. 657, 589 S.E.2d 886 (2003), cert. dismissed sub nom. Briggs v. City Asheville, 357 N.C. 657, 589 S.E.2d 887 (2003).

§ 162A-69. Powers generally; fiscal year.

Each district shall be deemed to be a public body and body politic and corporate exercising public and essential governmental functions to provide for the preservation and promotion of the public health and welfare, and each district is hereby authorized and empowered:

(1) To adopt bylaws for the regulation of its affairs and the conduct of its business not in conflict with this or other law;

(2) To adopt an official seal and alter the same at pleasure;

(3) To maintain an office at such place or places in the district as it may designate;

(4) To sue and be sued in its own name, plead and be impleaded;

(5) To acquire, lease as lessor or lessee, construct, reconstruct, improve, extend, enlarge, equip, repair, maintain and operate any sewerage system or part thereof within or without the district; provided, however, that no such sewerage system or part thereof shall be located in any city, town or incorporated village outside the district except with the consent of the governing body thereof, and each such governing body is hereby authorized to grant such consent;

(6) To issue general obligation bonds and revenue bonds of the district as hereinafter provided to pay the cost of a sewerage system or systems;

(7) To issue general obligation refunding bonds and revenue refunding bonds of the district as hereinafter provided;

(8) To fix and revise from time to time and to collect rents, rates, fees and other charges for the use of or for the services and facilities furnished by any sewerage system;

(9) To cause taxes to be levied and collected upon all taxable property within the district sufficient to meet the obligations of the district, to pay the cost of maintaining, repairing and operating any sewerage system or systems, and to pay all obligations incurred by the district in the performance of its lawful undertakings and functions;

(10) To acquire in the name of the district, either within or without the corporate limits of the district, by gift, purchase or the exercise of the right of eminent domain, which right shall be exercised in accordance with the provisions of Chapter 40A of the General Statutes of North Carolina, any improved or unimproved lands or rights in land, and to acquire such personal property, as it may deem necessary in connection with the acquisition, construction, reconstruction, improvement, extension, enlargement, repair, equipment, maintenance or operation of any sewerage system, and to hold and dispose of all real and personal property under its control;

(11) To make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this Article, including a trust agreement or trust agreements securing any revenue bonds issued hereunder;

(12) To employ such consulting and other engineers, superintendents, managers, construction and financial experts, accountants, attorneys,

employees and agents as may, in the judgment of the district board be deemed necessary, and to fix their compensation; provided, however, that the provisions of G.S. 159-20 shall be complied with to the extent that the same shall be applicable;

(13) To receive and accept from the United States of America or the State of North Carolina or any agency or instrumentality thereof loans, grants, advances or contributions for or in aid of the planning, acquisition, construction, reconstruction, improvement, extension, enlargement, repair, equipment, maintenance or operation of any sewerage system or systems, to agree to such reasonable conditions or requirements as may be imposed, and to receive and accept contributions from any source of either money, property, labor or other things of value, to be held, used and applied only for the purposes for which such loans, grants, advances or contributions may be made;

(13a) To adopt ordinances to regulate and control the discharge of sewage into any sewerage system owned or operated by the district. Prior to the adoption of any ordinance or any amendment to any ordinance the district shall first pass a declaration of intent to adopt such ordinance or amendment. The declaration of intent shall describe the ordinance or amendment which it is proposed that the district adopt. The declaration of intent shall be submitted to each governing body for review and comment. The district shall take into consideration any comment and suggestions with respect to the proposed ordinance or amendment offered by any governing body and may modify such proposed ordinance or amendment to reflect comment and suggestions offered by any governing body. Thereafter, the district shall be authorized to adopt such ordinance or any amendment to it at any time after 60 days following the submission of the declaration of intent to each governing body;

(13b) To require the owners of improved property located within the district so as to be served by a sewer collection line owned or leased and operated by the district to connect their premises with the sewer line, and fix charges for these connections; and

(14) To do all acts and things necessary or convenient to carry out the powers granted by this Article.

Each district shall keep its accounts on the basis of a fiscal year commencing on the first day of July and ending on the thirtieth day of June of the following year. (1961, c. 795, s. 6; 1973, c. 822, s. 4; 1981, c. 919, s. 32; 1983, c. 333, s. 3; 1987, c. 396, ss. 1-3.)

Editor's Note. — The reference in subdivision (12) of this section to G.S. 159-20 is to that section in Chapter 159 before its revisions by Session Laws 1971, c. 780. The corresponding section in the revised Chapter is G.S. 159-131.

CASE NOTES

Applied in Scarborough v. Adams, 264 N.C. 631, 142 S.E.2d 608 (1965).

§ 162A-70. Bonds and notes authorized.

A metropolitan sewerage district shall have power from time to time to issue bonds and notes under the Local Government Finance Act. (1961, c. 795, s. 7; 1971, c. 780, s. 30; 1973, c. 822, s. 4.)

§ 162A-71. Determination of tax rate by district board; levy and collection of tax; remittance and deposit of funds.

After each assessment for taxes following the creation of the district, the board or boards of commissioners shall file with the district board the valuation of assessable property within the district. The district board shall then determine the amount of funds to be raised by taxation for the ensuing year in excess of available funds to provide for the payment of interest on and the principal of all outstanding general obligation bonds as the same shall become due and payable, to pay the cost of maintaining, repairing and operating any sewerage system or systems, and to pay all obligations incurred by the district in the performance of its lawful undertakings and functions.

The district board shall determine the number of cents per one hundred dollars ($100.00) necessary to raise said amount and certify such rate to the board or boards of commissioners. The board or boards of commissioners shall include the number of cents per one hundred dollars ($100.00) certified by the district board in its next annual levy against all taxable property within the district, which tax shall be collected as other county taxes are collected, and every month the amount of tax so collected shall be remitted to the district board and deposited by the district board in a separate account in a bank in the State of North Carolina. Such levy may include an amount for reimbursing the county for the additional cost to the county of levying and collecting such taxes, pursuant to such formula as may be agreed upon by the district board and the board or boards of commissioners, to be deducted from the collections and stated with each remittance to the district board. The officer or officers having charge or custody of the funds of the district shall require said bank to furnish security for protection of such deposits as provided in G.S. 159-28 and, after June 30, 1973, G.S. 159-31. (1961, c. 795, s. 15; 1973, c. 512, s. 4; c. 822, s. 4.)

§ 162A-72. Rates and charges for services.

The district board may fix, and may revise from time to time, rents, rates, fees and other charges for the use of and for the services furnished or to be furnished by any sewerage system. Such rents, rates, fees and charges shall not be subject to supervision or regulation by any bureau, board, commission, or other agency of the State or of any political subdivision. Any such rents, rates, fees and charges pledged to the payment of revenue bonds of the district shall be fixed and revised so that the revenues of the sewerage system, together with any other available funds, shall be sufficient at all times to pay the cost of maintaining, repairing and operating the sewerage system the revenues of which are pledged to the payment of such revenue bonds, including reserves for such purposes, and to pay the interest on and the principal of such revenue bonds as the same shall become due and payable and to provide reserves therefor. If any such rents, rates, fees and charges are pledged to the payment of any general obligation bonds issued under this Article, such rents, rates, fees and charges shall be fixed and revised so as to comply with the requirements of such pledge. The district board may provide methods for collection of such rents, rates, fees and charges and measures for enforcement of collection thereof, including penalties and the denial or discontinuance of service. (1961, c. 795, s. 19; 1973, c. 822, s. 4.)

§ 162A-73. Authority of governing bodies of political subdivisions.

The governing body of any political subdivision is hereby authorized and empowered:

(1) Subject to the approval of the Local Government Commission, to transfer jurisdiction over, and to lease, lend, sell, grant or convey to a district, upon such terms and conditions as the governing body of such political subdivision may agree upon with the district board, the whole or any part of any existing sewerage system or systems or such real or personal property as may be necessary or useful in connection with the acquisition, construction, reconstruction, improvement, extension, enlargement, equipment, repair, maintenance or operation of any sewerage system by the district, including public roads and other property already devoted to public use;

(2) To make and enter into contracts or agreements with a district, upon such terms and conditions and for such periods as such governing body and the district board may determine:
   a. For the collection, treatment or disposal of sewage;
   b. For the collecting by such political subdivision or by the district of rents, rates, fees or charges for the services and facilities provided to or for such political subdivision or its inhabitants by any sewerage system, and for the enforcement of collection of such rents, rates, fees and charges; and
   c. For the imposition of penalties, including the shutting off of the supply of water furnished by any water system owned or operated by such political subdivision, in the event that the owner, tenant or occupant of any premises utilizing such water shall fail to pay any such rents, rates, fees or charges;

(3) To fix, and revise from time to time, rents, rates, fees and other charges for the services furnished or to be furnished by a sewerage system under any contract between the district and such political subdivision, and to pledge all or any part of the proceeds of such rents, rates, fees and charges to the payment of any obligation of such political subdivision to the district under such contract;

(4) To pay any obligation of such political subdivision to the district under such contract from any available funds of the political subdivision and to levy and collect a tax ad valorem for the making of any such payment; and

(5) In its discretion or if required by law, to submit to its qualified electors under the election laws applicable to such political subdivision any contract or agreement which such governing body is authorized to make and enter into with the district under the provisions of this Article.

Any such election upon a contract or agreement may, at the discretion of the governing body, be called and held under the election laws applicable to the issuance of bonds by such political subdivision. (1961, c. 795, s. 23; 1973, c. 822, s. 4.)

CASE NOTES

Subdivisions May Contract to Cut Off Water from Delinquent Sewerage Accounts. — A provision in contracts between a sewerage district and certain subdivisions that the latter would cut off water from users who were delinquent in their sewerage accounts was valid. Scarborough v. Adams, 264 N.C. 631, 142 S.E.2d 608 (1965).

§ 162A-74. Rights-of-way and easements in streets and highways.

A right-of-way or easement in, along, or across any State highway system, road, or street, and along or across any city or town street within a district is hereby granted to a district in case such right-of-way is found by the district board to be necessary or convenient for carrying out any of the work of the district. Any work done in, along, or across any State highway system, road, street, or property shall be done in accordance with the rules and regulations and any reasonable requirements of the Department of Transportation, and any work done in, along, or across any municipal street or property shall be done in accordance with any reasonable requirements of the municipal governing body. (1961, c. 795, s. 24; 1973, c. 507, s. 5; c. 822, s. 4; 1977, c. 464, s. 34.)

§ 162A-75. Submission of preliminary plans to planning groups; cooperation with planning agencies.

Prior to the time final plans are made for the location and construction of any sewerage system, the district board shall present preliminary plans for such improvement to the county, municipal or regional planning board for their consideration, if such facility is to be located within the planning jurisdiction of any such county, municipal or regional planning group. The district board shall make every effort to cooperate with the planning agency, if any, in the location and construction of a proposed facility authorized under this Article. Any district board created under the authority of this Article is hereby directed, wherever possible, to coordinate its plans for the construction of sewerage system improvements with the overall plans for the development of the planning area, if such district is located wholly or in part within a county, municipal or regional planning area; provided, however, that the approval of any such county, municipal or regional planning board as to any such plan of the district shall not be required. (1961, c. 795, s. 25; 1973, c. 822, s. 4.)

§ 162A-76. Water system acting as billing and collecting agent for district; furnishing meter readings.

The owner or operator, including any political subdivision, of a water system supplying water to the owners, lessees or tenants of real property which is or will be served by any sewerage system owned or operated by a district is authorized to act as the billing and collecting agent of the district for any rents, rates, fees or charges imposed by the district for the services and facilities provided by such sewerage system, and such district is authorized to arrange with such owner or operator to act as the billing and collecting agent of the district for such purpose. Any such owner or operator shall, if requested by a district, furnish to the district copies of such regular periodic meter reading and water consumption records and other pertinent data as the district may require to do its own billing and collecting. The district shall pay to such owner or operator the reasonable additional expenses incurred by such owner or operator in rendering such services to the district. (1961, c. 795, s. 26; 1973, c. 822, s. 4.)

§ 162A-77. District may assume sewerage system indebtedness of political subdivision; approval of voters; actions founded upon invalidity of election; tax to pay assumed indebtedness.

A district may assume all outstanding indebtedness of any political subdivision in the district lawfully incurred for paying all or any part of the cost of a sewerage system, subject to approval thereof by a majority of the qualified voters of the district voting at an election thereon. Any such election shall be called and held in accordance with the provisions of the Local Government Finance Act, insofar as the same may be made applicable, and the returns of such election shall be canvassed and a statement of the result thereof prepared, recorded and published as provided in the Local Government Finance Act. No right of action or defense founded upon the invalidity of the election shall be asserted nor shall the validity of the election be open to question in any court upon any ground whatever, except in an action or proceeding commenced within 30 days after the publication of such statement of result. In the event that any such indebtedness of a political subdivision is assumed by the district, there shall be annually levied and collected a tax ad valorem upon all the taxable property in the district sufficient to pay such assumed indebtedness and the interest thereon as the same become due and payable; provided, however, that such tax may be reduced by the amount of other moneys actually available for such purpose. Such tax shall be determined, levied and collected in the manner provided by G.S. 162A-71 and subject to the provisions of said section.

Nothing herein shall prevent any political subdivision from levying taxes to provide for the payment of its debt service requirements as to indebtedness incurred for paying all or any part of the cost of a sewerage system if such debt service requirements shall not have been otherwise provided for. (1961, c. 795, s. 27; 1973, c. 512, s. 5; c. 822, s. 4.)

§ 162A-77.1. Special election upon the question of the merger of metropolitan sewerage districts into cities or towns.

Any district lying entirely within the corporate limits of a city or town may be merged into such city or town in accordance with the provisions of this section.

The governing body of a city or town, with the approval of the district board, shall call and conduct a special election within such city or town on the question of the merger of the district into the city or town. A vote in favor of such merger shall constitute a vote for such city or town to assume the obligations of the district. Such special election may be called and conducted by the governing body of a city or town upon its own motion after passage of a resolution of the district board requesting or approving the special election.

A new registration of voters shall not be required for the special election. The special election shall be conducted in accordance with the provisions of law applicable to regular elections in the city or town.

If a majority of the votes are in favor of the merger, then:

(1) All property, real and personal and mixed, including accounts receivable, belonging to such district shall vest in, belong to, and be the property of, such city or town. All district boards are hereby authorized to take such actions and to execute such documents as will carry into effect the provisions and the intent of this section.

(2) All judgments, liens, rights of liens, and causes of action of any nature in favor of such district shall vest in and remain and inure to the benefit of such city or town.

(3) All taxes, assessments, sewer charges, and any other debts, charges or fees, owing to such district shall be owed to and collected by such city or town.

(4) All actions, suits and proceedings pending against, or having been instituted by, such district shall not be abated by this section or by the merger herein provided for, but all such actions, suits, and proceedings shall be continued and completed in the same manner as if merger had not occurred, and such city or town shall be a party to all

such actions, suits, and proceedings in the place and stead of the district and shall pay or cause to be paid any judgments rendered against the district in any such actions, suits, or proceedings. No new process need be served in any such action, suit, or proceeding.

(5) All obligations of the district, including outstanding indebtedness, shall be assumed by such city or town, and all such obligations and outstanding indebtedness shall constitute obligations and indebtedness of such city or town, and the full faith and credit of such city or town shall be deemed to be pledged for the punctual payment of the principal of and the interest on any general obligation bonds or bond anticipation notes of such district, and all the taxable property within such city or town, as well as that formerly located within the district, shall be and remain subject to taxation for such payment.

(6) All ordinances, rules, regulations, and policies of such district shall continue in full force and effect until repealed or amended by the governing body of such city or town.

(7) Such district shall be abolished, and shall no longer be constituted a public body or a body politic and corporate, except for the purposes of carrying into effect the provisions and the intent of this section.

If a majority of the votes are against the merger, then such merger shall not be effective unless approved by a majority of the qualified voters who vote thereon in a subsequent special election conducted under authority of this section.

Any action or proceeding in any court to set aside a special election held under authority of this section or the result thereof, or to obtain any other relief upon the ground that such election or any proceeding or action taken with respect to the holding of such election is invalid, must be commenced within 30 days after the day of such special election. After the expiration of such period of limitation, no right of action or defense founded upon the invalidity of the election or the result thereof shall be asserted, nor shall the validity of the election or of the result thereof be open to question in any court upon any ground whatever, except in an action or proceeding commenced within such period. (1975, c. 448.)

§ 162A-78. Advances by political subdivisions for preliminary expenses of districts.

Any political subdivision is hereby authorized to make advances, from any moneys that may be available for such purpose, in connection with the creation of such district and to provide for the preliminary expenses of such district. Any such advances may be repaid to such political subdivision from the proceeds of bonds issued by such district or from other available funds of the district. (1961, c. 795, s. 28; 1973, c. 822, s. 4.)

§ 162A-79. Article regarded as supplemental.

This Article shall be deemed to provide an additional and alternative method for the doing of the things authorized hereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of or as repealing any powers now existing under any other law, either general, special or local; provided, however, that the issuance of bonds under the provisions of this Article need not comply with the requirements of any other law applicable to the issuance of bonds except as herein provided. (1961, c. 795, s. 29; 1973, c. 822, s. 4.)

§ 162A-80. Inconsistent laws declared inapplicable.

All general, special or local laws, or parts thereof, inconsistent herewith are hereby declared to be inapplicable, unless otherwise specified, to the provisions of this Article. (1961, c. 795, s. 30; 1973, c. 822, s. 4.)

CASE NOTES

Applied in Scarborough v. Adams, 264 N.C. 631, 142 S.E.2d 608 (1965).

§ 162A-81. Adoption and enforcement of ordinances.

(a) A district shall have the same power as a city under G.S. 160A-175 to assess civil fines and penalties for violation of its ordinances, and may secure injunctions to further insure compliance with its ordinances as provided by this section.

(b) An ordinance may provide that its violation shall subject the offender to a civil penalty of not more than one thousand dollars ($1,000) to be recovered by the district in a civil action in the nature of debt if the offender does not pay the penalty within a prescribed period of time after he has been cited for violation of the ordinance. Any person assessed a civil penalty by the district shall be notified of the assessment by registered or certified mail, and the notice shall specify the reasons for the assessment. If the person assessed fails to pay the amount of the assessment to the district within 30 days after receipt of notice, or such longer period, not to exceed 180 days, as the district may specify, the district may institute a civil action in the General Court of Justice of the county in which the violation occurred or, in the discretion of the district, in the General Court of Justice of the county in which the person assessed has his or its principal place of business, to recover the amount of the assessment. The validity of the district's action may be appealed directly to General Court of Justice in the county in which the violation occurred, or may be raised at any time in the action to recover the assessment. Neither failure to contest the district's action directly nor failure to raise the issue of validity in the action to recover an assessment precludes the other.

(c) An ordinance may provide that it may be enforced by an appropriate equitable remedy issuing from court of competent jurisdiction. In such case, the General Court of Justice shall have jurisdiction to issue such orders as may be appropriate and it shall not be a defense to the application of the district for equitable relief that there is an adequate remedy at law.

(d) Subject to the express terms of an ordinance, a district ordinance may be enforced by any one, all, or a combination of the remedies authorized and prescribed by this section.

(e) An ordinance may provide, when appropriate, that each day's continuing violation shall be a separate and distinct offense. (1983, c. 333, s. 4.)

CASE NOTES

Cited in District Bd. of Metro. Sewerage Dist. v. Blue Ridge Plating Co., 110 N.C. App. 386, 430 S.E.2d 282 (1993).

§§ 162A-82 through 162A-85: Reserved for future codification purposes.

ARTICLE 6.

County Water and Sewer Districts.

§ 162A-86. Filling vacancies in the General Assembly.

(a) The board of commissioners of any county may create a county water and sewer district.

(a1) The governing board of a consolidated city-county, as defined by G.S. 160B-2(1), may create a water and sewer district pursuant to this Article. For the purposes of this Article, the term "board of county commissioners" shall also mean the governing board of a consolidated city-county and the term "county water and sewer district" also means a water and sewer district created by the governing board of a consolidated city-county.

(b) Before creating such a district, the board of commissioners shall hold a public hearing. Notice of the hearing shall state the date, hour, and place of the hearing and its subject and shall set forth a description of the territory to be included within the proposed district. The notice shall be published once a week for three weeks in a newspaper that circulates in the proposed district and in addition shall be posted in at least three public places in the district. The notice shall be posted and published the first time not less than 20 days before the hearing.

(b1) Before creating such a district, the board of commissioners shall hold a public hearing. Notice of the hearing shall state the date, hour, and place of the hearing and its subject and shall set forth a description of the territory to be included within the proposed district. The notice shall be published once in a newspaper that circulates in the proposed district and in addition shall be posted in at least three public places in the district. The notice shall be posted and published not more than 30 nor less than 14 days before the hearing. The newspaper notice and the public hearing may cover more than one district covered by this subsection.

This subsection applies only when the local Health Director or the State Health Director has certified that there is a present or imminent serious public health hazard caused by the failure of a low-pressure pipe sewer system within the area of the proposed district, and in such case the board of commissioners may proceed either under subsection (a) of this section or under this subsection.

(c) At the public hearing, the commissioners shall hear all interested persons and may adjourn the hearing from time to time. (1977, c. 466, s. 1; 1979, c. 624, ss. 2, 3; 1993 (Reg. Sess., 1994), c. 696, s. 1; c. 714, s. 1; 1995, c. 461, s. 7.)

Cross References. — As to provisions for the temporary implementation of federal Phase II Stormwater Management requirements, see Session Laws 2004-163, noted under G.S. 143-214.7.

Funds for Local Government Water and Sewer Improvement Grants. — Session Laws 2007-323, s. 13.13A, provides for the use of certain funds appropriated to the Rural Economic Development Center, Inc. for the 2007-2008 fiscal year for wastewater-related and public water system-related projects. See note at G.S. 160A-311.

Session Laws 2008-107, s. 13.8, provides for the use of certain funds appropriated to the Rural Economic Development Center, Inc. for the 2007-2008 fiscal year for wastewater-related and public water system-related projects. See note at G.S. 160A-311.

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

CASE NOTES

Cited in Homebuilders Ass'n v. City of Charlotte, 336 N.C. 37, 442 S.E.2d 45 (1994).

§ 162A-87. Creation of district; standards; limitation of actions.

(a) Following the public hearing, the board of commissioners may, by resolution, create a county water and sewer district if the board finds that:

(1) There is a demonstrable need for providing in the district water services, or sewer services, or both;

(2) The residents of all the territory to be included in the district will benefit from the district's creation; and

(3) It is economically feasible to provide the proposed service or services in the district without unreasonable or burdensome annual tax levies.

Territory lying within the corporate limits of a city or town may not be included in the district unless the governing body of the city or town agrees by resolution to such inclusion. Otherwise, the board of commissioners may define as the district all or any portion of the territory described in the notice of the public hearing.

(b) Upon adoption of a resolution creating a county water and sewer district, the board of commissioners shall cause the resolution to be published once in each of two successive weeks in the newspaper in which the notices of the hearing were published. In addition, the commissioners shall cause to be published with the resolution a notice in substantially the following form:

"The foregoing resolution was adopted by the ________________ County Board of Commissioners on ____________________ and was first published on ________.

Any action or proceeding questioning the validity of this resolution or the creation of the ____________________ Water and Sewer District of ____________________ County or the inclusion in the district of any of the territory described in the resolution must be commenced within 30 days after the first publication of the resolution.

____

Clerk, ____________________ County Board of Commissioners"

Any action or proceeding in any court to set aside a resolution creating a county water and sewer district, or questioning the validity of such a resolution, the creation of such a district, or the inclusion in such a district of any of the territory described in the resolution creating the district must be commenced within 30 days after the first publication of the resolution and notice. After the expiration of this period of limitation, no right of action or defense founded upon the invalidity of the resolution, the creation of the district, or the inclusion of any territory in the district may be asserted, nor may the validity of the resolution, the creation of the district, or the inclusion of the territory be open to question in any court upon any ground whatever, except in an action or proceeding commenced within that period.

Notwithstanding any other provision of this section, in the case of any county water and sewer districts created under G.S. 162A-86(b1):

(1) A resolution may cover the creation of more than one district;

(2) The board of commissioners shall cause the resolution to be published once in the newspaper in which the notice of the hearing was published; and

(3) References in this subsection to "30 days" are instead "21 days". (1977, c. 466, s. 1; 1979, c. 624, s. 4; 1993 (Reg. Sess., 1994), c. 696, s. 2; c. 714, s. 2.)

§ 162A-87.1. Extension of water and sewer districts.

(a) Standards. — The board of commissioners may, by resolution, annex territory to any water and sewer district upon a finding that:

(1) The area to be annexed is contiguous to the district, with at least one eighth of the area's aggregate external boundary coincident with the existing boundary of the district;

(2) The residents of the territory to be annexed will benefit from the annexation; and

(3) It is economically feasible to provide the proposed service or services in the annexed district without unreasonable or burdensome annual tax levies.

(b) Annexation by Petition. — The board of commissioners may, by resolution, extend by annexation the boundaries of any water or sewer district when one hundred percent (100%) of the real property owners of the area to be annexed have petitioned the board for annexation to the water and sewer district.

(c) Annexation of Property within a City or Sanitary District. — Territory lying within the corporate limits of a city or sanitary district may not be annexed to a water and sewer district unless the governing body of the city or sanitary district agrees, by resolution, to the annexation.

(d) Report. — Before the public hearing required by subsection (e) of this section, the board of commissioners shall have prepared a report containing:

(1) A map of the water and sewer district and the adjacent territory, showing the present and proposed boundaries of the district; and

(2) A statement showing that the area to be annexed meets the standards and requirements established in subsections (a), (b), or (c) of this section.

The report shall be available for public inspection in the office of the clerk of the board of commissioners for at least two weeks before the date of the public hearing required by subsection (e) of this section.

(e) Hearing and Notice. — The board of commissioners shall hold a public hearing before adopting any resolution extending the boundaries of a water and sewer district. Notice of the hearing shall state the date, hour, and place of the hearing and its subject, and shall include a statement that the report required by subsection (d) of this section is available for inspection in the office of the clerk of the board of commissioners. The notice shall be published at least once not less than one week before the date of the hearing. In addition, unless the hearing is because of a petition for annexation submitted under subsection (b) of this section, the notice shall be mailed, at least four weeks before the date of the hearing, to the owners, as shown by the county tax records as of the preceding January 1, of all property located within the area to be annexed. The notice may be mailed by any class of U.S. mail which is fully prepaid. The person designated by the board of commissioners to mail the notice shall certify to the board of commissioners that the mailing has been completed, and his certificate shall be conclusive in the absence of fraud.

(f) Effective Date. — The resolution extending the boundaries of the district shall take effect at the beginning of a fiscal year commencing after its passage, as determined by the board of commissioners. (1985, c. 627, s. 1; 1989, c. 543.)

§ 162A-87.1A. Initial boundaries of district.

(a) The initial boundaries of a district may exclude areas contained solely within the external boundaries of the district.

(b) The initial boundaries of a district may include noncontiguous portions, as long as the closest distance from a noncontiguous piece to the part of the district containing the greatest area does not exceed one mile.

(c) This section does not invalidate any district created prior to the effective date of this section. (1993 (Reg. Sess., 1994), c. 696, s. 3; c. 714, s. 3.)

§ 162A-87.1B. Transfer of State-owned property from one district to another.

If any property owned by the State is located in a county water and sewer district, the board of commissioners of that county by resolution may transfer the property to another county water and sewer district in that county. This section only applies if the State acquired the property from the county. Any such resolution shall become effective on the date specified in the resolution, and a copy of the resolution shall be sent to the Department of Administration. (2005-127, s. 1; 2006-226, s. 29.)

Editor's Note. — Session Laws 2005-127, s. 3, as amended by Session Laws 2006-226, s. 29, made this section effective June 29, 2005. For each water and sewer authority organized under Article 1 of Chapter 162A of the General Statutes, G.S. 162A-5(c) applies on the first day of the fiscal year of the authority that begins on or after June 29, 2005.

§ 162A-87.2. Abolition of water and sewer districts.

(a) Upon finding that there is no longer a need for a water and sewer district and that there are no outstanding bonds or notes issued to finance projects in the district, the board of commissioners may, by resolution, abolish that district. The board of commissioners shall hold a public hearing before adopting a resolution abolishing a district. Notice of the hearing shall state the date, hour, and place of the hearing and its subject, and shall be published at least once not less than one week before the date of the hearing. The abolition of any water and sewer district shall take effect at the end of a fiscal year following passage of the resolution, as determined by the board of commissioners.

(b) If the:

(1) Terms of any contract between a county water and sewer district and a city provide that upon certain conditions, all the property of the district is conveyed to that city; and

(2) District has at the time of abolition no existing bonds or notes issued as authorized by G.S. 162A-90 to finance projects in the district,

then such contract may also provide that no earlier than such conveyance the district may be abolished by action of the governing board of the city. If the district has any other indebtedness, a contract providing for conveyance of all of the assets of a district to a city must provide for assumption of such other indebtedness by the city. If the district is owed any assessments, then the right to collect such assessments becomes that of the city. The governing board of the city shall hold a public hearing before adopting a resolution abolishing a district. Notice of the hearing shall state the date, hour, and place of the hearing and its subject, and shall be published at least once not less than one week before the date of the hearing. The abolition of any water and sewer district shall take effect at the end of a fiscal year of the district following passage of the resolution, as determined by the governing board. This subsection applies only to a county water and sewer district created under G.S. 162A-86(b1).

(c) If the:

(1) Terms of any contract between a county water and sewer district and a private person provide that upon certain conditions, all the property of the district is conveyed to that private person; and

(2) District has at the time of abolition no existing bonds or notes issued as authorized by G.S. 162A-90 to finance projects in the district,

such contract may also provide that no earlier than such conveyance the district may be abolished by action of the Utilities Commission. If the district has any other indebtedness, a contract providing for conveyance of all of the assets of a district to a private person must provide for assumption of such other indebtedness by the private person. If the district is owed any assessments, then the private person may collect the assessment under the same procedures as if it was the district. The Utilities Commission shall hold a public hearing before adopting a resolution abolishing a district. Notice of the hearing shall state the date, hour, and place of the hearing and its subject, and shall be published at least once not less than one week before the date of the hearing. The abolition of any water and sewer district shall take effect at the end of a fiscal year of the district following passage of the resolution, as determined by the Utilities Commission. This subsection applies only to a county water and sewer district created under G.S. 162A-86(b1).

(d) Any resolution of abolition adopted under this section on or after the effective date of this section shall be filed with the Secretary of State. (1985, c. 627, s. 2; 1993 (Reg. Sess., 1994), c. 696, s. 4; c. 714, s. 4.)

§ 162A-87.3. Services outside the district.

(a) A county water and sewer district may provide water or sewer services, or both, to customers outside the district, but in no case shall the county water and sewer district be held liable for damages to those outside the district for failure to furnish such services.

(b) A county water and sewer district may provide a different schedule of rents, rates, fees, and charges for services provided outside the district.

(c) A county water and sewer district may not extend service to customers lying within the corporate limits of a city or sanitary district unless the governing body of a city or sanitary district agrees, by resolution, to the extension.

(d) A county water and sewer district may not extend service to customers lying within another county unless the board of commissioners of that county agrees, by resolution, to the extension. (1989, c. 726, s. 1.)

§ 162A-88. District is a municipal corporation.

The inhabitants of a county water and sewer district created pursuant to this Article are a body corporate and politic by the name specified by the board of commissioners. Under that name they are vested with all the property and rights of property belonging to the corporation; have perpetual succession; may sue and be sued; may contract and be contracted with; may acquire and hold any property, real and personal, devised, bequeathed, sold, or in any manner conveyed, dedicated to, or otherwise acquired by them, and from time to time may hold, invest, sell, or dispose of the same; may have a common seal and alter and renew it at will; may establish, revise and collect rates, fees or other charges and penalties for the use of or the services furnished or to be furnished by any sanitary sewer system, water system or sanitary sewer and water system of the district; and may exercise those powers conferred on them by this Article. (1977, c. 466, s. 1; 1979, c. 624, s. 5.)

CASE NOTES

Purpose. — The very purpose of G.S. 162A-88 is to clarify that a county water and sewer district created pursuant to G.S. 162A-86 is effectively a municipal corporation. Homebuilders Ass'n v. City of Charlotte, 336 N.C. 37, 442 S.E.2d 45 (1994).

Broad Powers Granted to Water and Sewer Districts. — The legislature has granted broad powers to water and sewer districts, some of which are set forth in this section. McNeill v. Harnett County, 327 N.C. 552, 398 S.E.2d 475 (1990).

Powers Granted to Sewer District and County Under Chapter 153A, Article 15. — In addition to those powers granted to sewer district in this section, county, as operator of a public enterprise, is clothed with those powers set forth in Chapter 153A, Article 15, including the power to mandate connections and to fix charges for those connections under G.S. 153A-284. The plain wording of G.S. 153A-284 clearly supports this conclusion. McNeill v. Harnett County, 327 N.C. 552, 398 S.E.2d 475 (1990).

Water and sewer districts may contract with counties to carry out their purposes. McNeill v. Harnett County, 327 N.C. 552, 398 S.E.2d 475 (1990).

Power of County to Exercise Rights, Powers and Functions Granted to Water and Sewer Districts. — Pursuant to an interlocal cooperative agreement and pursuant to authority granted in Article 15 of Chapter 153A, a county may, among other things, operate a water and/or sewer system for and on behalf of another unit of local government, such as a water and sewer district, and in conjunction therewith may exercise those rights, powers, and functions granted to water and sewer districts as found in this section and those rights, powers, and functions granted to counties in Ch. 153A, Art. 15. McNeill v. Harnett County, 327 N.C. 552, 398 S.E.2d 475 (1990).

Financing a Project by Charging for Services "To Be Furnished." — A local government is not required to use an assessment procedure to finance a project, and a sewer district may effectively finance a project through its authority to charge for services "to be furnished" pursuant to this section. McNeill v. Harnett County, 327 N.C. 552, 398 S.E.2d 475 (1990).

User Fees Are Not Limited. — The provisions of this section authorizing user fees for services "to be furnished" is not limited to the financing of maintenance and improvements of existing customers. McNeill v. Harnett County, 327 N.C. 552, 398 S.E.2d 475 (1990).

Annexation of Water and Sewer District. — Trial court did not err in holding that city could lawfully annex part of water and sewer district, even though a water and sewer district under this chapter is termed a municipal corporation; a water and sewer district is a municipal corporation organized for a special purpose, which does not qualify as a municipal corporation for purposes of Chapter 160A. Thrash v. City of Asheville, 95 N.C. App. 457, 383 S.E.2d 657 (1989), rev'd on other grounds, 327 N.C. 251, 393 S.E.2d 842 (1990).

§ 162A-88.1. Contracts with private entities.

A county water and sewer district may contract with and appropriate money to any person, association, or corporation, in order to carry out any public purpose that the county water and sewer district is authorized by law to engage in. (1993 (Reg. Sess., 1994), c. 696, s. 5; c. 714, s. 5.)

§ 162A-89. Governing body of district; powers.

(a) The board of commissioners of the county in which a county water and sewer district is created is the governing body of the district.

(b) The governing board of a consolidated city-county in which a water and sewer district is created is the governing body of the district. (1977, c. 466, s. 1; 1995, c. 461, s. 8.)

§ 162A-89.1. Eminent domain power authorized.

A county water and sewer district shall have the power of eminent domain, to be exercised in accordance with the provisions of Chapter 40A of the General Statutes, over the acquisition of any improved or unimproved lands or rights in land, within or without the district. (1977, c. 466, s. 1; 1983, c. 735, s. 1; 1987, c. 2, s. 2.)

CASE NOTES

Cited in Pinehurst v. Regional Invs., 97 N.C. App. 114, 387 S.E.2d 222 (1990).

§ 162A-90. Bonds and notes authorized.

A county water and sewer district may from time to time issue general obligation and revenue bonds and bond anticipation notes pursuant to the Local Government Finance Act, for the purposes of providing sanitary sewer systems or water systems or both.

A county water and sewer district may from time to time issue tax and revenue anticipation notes pursuant to Chapter 159, Article 9, Part 2. (1977, c. 466, s. 1.)

CASE NOTES

Each of the grants of authority in this section and §§ 162A-91 and 162A-92 is permissive and not mandatory. McNeill v. Harnett County, 327 N.C. 552, 398 S.E.2d 475 (1990).

§ 162A-91. Taxes authorized.

The governing body of a county water and sewer district may levy property taxes within the district in order to finance the operation and maintenance of the district's water system or sewer system or both and in order to finance debt service on any general obligation bonds or notes issued by the district. No voter approval is necessary in order for such taxes to be levied. (1977, c. 466, s. 1.)

CASE NOTES

Each of the grants of authority §§ 162A-90 and 162A-92 and this section is permissive and not mandatory. McNeill v. Harnett County, 327 N.C. 552, 398 S.E.2d 475 (1990).

§ 162A-92. Special assessments authorized.

A county water and sewer district may make special assessments against benefited property within the district for all or part of the costs of:

(1) Constructing, reconstructing, extending, or otherwise building or improving water systems;

(2) Constructing, reconstructing, extending, or otherwise building or improving sewage disposal systems.

A district shall exercise the authority granted by this section according to the provisions of Chapter 153A, Article 9. For the purposes of this section references in that Article to the "county" and the "board of commissioners" are deemed to refer, respectively, to the "district" and the "governing body of the district." (1977, c. 466, s. 1.)

CASE NOTES

Each of the grants of authority in §§ 162A-90 and 162A-91 and this section is permissive and not mandatory. McNeill v. Harnett County, 327 N.C. 552, 398 S.E.2d 475 (1990).

§ 162A-93. Certain city actions prohibited.

(a) No city may duplicate water or sewer services provided by a district under this Article by installing parallel lines and requiring owners of improved property in territory annexed by the city to connect, except with consent of the district governing body.

(b) The provisions of subsection (a) shall not apply if the city council adopts an annexation ordinance including an area served by a district and finds, after a public hearing, that adequate fire protection cannot be provided in the area because of the level of available water service. Notice of the public hearing shall be provided by first class mail to each affected customer and by publication in a newspaper having general circulation in the area, each not less than 10 days before the hearing. The clerk's certification of the mailing shall be deemed conclusive in the absence of fraud. Any resident of the annexed area aggrieved by such a finding of the council may file a petition for review in the superior court in the nature of certiorari, within 30 days after the finding. The petition for review in the nature of certiorari shall comply with G.S. 160A-393.

(c) Provision of public water and sewer services by a district under this Article to an area annexed by a city shall satisfy the city's obligation to provide for water and sewer services under G.S. 160A-35 and G.S. 160A-47. The city may negotiate for purchase of the lines or systems owned and operated by the district.

(d) Upon annexation by a city of an area served by a district under this Article, the city may provide for installation of and use fire hydrants on the district water lines, by arrangement with the district and at the city's cost. (1989, c. 741, s. 1; 2009-421, s. 4.)

Effect of Amendments. — Session Laws 2009-421, s. 4, effective January 1, 2010, and applicable to quasi-judicial decisions rendered on or after that date, in subsection (b), made a minor stylistic change and added the last sentence.

§ 162A-94. Certain actions validated.

Any contract entered into by a county water and sewer district on or before February 1, 1995, is not invalid because of failure to comply with Article 8 of Chapter 143 of the General Statutes. (1995, c. 266, s. 1.)

§§ 162A-95 through 162A-100: Reserved for future codification purposes.

Article 7.

Assumption of Indebtedness of Certain Districts.

§ 162A-101. Assumption of indebtedness of certain districts.

Subject to approval by a majority of the qualified voters of the county voting at an election thereon, a county may assume all indebtedness, incurred for paying all or any part of the cost of a water supply and distribution system, a sewerage system, or both, of any:

(1) Water and sewer authority organized under Article 1 of this Chapter;
(2) Metropolitan water district organized under Article 4 of this Chapter;
(3) Metropolitan sewerage district organized under Article 5 of this Chapter; or

(4) County water and sewer district organized under Article 6 of this Chapter.

An election under this Article shall be called and held in accordance with the provisions of the Local Government Finance Act, insofar as the same may be made applicable, and the returns of the election shall be canvassed and a statement of the result thereof prepared, recorded and published as provided in the Local Government Finance Act. No right of action or defense founded upon the invalidity of the election shall be asserted nor shall the validity of the election be open to question in any court upon any ground whatever, except in an action or proceeding commenced within 30 days after the publication of the statement of result. In the event that any indebtedness of a water and sewer authority, metropolitan water district, metropolitan sewerage district, or county water and sewer district is assumed by the county, there shall be annually levied and collected an ad valorem tax upon all the taxable property in the county sufficient to pay the assumed indebtedness and the interest thereon as it becomes due and payable; provided, however, the tax may be reduced by the amount of other moneys actually available for this purpose. The tax shall be determined, levied and collected in the manner provided by law. (1989, c. 573, s. 1.)

Chapter 162B.
Continuity of Local Government in Emergency.

Article 1.

In General.

Sec.
162B-1. Designated emergency location of government.
162B-2. Emergency meetings.
162B-3. Emergency public business; nature and conduct.
162B-4. Provisions of Article control over local law.

Article 2.

Emergency Interim Succession to Local Offices.

162B-5. Short title.
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162B-12. Removal of designees.
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ARTICLE 1.
In General.

§ 162B-1. Designated emergency location of government.

The governing body of each political subdivision of this State is hereby authorized to designate by ordinance, resolution or other manner, alternate sites or places, within or without the territorial limits of such political subdivision and within or without this State, as the emergency location of government. (1959, c. 349.)

§ 162B-2. Emergency meetings.

Whenever the Governor and Council of State acting together declare an emergency to exist by reason of actual or impending hostile attack upon the State of North Carolina and, due to the emergency so declared, it becomes imprudent or impossible to conduct the affairs of local government at the regular or usual place or places thereof, the governing body of each political subdivision of this State is hereby authorized to meet from time to time upon call of the presiding officer or a majority of the members thereof at the designated emergency location of government during the period of the emergency and until the emergency is declared terminated by the Governor and Council of State. (1959, c. 349.)

§ 162B-3. Emergency public business; nature and conduct.

Whenever the public business of any political subdivision is being conducted at a designated emergency location outside the territorial limits thereof, the members of the governing body may exercise such executive and legislative powers and functions as are pertinent to continued operation of the local government upon return to within the respective political subdivision. Any action taken by any local governing body at a designated emergency location shall apply and be effective only within the territorial limits of the political subdivision which such governing body represents. During the period of time in which the public business is being conducted at a designated emergency location, the governing body may, when emergency conditions make impossible compliance with legally prescribed procedural requirements relating to the conduct of meetings and transaction of business, waive such compliance by adoption of an ordinance or resolution reciting the facts and conditions showing the impossibility of compliance. (1959, c. 349.)

§ 162B-4. Provisions of Article control over local law.

The provisions of this Article shall be effective in the event it shall be employed notwithstanding any statutory, charter or ordinance provision to the contrary or in conflict herewith. (1959, c. 349.)

ARTICLE 2.

Emergency Interim Succession to Local Offices.

§ 162B-5. Short title.

This Article shall be known and may be cited as the North Carolina "Emergency Interim Local Government Executive Succession Act of 1959." (1959, c. 314, s. 1.)

§ 162B-6. Policy and purpose.

Because of the existing possibility of attack upon the State of North Carolina of unprecedented size and destructiveness, and in order, in the event of such an attack, to assure continuity of local government through legally constituted leadership, authority and responsibility in offices of political subdivisions of the State of North Carolina; to provide for the effective operation of local governments during an emergency; and to facilitate the early resumption of functions temporarily suspended, it is found and declared to be necessary to provide for emergency interim succession to governmental offices of political subdivisions in the event the incumbents thereof and their deputies, assistants or other subordinate officers authorized, pursuant to law, to exercise all of the powers and discharge the duties of such offices (hereinafter referred to as deputies) are unavailable to perform the duties and functions of such offices. (1959, c. 314, s. 2.)

§ 162B-7. Definitions.

Unless otherwise clearly required by the context, as used in this Article:

(1) "Attack" means any attack or series of attacks by an enemy of the United States upon the State of North Carolina causing, or which may cause, substantial damage or injury to civilian property or persons in the State in any manner by sabotage or by the use of bombs, missiles, shellfire, or atomic, radiological, chemical, bacteriological or biological means or other weapons or processes.

(2) "Emergency interim successor" means a person designated pursuant to this Article, in the event the officer is unavailable, to exercise the powers and discharge the duties of an office until a successor is appointed or elected and qualified as may be provided by the statutes, charters and ordinances or until the lawful incumbent is able to

resume the exercise of the powers and discharge the duties of the office.

(3) "Office" includes all local offices, the powers and duties of which are defined by statutes, charters and ordinances.

(4) "Political subdivision" includes counties, cities, towns, townships, districts, authorities and other municipal corporations and entities whether organized and existing under charter or general law.

(5) "Unavailable" means either that a vacancy in office exists and there is no deputy authorized to exercise all of the powers and discharge the duties of the office, or that the lawful incumbent of the office (including any deputy exercising the powers and discharging the duties of an office because of a vacancy) and his duly authorized deputy are absent or unable to exercise the powers and discharge the duties of the office. (1959, c. 314, s. 3.)

§ 162B-8. Enabling authority for emergency interim successors for local offices.

With respect to local offices for which the governing bodies of cities, towns, townships, and counties may enact resolutions or ordinances relative to the manner in which vacancies will be filled or temporary appointments to office made, such governing bodies are hereby authorized to enact resolutions or ordinances providing for emergency interim successors to offices of the aforementioned governmental units. Such resolutions and ordinances shall not be inconsistent with the provisions of this Article. (1959, c. 314, s. 4.)

§ 162B-9. Emergency interim successors for local officers.

The provisions of this section shall be applicable to officers of political subdivisions (including, but not limited to counties, cities, towns and townships as well as school, fire, drainage and other municipal corporate districts) not included in G.S. 162B-8. Such governing bodies, pursuant to such regulations as they may adopt, shall upon approval of this Article, designate by title (if feasible) or by named person, emergency interim successors and specify their order of succession. The local governing body shall review and revise, as necessary, designations made pursuant to this Article to insure their current status. The governing body will designate a sufficient number of persons so that there will be not less than three, nor more than seven, deputies or emergency interim successors or combination thereof at any time. In the event that any officer of any political subdivision (or his deputy provided for pursuant to law) is unavailable, the powers of the office shall be exercised and duties shall be discharged by his designated emergency interim successors in the order specified. The emergency interim successor shall exercise the powers and discharge the duties of the office to which designated until such time as a vacancy which may exist shall be filled in accordance with the Constitution or statutes; or until the officer (or his deputy or a preceding emergency interim successor) again becomes available to exercise the powers and discharge the duties of his office. (1959, c. 314, s. 5.)

§ 162B-10. Formalities of taking office.

At the time of their assumption of office, emergency interim successors shall take such oath as may be required for them to exercise the powers and discharge the duties of the office to which they may succeed. Notwithstanding any other provision of law, no person, as a prerequisite to the exercise of the powers or discharge of the duties of an office to which he succeeds, shall be required to comply with any other provision of law relative to taking office. (1959, c. 314, s. 6.)

§ 162B-11. Period in which authority may be exercised.

Emergency interim successors, authorized to act pursuant to this Article, are empowered to exercise the powers and discharge the duties of an office as herein authorized only after an attack upon the State of North Carolina, as defined herein, has occurred. The local governing body, by a duly adopted resolution, may at any time terminate the authority of said emergency interim successors to exercise the powers and discharge the duties of office as herein provided. (1959, c. 314, s. 7.)

§ 162B-12. Removal of designees.

Until such time as the persons designated as emergency interim successors are authorized to exercise the powers and discharge the duties of an office in accordance with this Article, including G.S. 162B-11 hereof, said persons shall serve in their designated capacities at the pleasure of the designating authority and may be removed or replaced by said designating authority at any time, with or without cause. (1959, c. 314, s. 8.)

§ 162B-13. Disputes.

Any dispute concerning a question of fact arising under this Article with respect to an office in any political subdivision shall be adjudicated by the local governing body and their decision shall be final. (1959, c. 314, s. 9.)

Chapter 163.

Elections and Election Laws.

SUBCHAPTER I. TIME OF PRIMARIES AND ELECTIONS.

Article 1.

Time of Primaries and Elections.

Sec.
163-1. Time of regular elections and primaries.
163-2. [Repealed.]
163-3 through 163-7. [Reserved.]

Article 2.

Time of Elections to Fill Vacancies.

163-8. Filling vacancies in State executive offices.
163-9. Filling vacancies in State and district judicial offices.
163-10. Filling vacancy in office of district attorney.
163-11. Filling vacancies in the General Assembly.
163-12. Filling vacancy in United States Senate.
163-13. Filling vacancy in United States House of Representatives.
163-14 through 163-18. [Reserved.]

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State Board of Elections.

163-19. State Board of Elections; appointment; term of office; vacancies; oath of office.
163-20. Meetings of Board; quorum; minutes.
163-21. Compensation of Board members.
163-22. Powers and duties of State Board of Elections.
163-22.1. [Repealed.]
163-22.2. Power of State Board to promulgate temporary rules and regulations.
163-22.3. State Board of Elections littering notification.
163-23. Powers of chairman in execution of Board duties.
163-24. Power of State Board of Elections to maintain order.
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163-27. Executive Director to be appointed by Board.
163-27.1. Emergency powers.
163-28. State Board of Elections independent agency.

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163-29. [Reserved.]

Article 4.

County Boards of Elections.

163-30. County boards of elections; appointments; terms of office; qualifications; vacancies; oath of office; instructional meetings.
163-31. Meetings of county boards of elections; quorum; minutes.
163-32. Compensation of members of county boards of elections.
163-33. Powers and duties of county boards of elections.
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163-33.2. Chairman and county board to examine voting machines.
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163-38. Applicability of Article.
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163-41. Precinct chief judges and judges of election; appointment; terms of office; qualifications; vacancies; oaths of office.
163-41.1. Certain relatives prohibited from serving together.
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163-42. Assistants at polls; appointment; term of office; qualifications; oath of office.
163-42.1. Student election assistants.
163-43. Ballot counters; appointment; qualifications; oath of office.
163-44. [Repealed.]

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163-45. Observers; appointment.
163-46. Compensation of precinct officials and assistants.
163-47. Powers and duties of chief judges and judges of election.
163-48. Maintenance of order at place of registration and voting.
163-49 through 163-53. [Reserved.]

SUBCHAPTER III. QUALIFYING TO VOTE.

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Qualifications of Voters.

163-54. Registration a prerequisite to voting.
163-55. Qualifications to vote; exclusion from electoral franchise.
163-56. [Repealed.]
163-57. Residence defined for registration and voting.
163-58. [Repealed.]
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Registration of Voters.

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Registration of Voters.

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163-82.5. Distribution of application forms.
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163-91. Complaint procedure.
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163-97.1. Voters affiliated with expired political party.
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163-109. [Repealed.]
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163-122. Unaffiliated candidates nominated by petition.
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163-127.2. When and how a challenge to a candidate may be made.
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163-130. Satellite voting places.
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163-132.1. Participation in 2000 Census Redistricting Data Program of the United States Bureau of the Census.
163-132.1A. [Repealed.]
163-132.1B. Participation in 2010 Census Redistricting Data Program of the United States Bureau of the Census.
163-132.2. [Repealed.]
163-132.3. Alterations to approved precinct boundaries.
163-132.3A. Alterations to precinct names.
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163-132.5B. Exemption from Administrative Procedure Act.
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163-132.5E. [Repealed.]
163-132.5F. U.S. Census data by voting tabulation district.

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163-132.5G. Voting data maintained by voting tabulation district.
163-132.6. [Repealed.]
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163-165.3. Responsibilities for preparing official ballots.
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163-182.2. Initial counting of official ballots.
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163-213.3. Conduct of election.
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163-227.3. Date by which absentee ballots must be available for voting.
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163-234. Counting absentee ballots by county board of elections.
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163-247. Methods of applying for absentee ballots.
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163-252. [Repealed.]
163-253. Article inapplicable to persons after change of status; reregistration not required.
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SUBCHAPTER VIII. REGULATION OF ELECTION CAMPAIGNS.

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163-272.1. Penalties for violation of this Chapter.
163-273. Offenses of voters; interference with voters; penalty.

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163-274. Certain acts declared misdemeanors.
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163-278.1 through 163-278.4. [Reserved.]

Article 22A.

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163-278.6. Definitions.
163-278.7. Appointment of political treasurers.
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163-278.12. Special reporting of contributions and independent expenditures.
163-278.12A. [Repealed.]
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163-278.13A. [Repealed.]
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163-278.14A. Evidence that communications are "to support or oppose the nomination or election of one or more clearly identified candidates."
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163-278.16B. Use of contributions for certain purposes.
163-278.17. Statements of media receiving campaign expenditures.
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163-278.21. Promulgation of policy and administration through State Board of Elections.
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163-278.28. Issuance of injunctions; special prosecutors named.
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163-278.30. Candidates for federal offices to file information reports.
163-278.31. [Repealed.]
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163-278.34. Civil penalties.
163-278.34A. Presumptions.
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163-329. Elections to fill vacancy in office created after primary filing period opens.
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Editor's Note. — Legislation affecting certain counties in North Carolina, and therefore legislation affecting the entire State, may be subject to Section 5 of the Voting Rights Act of 1965. For information on receipt of preclearance, please refer to the *North Carolina Register* or the appropriate agency as described in Chapter 120, Article 6A, G.S. 120-30.9A, et seq.

SUBCHAPTER I. TIME OF PRIMARIES AND ELECTIONS.

Article 1.

Time of Primaries and Elections.

§ 163-1. Time of regular elections and primaries.

(a) Unless otherwise provided by law, elections for the officers listed in the tabulation contained in this section shall be conducted in all election precincts of the territorial units specified in the column headed "Jurisdiction" on the dates indicated in the column headed "Date of Election." Unless otherwise provided by law, officers shall serve for the terms specified in the column headed "Term of Office."

(b) On Tuesday next after the first Monday in May preceding each general election to be held in November for the officers referred to in subsection (a) of this section, there shall be held in all election precincts within the territory for which the officers are to be elected a primary election for the purpose of nominating candidates for each political party in the State for those offices, and nonpartisan candidates as to offices elected under the provisions of Article 25 of this Chapter.

(c) On Tuesday next after the first Monday in November in the year 1968, and every four years thereafter, or on such days as the Congress of the United States shall direct, an election shall be held in all of the election precincts of the State for the election of electors of President and Vice-President of the United States. The number of electors to be chosen shall be equal to the number of Senators and Representatives in Congress to which this State may be entitled. Presidential electors shall not be nominated by primary election; instead, they shall be nominated in a State convention of each political party as defined in G.S. 163-96 unless otherwise provided by the plan of organization of the political party; provided, that in the case of a candidate for President of the United States who has qualified to have his name printed on the general election ballot as an unaffiliated candidate under G.S. 163-122, that candidate shall nominate presidential electors. One presidential elector shall be nominated from each congressional district and two from the state-at-large, and in addition, the State convention of each party and the unaffiliated candidate shall each nominate first and second alternate electors who shall serve if their slate is elected as provided by G.S. 163-209 and if there is a vacancy as provided by G.S. 163-210.

(d) If primaries for the State Senate or State House of Representatives are temporarily moved from the date provided in subsection (b) of this section for any election year, all primaries shall be held on the same day.

OFFICE	JURISDICTION	DATE OF ELECTION	TERM OF OFFICE
Governor	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years, from first day of January next after election
Lieutenant Governor	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years, from first day of January next after election
Secretary of State	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years, from first day of January next after election
Auditor	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years, from first day of January next after election
Treasurer	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years, from first day of January next after election
Superintendent of Public Instruction	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years, from first day of January next after election
Attorney General	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years, from first day of January next after election
Commissioner of Agriculture	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years, from first day of January next after election
Commissioner of Labor	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years, from first day of January next after election

OFFICE	JURISDICTION	DATE OF ELECTION	TERM OF OFFICE
Commissioner of Insurance	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years, from first day of January next after election
All other State officers whose terms last for four years	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years, from first day of January next after election
All other State officers whose terms are not specified by law	State	Tuesday next after the first Monday in November 1968 and every two years thereafter	Two years, from first day of January next after election
State Senator	Senatorial district	Tuesday next after the first Monday in November 1968 and every two years thereafter	Two years
Member of State House of Representatives	Representative district	Tuesday next after the first Monday in November 1968 and every two years thereafter	Two years
Justices and Judges of the Appellate Division	State	At the regular election for members of the General Assembly immediately preceding the termination of each regular term	Eight years, from first day of January next after election
Judges of the superior courts	Superior Court District	At the regular election for members of the General Assembly immediately preceding the termination of each regular term	Eight years, from first day of January after next election
Judges of the district courts	District court district	At the regular election for members of the General Assembly immediately preceding the termination of each regular term	Four years, from the first day in January next after election

OFFICE	JURISDICTION	DATE OF ELECTION	TERM OF OFFICE
District Attorney	District Attorney district	At the regular election for members of the General Assembly immediately preceding the termination of each regular term	Four years, from first day of January next after election
Members of House of Representatives of the Congress of the United States	Congressional district, except as modified by G.S. 163-104	Tuesday next after the first Monday in November 1968 and every two years thereafter	Two years
United States Senators	State	At the regular election immediately preceding the termination of each regular term	Six years
County commissioners	County	At the regular election for members of the General Assembly immediately preceding the termination of each regular term	Two years, from the first Monday in December next after election
Clerk of superior court	County	At the regular election for members of the General Assembly immediately preceding the termination of each regular term	Four years, from the first Monday in December next after election
Register of deeds	County	At the regular election for members of the General Assembly immediately preceding the termination of each regular term	Four years, from the first Monday in December next after election
Sheriff	County	At the regular election for members of the General Assembly immediately preceding the termination of each regular term	Four years, from the first Monday in December next after election
Coroner	County	At the regular election for members of the General Assembly immediately preceding the termination of a regular term	Four years, from the first Monday in December next after election

OFFICE	JURISDICTION	DATE OF ELECTION	TERM OF OFFICE
County treasurer (in counties in which elected)	County	Tuesday next after the first Monday in November 1968 and every two years thereafter	Two years, from the first Monday in December next after election
All other county officers to be elected by the people	County	Tuesday next after the first Monday in November 1968 and every two years thereafter	Two years, from the first Monday in December next after election

(Const., art. 4, s. 24; 1901, c. 89, ss. 1-4, 73, 74, 77; Rev., ss. 4293, 4294, 4296-4299; 1915, c. 101, s. 1; 1917, c. 218; C.S., ss. 5914, 5915, 5917-5920, 6018; 1935, c. 362; 1939, c. 196; 1943, c. 134, s. 4; 1947, c. 505, s. 1; 1951, c. 1009, s. 2; 1953, c. 1191, s. 1; 1967, c. 775, s. 1; cc. 1264, 1271; 1969, c. 44, s. 80; 1971, c. 170; 1973, c. 793, s. 93; 1977, c. 265, s. 1; c. 661, s. 1; 1991 (Reg. Sess., 1992), c. 782, s. 1; 1993 (Reg. Sess., 1994), c. 738, s. 2; 1996, 2nd Ex. Sess., c. 9, s. 2; 2003-434, 1st Ex. Sess., s. 6; 2004-127, s. 12; 2005-425, s. 3.2.)

Local Modification to Former §§ 163-118 to 163-147. — Session Laws 1945, c. 894, repealed former Article 19, relating to primaries, insofar as its provisions applied to the nomination of Democratic candidates for the General Assembly and county offices in Mitchell County. Session Laws 1957, c. 826, as amended by Session Laws 1959, c. 621, s. 2, provided that the former Article should not apply to nominations of Democratic candidates for county offices and members of the House of Representatives in Cherokee County, but that such candidates should be nominated by convention of the Democratic Party. Session Laws 1961, c. 484, provided that the former Article should not apply to nominations of Republican candidates for county offices and members of the General Assembly in Cherokee County, but that such candidates should be nominated by convention of the Republican Party. Session Laws 1953, c. 1069, as amended by Session Laws 1959, c. 238, made the former Article applicable to Watauga County. Session Laws 1955, c. 439, to the extent provided, made the former Article applicable to Yancey County. Session Laws 1955, c. 442, made the former Article applicable to the Counties of Avery, Madison, Mitchell and Yancey for the purpose of nominating Democratic candidates for the state Senate.

Local Modification to Former § 163-129. —Avery: 1933, c. 327; 1935, c. 141; 1937, c. 263; Stanly: 1945, c. 958. Session Laws 1971, c. 50, made the provisions of the primary laws as contained in this Chapter applicable to Yancey County, and repealed Session Laws 1955, cc. 439 and 442, insofar as they conflicted with the 1971 act. Session Laws 1975, c. 246, provided that the provisions of the general primary laws of this Chapter should be applicable in Mitchell County for the purpose of nominating the candidates of the Republican Party for all county offices. (As to this Chapter) Caswell: 1987 (Reg. Sess., 1988), c. 1016, ss. 5, 12; (As to this Chapter) Cumberland: 1991, c. 445; 1991 (Reg. Sess., 1992), c. 810; Tyrell: 1995, c. 69, s. 1; (As to this Chapter) city of Albemarle: 1987 (Reg. Sess., 1988), c. 881, s. 2; city of Clinton: 1989 (Reg. Sess., 1990), c. 886; town of Calabash: 1987, c. 468, s. 6; Grandfather Village: 1987, c. 549, s. 6.9; (As to this Chapter) Anson County Board of Commissioners: 1991 (Reg. Sess., 1992), c. 781 (but shall only be enforced as provided by Section 5 of the Voting Rights Act of 1965); Vance County Board of Education: 1987 (Reg. Sess., 1988), c. 974, ss. 3, 4.

Cross References. — As to election of Superintendent of Public Instruction, see G.S. 115C-18. As to election of members of county boards of education, see G.S. 115C-37. As to election of executive officers of the State government, see G.S. 147-4.

Editor's Note. — Session Laws 1967, c. 775, which rewrote this Chapter, provided in s. 2 for the repeal of all laws and clauses of laws in conflict with the act, "except local and special acts relating to primaries and elections."

An amendment to this and other sections by Session Laws 1981, c. 504, ss. 11 to 13, was made effective upon certification of approval of the constitutional amendments proposed by ss. 1 to 3 of the act. The constitutional amendments were submitted to the people at an election held June 29, 1982, and were defeated. Therefore, the 1981 amendment to this section never went into effect.

Amendments to this and other sections by Session Laws 1985, c. 768 were made contingent on approval by the voters of the constitutional amendments proposed by c. 768. Since the proposed constitutional amendments were defeated by a vote of the people on May 6, 1986, the amendments to this section by Session Laws 1985, c. 768 never went into effect.

Session Laws 1991, Ex. Sess., c. 1, which was submitted to the Attorney General of the United States pursuant to Section 5 of the Voting Rights Act of 1965, as amended (42 U.S.C. 1973c), received preclearance from the United States Department of Justice on January 3, 1992.

Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 5, effective January 1, 1995, and applicable to all primaries and elections occurring on or after that date, provides: "Wherever the term 'registrar' appears in Chapter 163 of the General Statutes, the term shall be changed to read 'chief judge'."

Session Laws 1996, Second Extra Session, c. 9, s. 23, provides: "Part 1 of this act becomes effective only if Parts 1 and 2 of this act are both effective under section 5 of the Voting Rights Act of 1965." Preclearance was received from the U.S. Department of Justice by letter dated October 1, 1996.

Session Laws 1996, Second Extra Session, c.

9, s. 24, made the amendment thereby effective upon ratification, and applicable beginning with the 1996 elections, except that Sections 1 and 2 of that act shall be applied to the 1994 general election and the results of that election validated and confirmed under those sections. The Act was ratified August 2, 1996.

Subsection (d), added by Session Laws 2003-434, 1st Ex. Sess., s. 6, effective November 25, 2003, is applicable to any case pending on or after that date, to any case regardless of when the case was filed, and to any action of a court affecting the validity of an act apportioning or redistricting State legislative or congressional districts.

Session Laws 2005-425, s. 4, provides: "Sections 1.1 and 1.2 of this act become effective January 1, 2006, and apply to fees assessed or collected on or after that date. Section 2 becomes effective January 1, 2006, and applies to cases filed on or after that date. Sections 3.1 and 3.2 of this act are effective when they become law. Judges elected in 2006 and thereafter take office accordingly, and as provided by Section 10 of Article VI of the North Carolina Constitution and G.S. 128-7, those in office on the first Monday in December of 2006 or 2008 shall continue until their successors' terms begin and are duly qualified."

Legal Periodicals. — For case law survey on elections, see 41 N.C.L. Rev. 433 (1963).

For survey of 1977 administrative law affecting state government, see 56 N.C.L. Rev. 867 (1978).

CASE NOTES

Method of Electing Superior Court Judges Held Constitutional. — The method of electing superior court judges does not infringe upon Republicans' rights to free speech and association in violation of the First Amendment. Republican Party v. Martin, 980 F.2d 943 (4th Cir. 1992), rehearing denied, 991 F.2d 1202 (4th Cir.), cert. denied, 510 U.S. 828, 114 S. Ct. 93, 126 L. Ed. 2d 60 (1993).

Election Following Creation of New Township upon Reasonable Notice. — Under an earlier statute it was held that, where the legislature had created a new township and the time for election had passed, as the public good required the offices to be immediately filled, the commissioners could order an election upon reasonable notice. Grady v. County Comm'rs, 74 N.C. 101 (1876).

Cited in Greaves v. State Bd. of Elections, 508 F. Supp. 78 (E.D.N.C. 1980); Lake v. State Bd. of Elections, 798 F. Supp. 1199 (M.D.N.C. 1992); Republican Party v. Hunt, 841 F. Supp. 722 (E.D.N.C. 1994); Braswell v. Ellis, 950 F. Supp. 145 (E.D.N.C. 1995); Carter v. Good, 951 F. Supp. 1235 (W.D.N.C. 1996).

§ 163-2: Repealed by Session Laws 2001-460, s. 2, effective January 1, 2002.

Cross References. — As to hours for voting, see now G.S. 163-166.01.

§§ 163-3 through 163-7: Reserved for future codification purposes.

ARTICLE 2.

Time of Elections to Fill Vacancies.

§ 163-8. Filling vacancies in State executive offices.

If the office of Governor or Lieutenant Governor shall become vacant, the provisions of G.S. 147-11.1 shall apply. If the office of any of the following officers shall be vacated by death, resignation, or otherwise than by expiration of term, it shall be the duty of the Governor to appoint another to serve until his successor is elected and qualified: Secretary of State, Auditor, Treasurer, Superintendent of Public Instruction, Attorney General, Commissioner of Agriculture, Commissioner of Labor, and Commissioner of Insurance. Each such vacancy shall be filled by election at the first election for members of the General Assembly that occurs more than 60 days after the vacancy has taken place, and the person chosen shall hold the office for the remainder of the unexpired four-year term: Provided, that when a vacancy occurs in any of the offices named in this section and the term expires on the first day of January succeeding the next election for members of the General Assembly, the Governor shall appoint to fill the vacancy for the unexpired term of the office.

Upon the occurrence of a vacancy in the office of any one of these officers for any of the causes stated in the preceding paragraph, the Governor may appoint an acting officer to perform the duties of that office until a person is appointed or elected pursuant to this section and Article III, Section 7 of the State Constitution, to fill the vacancy and is qualified. (1901, c. 89, ss. 4, 73; Rev., s. 4299; C.S., s. 5920; 1967, c. 775, s. 1; 1983, c. 324, s. 1; 1985 (Reg. Sess., 1986), c. 920, s. 5.)

Cross References. — As to the constitutional amendments by Session Laws 1985 (Reg. Sess., 1986), c. 920, ss. 1 and 2, see N.C. Const., Art. III, § 7(3) and Art. IV, § 19.

Editor's Note. — Session Laws 1985 (Reg. Sess., 1986), c. 920, s. 5, effective January 1, 1987, but only upon approval by the voters of the constitutional amendments set forth in Session Laws 1985 (Reg. Sess., 1986), c. 920, ss. 1 and 2, substituted "60 days" for "30 days" in the third sentence. The constitutional amendments were approved at the election held November 4, 1986.

§ 163-9. Filling vacancies in State and district judicial offices.

(a) Vacancies occurring in the offices of Justice of the Supreme Court, judge of the Court of Appeals, and judge of the superior court for causes other than expiration of term shall be filled by appointment of the Governor. An appointee to the office of Justice of the Supreme Court or judge of the Court of Appeals shall hold office until January 1 next following the election for members of the General Assembly that is held more than 60 days after the vacancy occurs, at which time an election shall be held for an eight-year term and until a successor is elected and qualified.

(b) Except for judges specified in the next paragraph of this subsection, an appointee to the office of judge of superior court shall hold his place until the next election for members of the General Assembly that is held more than 60 days after the vacancy occurs, at which time an election shall be held to fill the unexpired term of the office.

Appointees for judges of the superior court from any district:

(1) With only one resident judge; or
(2) In which no county is subject to section 5 of the Voting Rights Act of 1965,

shall hold the office until the next election of members of the General Assembly that is held more than 60 days after the vacancy occurs, at which time an election shall be held to fill an eight-year term.

(c) When the unexpired term of the office in which the vacancy has occurred expires on the first day of January succeeding the next election for members of the General Assembly, the Governor shall appoint to fill that vacancy for the unexpired term of the office.

(d) Vacancies in the office of district judge which occur before the expiration of a term shall not be filled by election. Vacancies in the office of district judge shall be filled in accordance with G.S. 7A-142. (1901, c. 89, ss. 4, 73; Rev. s. 4299; C.S., s. 5920; 1967, c. 775, s. 1; 1969, c. 44, s. 81; 1979, c. 494; 1981, c. 763, s. 3; 1985 (Reg. Sess., 1986), c. 920, s. 6; 1995, c. 98, s. 1; 1996, 2nd Ex. Sess., c. 9, s. 21.)

Cross References. — As to the constitutional amendments by Session Laws 1985 (Reg. Sess., 1986), c. 920, ss. 1 and 2, see N.C. Const., Art. III, § 7(3) and Art. IV, § 19.

Editor's Note. — Session Laws 1985 (Reg. Sess., 1986), c. 920, s. 6, effective January 1, 1987, but only upon approval by the voters of the constitutional amendments set forth in

Session Laws 1985 (Reg. Sess., 1986), c. 920, ss. 1 and 2, substituted "60 days" for "30 days" in the second sentence of the first paragraph. The constitutional amendments were approved at the election held November 4, 1986.

Session Laws 1995, c. 98, s. 2, effective May 23, 1995, specified the terms of all duly elected judges of the Supreme Court and Judges of the Court of Appeals who were not already serving full eight year terms of office.

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Constitutionality. — This section, insofar as it provides for elections of judges to fill only the unexpired portions of eight-year terms, is authorized by N.C. Const., Art. IV, § 19; therefore, it does not violate N.C. Const., Art. IV, § 16, providing that judges "shall be elected ... and shall hold office for terms of eight years." Brannon v. North Carolina State Bd. of Elections, 331 N.C. 335, 416 S.E.2d 390 (1992).

OPINIONS OF ATTORNEY GENERAL

Where an individual elected as district court judge died prior to certification of the election, the vacancy in the office arose when the election was certified. Accordingly, the District Court Bar could submit nominations to the Governor to fill the vacancy at any time between the date the election was certified and 30 days thereafter. See opinion of Attorney General to The Honorable Christopher W. Bragg, Union County Courthouse, 2004 N.C. AG LEXIS 12 (11/18/04).

The term to which the Honorable W. Robert Bell was elected in 1998 was eight years. See opinion of Attorney General to The Honorable Forest A. Ferrell, Sigmon, Clark, Mackie, Hutton, Hanvey & Ferrell, P.A., 2001 N.C. AG LEXIS 13 (3/28/2001).

§ 163-10. Filling vacancy in office of district attorney.

Any vacancy occurring in the office of district attorney for causes other than expiration of term shall be filled by appointment of the Governor. An appointee shall hold his place until the next election for members of the General Assembly that is held more than 60 days after the vacancy occurs, at which time an election shall be held to fill the unexpired term of the office: Provided, that when the unexpired term of the office in which the vacancy has occurred expires on the first day of January succeeding the next election for members of the General Assembly, the Governor shall appoint to fill that vacancy for the unexpired term of the office. (1901, c. 89, ss. 4, 73; Rev., s. 4299; C.S., s. 5920; 1967, c. 775, s. 1; 1973, c. 47, s. 2; 1977, c. 265, s. 2; 1985 (Reg. Sess., 1986), c. 920, s. 7.)

Cross References. — As to the constitutional amendments by Session Laws 1985 (Reg. Sess., 1986), c. 920, ss. 1 and 2, see N.C. Const., Art. III, § 7(3) and Art. IV, § 19.

Editor's Note. — Session Laws 1985 (Reg. Sess., 1986), c. 920, s. 7, effective January 1, 1987, but only upon approval by the voters of the constitutional amendments set forth in Session Laws 1985 (Reg. Sess., 1986), c. 920, ss. 1 and 2, substituted "60 days" for "30 days" in the second sentence. The constitutional amendments were approved at the election held November 4, 1986.

§ 163-11. Filling vacancies in the General Assembly.

(a) If a vacancy shall occur in the General Assembly by death, resignation, or otherwise than by expiration of term, the Governor shall immediately appoint for the unexpired part of the term the person recommended by the political party executive committee provided by this section. The Governor shall make the appointment within seven days of receiving the recommendation of the appropriate committee. If the Governor fails to make the appointment within the required period, he shall be presumed to have made the appointment and the legislative body to which the appointee was recommended is directed to seat the appointee as a member in good standing for the duration of the unexpired term.

(b) If the district consists solely of one county and includes all of that county, the Governor shall appoint the person recommended by the county executive committee of the political party with which the vacating member was affiliated when elected, it being the party executive committee of the county which the vacating member was resident.

(c) If the district consists solely of one county but includes less than all of the county, the Governor shall appoint the person recommended by the county executive committee of the political party with which the vacating member was affiliated when elected, it being the county executive committee of the county which the vacating member was resident, provided that in voting only those county executive committee members who reside in the district shall be eligible to vote.

(d) If the district consists of more than one county, the Governor shall appoint for the unexpired portion of the term the person recommended by the State House of Representatives district committee or the Senatorial district committee of the political party with which the vacating member was affiliated when elected. In the case where all of a county is included within a district, the county convention or county executive committee of that political party shall elect or appoint at least one member from that county to serve on the State House of Representatives district executive committee or State Senatorial district executive committee. In the case where only part of a county is included within a district, the county convention or county executive committee of that political party shall elect or appoint at least one member from that county to serve on the State House of Representatives district committee or the State Senatorial district committee, but only the delegates to the county convention or the members of the county executive committee who reside in the district may vote in electing the district committee member. When the State House of Representatives district committee or the State Senatorial district committee meets, a member shall be entitled to cast for his county (or the part of his county within the district) one vote for each 300 persons or major fraction thereof residing within that county, or in the case where less than the whole county is in the district one vote for each 300 persons or major fraction thereof residing in that part of the district within the county.

A county convention or county executive committee may elect more than one member to the district committee but in the event that more than one member is selected from that county, then each member shall cast an equal share of the votes allotted to the county.

(e) No person is eligible for appointment to fill a vacancy in the Senate or the House of Representatives under this section, unless that person would have been qualified to vote as an elector for that office if an election were to be held on the date of appointment. This section is intended to implement the provisions of Section 8 of Article VI of the Constitution. (1901, c. 89, s. 74; Rev., s. 4298; C.S., s. 5919; 1947, c. 505, s. 1; 1953, c. 1191, s. 1; 1967, c. 775, s. 1; 1973, c. 35; 1981 (Reg. Sess., 1982), c. 1265, s. 3; 2007-391, s. 27(b).)

CASE NOTES

Cited in Baker v. Martin, 330 N.C. 331, 410 S.E.2d 887 (1991).

§ 163-12. Filling vacancy in United States Senate.

Whenever there shall be a vacancy in the office of United States Senator from this State, whether caused by death, resignation, or otherwise than by expiration of term, the Governor shall appoint to fill the vacancy until an election shall be held to fill the office. The Governor shall issue his writ for the election of a Senator to be held at the time of the first election for members of the General Assembly that is held more than 60 days after the vacancy occurs. The person elected shall hold the office for the remainder of the unexpired term. The election shall take effect from the date of the canvassing of the returns. (1913, c. 114, ss. 1, 2; C.S., ss. 6002, 6003; 1929, c. 12, s. 2; 1955, c. 871, s. 6; 1967, c. 775, s. 1; 1985, c. 759, s. 2.)

Legal Periodicals. — For article, "Rediscovering the Sovereignty of the People: the Case for Senate Districts," see 75 N.C.L. Rev. 1 (1996).

§ 163-13. Filling vacancy in United States House of Representatives.

(a) Special Election. — If at any time after expiration of any Congress and before another election, or if at any time after an election, there shall be a vacancy in this State's representation in the House of Representatives of the United States Congress, the Governor shall issue a writ of election, and by proclamation fix the date on which an election to fill the vacancy shall be held in the appropriate congressional district.

(b) Nominating Procedures. — If a congressional vacancy occurs beginning on the tenth day before the filing period ends under G.S. 163-106(c) preceding the next succeeding general election, candidates for the special election to fill the vacancy shall not be nominated in primaries. Instead, nominations may be made by the political party congressional district executive committees in the district in which the vacancy occurs. The chairman and secretary of each political party congressional district executive committee nominating a candidate shall immediately certify his name and party affiliation to the State Board of Elections so that it may be printed on the special election ballots.

If the congressional vacancy occurs before the tenth day before the filing period ends under G.S. 163-106(c) prior to the next succeeding general election, the Governor shall call a special primary for the purpose of nominating candidates to be voted on in a special election called by the Governor in accordance with the provisions of subsection (a) of this section. Such a primary election shall be conducted in accordance with the general laws governing primaries, except that the opening and closing dates for filing notices of candidacy with the State Board of Elections shall be fixed by the Governor in his call for the special primary. The Governor may also fix the absentee voting period for the special election and for the special first primary, but such period shall not be less than 30 days. (1901, c. 89, s. 60; Rev., s. 4369; C.S., s. 6007; 1947, c. 505, s. 5; 1967, c. 775, s. 1; 1985, c. 759, ss. 3-5.)

§§ 163-14 through 163-18: Reserved for future codification purposes.

SUBCHAPTER II. ELECTION OFFICERS.

Article 3.

State Board of Elections.

§ 163-19. State Board of Elections; appointment; term of office; vacancies; oath of office.

All of the terms of office of the present members of the State Board of Elections shall expire on May 1, 1969, or when their successors in office are appointed and qualified.

The State Board of Elections shall consist of five registered voters whose terms of office shall begin on May 1, 1969, and shall continue for four years, and until their successors are appointed and qualified. The Governor shall appoint the members of this Board and likewise shall appoint their successors every four years at the expiration of each four-year term. Not more than three members of the Board shall be members of the same political party. The Governor shall appoint the members from a list of nominees submitted to him by the State party chairman of each of the two political parties having the highest number of registered affiliates as reflected by the latest registration statistics published by the State Board of Elections. Each party chairman shall submit a list of five nominees who are affiliated with that political party.

Any vacancy occurring in the Board shall be filled by the Governor, and the person so appointed shall fill the unexpired term. The Governor shall fill the vacancy from a list of three nominees submitted to him by the State party chairman of the political party that nominated the vacating member as provided by the preceding paragraph. The three nominees must be affiliated with that political party.

At the first meeting held after new appointments are made, the members of the State Board of Elections shall take the following oath:

> "I, ________, do solemnly swear (or affirm) that I will support the Constitution of the United States; that I will be faithful and bear true allegiance to the State of North Carolina, and to the constitutional powers and authorities which are or may be established for the government thereof; that I will endeavor to support, maintain and defend the Constitution of said State, and that I will well and truly execute the duties of the office of member of the State Board of Elections according to the best of my knowledge and ability, according to law, so help me, God."

After taking the prescribed oath, the Board shall organize by electing one of its members chairman and another secretary.

No person shall be eligible to serve as a member of the State Board of Elections who holds any elective or appointive office under the government of the United States, or of the State of North Carolina or any political subdivision thereof. No person who holds any office in a political party, or organization, or who is a candidate for nomination or election to any office, or who is a campaign manager or treasurer of any candidate in a primary or election shall be eligible to serve as a member of the State Board of Elections. (1901, c. 89, ss. 5, 7; Rev., ss. 2760, 4300, 4301; C.S., ss. 5921, 5922; 1933, c. 165, s. 1; 1953, c. 428; 1967, c. 775, s. 1; 1975, c. 286; 1985, c. 62, ss. 1, 1.1; 2005-276, s. 23A.3; 2006-262, s. 4.2.)

Cross References. — For provision that no person shall serve as a member of the State Board of Elections who holds any elective public office or is a candidate for any office in the primary or election, see G.S. 163-30.

§ 163-20. Meetings of Board; quorum; minutes.

(a) Call of Meeting. — The State Board of Elections shall meet at the call of the chairman whenever necessary to discharge the duties and functions imposed upon it by this Chapter. The chairman shall call a meeting of the Board upon the written application or applications of any two members thereof. If there is no chairman, or if the chairman does not call a meeting within three days after receiving a written request or requests from two members, any three members of the Board shall have power to call a meeting of the Board, and any duties imposed or powers conferred on the Board by this Chapter may be performed or exercised at that meeting, although the time for performing or exercising the same prescribed by this Chapter may have expired.

(b) Place of Meeting. — Except as provided in subsection (c), below, the State Board of Elections shall meet in its offices in the City of Raleigh, or at another place in Raleigh to be designated by the chairman. However, subject to the limitation imposed by subsection (c), below, upon the prior written request of any four members, the State Board of Elections shall meet at any other place in the State designated by the four members.

(c) Meetings to Investigate Alleged Violations of This Chapter. — When called upon to investigate or hear sworn alleged violations of this Chapter, the State Board of Elections shall meet and hear the matter in the county in which the violations are alleged to have occurred.

(d) Quorum. — A majority of the members constitutes a quorum for the transaction of business by the State Board of Elections. If any member of the Board fails to attend a meeting, and by reason thereof there is no quorum, the members present shall adjourn from day to day for not more than three days, by the end of which time, if there is no quorum, the Governor may summarily remove any member failing to attend and appoint his successor.

(e) Minutes. — The State Board of Elections shall keep minutes recording all proceedings and findings at each of its meetings. The minutes shall be recorded in a book which shall be kept in the office of the Board in Raleigh. (1901, c. 89, s. 7; Rev., ss. 2760, 4301, 4302; C.S., ss. 5922, 5923; 1933, c. 165, s. 1; 1945, c. 982; 1967, c. 775, s. 1; 1973, c. 793, s. 3; c. 1223, s. 1.)

CASE NOTES

Venue of State Board of Elections. — Members of State Board of Elections reside in Wake County for venue purposes, since it is there that they act in their capacities as members of the State Board. Republican Party v. Martin, 682 F. Supp. 834 (M.D.N.C. 1988).

The mere fact of the State Board's supervisory role, does not give it an official residence in each of the 100 counties in this state where county boards of elections are located for purposes of venue. Republican Party v. Martin, 682 F. Supp. 834 (M.D.N.C. 1988).

Cited in Lloyd v. Babb, 296 N.C. 416, 251 S.E.2d 843 (1979).

§ 163-21. Compensation of Board members.

The members of the State Board of Elections shall be compensated for the time they are actually engaged in the discharge of their duties and for their traveling and other expenses necessary and incidental to the discharge of their duties in accordance with the provisions of Chapter 138 of the General Statutes. (1901, c. 89, s. 7; Rev., ss. 2760, 4301; C.S., s. 5922; 1933, c. 165, s. 1; 1967, c. 775, s. 1.)

§ 163-22. Powers and duties of State Board of Elections.

(a) The State Board of Elections shall have general supervision over the primaries and elections in the State, and it shall have authority to make such reasonable rules and regulations with respect to the conduct of primaries and elections as it may deem advisable so long as they do not conflict with any provisions of this Chapter.

(b) From time to time, the Board shall publish and furnish to the county and municipal boards of elections and other election officials a sufficient number of indexed copies of all election laws and Board rules and regulations then in force. It shall also publish, issue, and distribute to the electorate such materials explanatory of primary and election laws and procedures as the Board shall deem necessary.

(c) The State Board of Elections shall appoint, in the manner provided by law, all members of the county boards of elections and advise them and municipal elections board members as to the proper methods of conducting primaries and elections. The Board shall require such reports from the county and municipal boards and election officers as are provided by law, or as are deemed necessary by the Board, and shall compel observance of the requirements of the election laws by county and municipal boards of elections and other election officers. In performing these duties, the Board shall have the right to hear and act on complaints arising by petition or otherwise, on the failure or neglect of a county or municipal board of elections to comply with any part of the election laws imposing duties upon such a board. The State Board of Elections shall have power to remove from office any member of a county or municipal board of elections for incompetency, neglect or failure to perform duties, fraud, or for any other satisfactory cause. Before exercising this power, the State Board shall notify the county or municipal board member affected and give him an opportunity to be heard. When any county board member shall be removed by the State Board of Elections, the vacancy occurring shall be filled by the State Board of Elections. When any municipal board member shall be removed by the State Board of Elections, the vacancy occurring shall be filled by the city council of the city appointing members of that board.

(d) The State Board of Elections shall investigate when necessary or advisable, the administration of election laws, frauds and irregularities in elections in any county and municipality and special district, and shall report violations of the election laws to the Attorney General or district attorney or prosecutor of the district for further investigation and prosecution.

(e) The State Board of Elections shall determine, in the manner provided by law, the form and content of ballots, instruction sheets, pollbooks, tally sheets, abstract and return forms, certificates of election, and other forms to be used in primaries and elections. The Board shall furnish to the county boards of elections the registration application forms required pursuant to G.S. 163-82.3. The State Board of Elections shall direct the county boards of elections to purchase a sufficient quantity of all forms attendant to the registration and elections process. In addition, the State Board shall provide a source of supply from which the county boards of elections may purchase the quantity of pollbooks needed for the execution of its responsibilities. In the preparation of ballots, pollbooks, abstract and return forms, and all other forms, the State Board of Elections may call to its aid the Attorney General of the State, and it shall be the duty of the Attorney General to advise and aid in the preparation of these books, ballots and forms.

(f) The State Board of Elections shall prepare, print, distribute to the county and municipal boards of elections all ballots for use in any primary or election held in the State which the law provides shall be printed and furnished by the State to the counties. The Board shall instruct the county boards of elections as to the printing of county and local ballots.

(g) The State Board of Elections shall certify to the appropriate county boards of elections the names of candidates for district offices who have filed notice of candidacy with the Board and whose names are required to be printed on county ballots.

(h) It shall be the duty of the State Board of Elections to tabulate the primary and election returns, to declare the results, and to prepare abstracts of the votes cast in each county in the State for offices which, according to law, shall be tabulated by the Board.

(i) The State Board of Elections shall make recommendations to the Governor and legislature relative to the conduct and administration of the primaries and elections in the State as it may deem advisable.

(j) Notwithstanding the provisions of any other section of this Chapter, the State Board of Elections is empowered to have access to any ballot boxes and their contents, any voting machines and their contents, any registration records, pollbooks, voter authorization cards or voter lists, any lists of absentee voters, any lists of presidential registrants under the Voting Rights Act of 1965 as amended, and any other voting equipment or similar records, books or lists in any precinct, county, municipality or electoral district over whose elections it has jurisdiction or for whose elections it has responsibility.

(k) Notwithstanding the provisions contained in Article 20 or Article 21 of Chapter 163 the State Board of Elections shall be authorized, by resolution adopted prior to the printing of the primary ballots, to reduce the time by which absentee ballots are required to be printed and distributed for the primary election from 50 days to 45 days. This authority shall not be authorized for absentee ballots to be voted in the general election, except if the law requires ballots to be available for mailing 60 days before the general election, and they are not ready by that date, the State Board of Elections shall allow the counties to mail them out as soon as they are available.

(*l*) Notwithstanding any other provision of law, in order to obtain judicial review of any decision of the State Board of Elections rendered in the performance of its duties or in the exercise of its powers under this Chapter, the person seeking review must file his petition in the Superior Court of Wake County.

(m) Repealed by Session Laws 2001-398, s. 4, effective January 1, 2002.

(n) The State Board of Elections shall provide specific training to county boards of elections regarding rules for registering students.

(o) The State Board of Elections shall promulgate minimum requirements for the number of pollbooks, voting machines and curbside ballots to be available at each precinct, such that more of such will be available at general elections and a sufficient number will be available to allow voting without excessive delay. The State Board of Elections shall provide for a training and screening program for chief judges and judges. The State Board of Elections shall provide additional testing of voting machines to ensure that they operate properly even with complicated ballots.

(p) The State Board of Elections shall require counties with voting systems to have sufficient personnel available on election day with technical expertise to make repairs in such equipment, to investigate election day problems, and assist in curbside voting.

(q) The State Board of Elections may assign responsibility for enumerated administrative matters to the Executive Director by resolution, if that resolution provides a process for the State Board to review any administrative decision made by the Executive Director. (1901, c. 89, ss. 7, 11; Rev., ss. 4302, 4305; 1913, c. 138; C.S., ss. 5923, 5926; 1921, c. 181, s. 1; 1923, c. 196; 1933, c. 165, ss. 1, 2; 1945, c. 982; 1953, c. 410, s. 2; 1967, c. 775, s. 1; 1973, c. 47, s. 2; c. 793, s. 2; 1975, c. 19, s. 65; 1977, c. 661, s. 6; 1979, c. 411, s. 1; 1981, c. 556; 1985 (Reg. Sess., 1986), c. 986, ss. 2, 3; 1987, c. 485, ss. 2, 5; c. 509, s. 9; c. 642, s. 3; 1989, c. 635, s. 5; 1991, c. 727, ss. 5.2, 7; 1993 (Reg. Sess., 1994), c. 762, s. 12; 1995, c. 509, s. 114; 1999-424, s. 7(a); 2001-398, s. 4; 2009-537, s. 10; 2009-541, s. 1.)

Editor's Note. — Section 4 of Session Laws 1985 (Reg. Sess., 1986), c. 986, provided that ss. 2 and 3 thereof, which amended subsection (k), would expire with respect to primaries and elections held on or after December 31, 1986.

Session Laws 1985 (Reg. Sess., 1986), c. 987, ss. 2, 3 made the same changes to this section as c. 986, but was only to become effective if the U.S. Attorney General interposed objection to Session Laws 1985 (Reg. Sess., 1986), c. 986 as to the fact that such bill provided for designating vacancies for all unexpired terms separately from full terms. Chapter 987 also provided that the act would expire with respect to primaries and elections held on or after December 31, 1986. Objection to c. 986 was not made. Moreover, Session Laws 1987, c. 509, s. 9 repealed Session Laws 1985 (Reg. Sess., 1986), c. 987. Therefore, c. 987 never went into effect.

Effect of Amendments. — Session Laws

2009-537, s. 10, effective January 1, 2010, and applicable with respect to elections held on or after that date, added "except if the law requires ballots to be available for mailing 60 days before the general election, and they are not ready by that date, the State Board of Elections shall allow the counties to mail them out as soon as they are available" at the end of subsection (k).

Session Laws 2009-541, s. 1, effective August 28, 2009, redesignated the former last paragraph of the section as present subsection (p) and added subsection (q).

CASE NOTES

Supervisory and Other Powers. — The State Board of Elections has general supervision over the primaries and elections in the State, with authority to promulgate legally consistent rules and regulations for their conduct and to compel the observance of the election laws by county boards of elections, and the duty of the Board to canvass the returns and declare the county does not affect its supervisory power, which perforce must be exercised prior to the final acceptance of the returns made by the county boards. Burgin v. North Carolina State Bd. of Elections, 214 N.C. 140, 198 S.E. 592 (1938).

The General Assembly has given the State Board of Elections power to supervise primaries and general elections to the end that, insofar as possible, the results in primary and general elections in this State will not be influenced or tainted with fraud, corruption or other illegal conduct on the part of election officials or others. Ponder v. Joslin, 262 N.C. 496, 138 S.E.2d 143 (1964).

Power to Make Rules and Regulations Not in Conflict with Law. — The General Assembly has conferred upon the State Board of Elections power to make reasonable rules and regulations for carrying into effect the law it was created to administer, but has annexed to the grant of this power the express limitation that such rules and regulations must not conflict with any provisions of such law. This specific restriction would have been inseparably wedded to the authority granted even if the statutes had been silent with respect to it, because the Constitution forbids the legislature to delegate the power to make law to any other body. States' Rights Democratic Party v. State Bd. of Elections, 229 N.C. 179, 49 S.E.2d 379 (1948).

Authority to Hear and Act on Complaints. — The legislature has mandated that the State Board of Elections shall compel observance of the election laws. To do so, the State Board of Elections must have authority to hear and act on complaints, whether they arise by petitions filed in accordance with the rules and regulations promulgated by the Board or otherwise. In re Judicial Review by Republican Candidates, 45 N.C. App. 556, 264 S.E.2d 338, cert. denied, 299 N.C. 736, 267 S.E.2d 672 (1980).

The authority of the State Board to conduct a public inquiry into an election in a certain county and enter an order calling for a new election was not dependent upon a protest having been previously filed. In re Judicial Review by Republican Candidates, 45 N.C. App. 556, 264 S.E.2d 338, cert. denied, 299 N.C. 736, 267 S.E.2d 672 (1980).

Investigation of Frauds Is Not Limited to Reporting Them for Further Investigation. — Subdivision (11) of former G.S. 163-10 (subsection (d) of this section) does not limit the authority of the State Board of Elections merely to an investigation of alleged "frauds and irregularities in elections in any county" for the sole purpose of making a report of such frauds and irregularities to the Attorney General or district attorney for further investigation and prosecution. Ponder v. Joslin, 262 N.C. 496, 138 S.E.2d 143 (1964).

And State Board May Direct County Board to Amend Returns. — The State Board of Elections, which is a quasi-judicial agency, may, in a primary or election in a multiple county district, investigate alleged frauds and irregularities in elections in any county upon appeal from a county board or upon a protest filed in apt time with the State Board of Elections, may take such action as the findings of fact may justify, and may direct a county board of elections to amend its returns in accordance therewith. Ponder v. Joslin, 262 N.C. 496, 138 S.E.2d 143 (1964).

Persons Entitled to Notice of Inquiry. — The procedure contemplated by subsection (d) of this section is not the type of procedure contemplated by Article 3 of the Administrative Procedure Act, G.S. 150A-23 et seq. (now G.S. 150B-23 et seq.); however there can be no doubt but that persons elected to county offices in the election to be inquired into are entitled to notice. In re Judicial Review by Republican Candidates, 45 N.C. App. 556, 264 S.E.2d 338, cert. denied, 299 N.C. 736, 267 S.E.2d 672 (1980).

Venue of State Board of Elections. — The mere fact of the State Board's supervisory role does not give it an official residence in each of the 100 counties in this state where county boards of elections are located for purposes of venue. Republican Party v. Martin, 682 F. Supp. 834 (M.D.N.C. 1988).

Notice of Hearing Held Sufficient. — Notice published in a newspaper and provided to each member of the county board of elections and each candidate whose name appeared on the ballot for a county office that a public hearing would be held at a specified time and place to inquire into the processes relative to a general election conducted in the county, particularly the processes involving absentee ballots, was sufficient to comply with due process, it not being necessary for the State Board of Elections to particularize any charges in the notice of public hearing. In re Judicial Review by Republican Candidates, 45 N.C. App. 556, 264 S.E.2d 338, cert. denied, 299 N.C. 736, 267 S.E.2d 672 (1980).

Decision of Board Held Not Made on Unlawful Procedure. — A decision of the State Board of Elections ordering a new election for certain offices in Clay County was not made on "unlawful procedure" without findings of fact where the chairman orally announced the Board's decision on December 6, 1978, to order a new election because of irregularities in assistance rendered to persons who voted by absentee ballots and in the collection and return of voted absentee ballots; a written decision was filed on the same day incorporating the oral decision; an order was entered December 14, 1978, setting a date for the new election and setting out the rules and procedure for its conduct; and on February 13, 1979, the State Board filed a written order containing its findings of fact and conclusions of law. In re Judicial Review by Republican Candidates, 45 N.C. App. 556, 264 S.E.2d 338, cert. denied, 299 N.C. 736, 267 S.E.2d 672 (1980).

Applied in James v. Bartlett, 359 N.C. 260, 607 S.E.2d 638, 2005 N.C. LEXIS 146 (2005).

Cited in Clayton v. North Carolina State Bd. of Elections, 317 F. Supp. 915 (E.D.N.C. 1970).

§ 163-22.1: Repealed by Session Laws 2001-398, s. 2, effective January 1, 2002.

§ 163-22.2. Power of State Board to promulgate temporary rules and regulations.

In the event any portion of Chapter 163 of the General Statutes or any State election law or form of election of any county board of commissioners, local board of education, or city officer is held unconstitutional or invalid by a State or federal court or is unenforceable because of objection interposed by the United States Justice Department under the Voting Rights Act of 1965 and such ruling adversely affects the conduct and holding of any pending primary or election, the State Board of Elections shall have authority to make reasonable interim rules and regulations with respect to the pending primary or election as it deems advisable so long as they do not conflict with any provisions of Chapter 163 of the General Statutes and such rules and regulations shall become null and void 60 days after the convening of the next regular session of the General Assembly. The State Board of Elections shall also be authorized, upon recommendation of the Attorney General, to enter into agreement with the courts in lieu of protracted litigation until such time as the General Assembly convenes. (1981, c. 741; 1982, 2nd Ex. Sess., c. 3, s. 19.1; c. 1265, ss. 1, 2; 1985, c. 563, s. 15; 1986, Ex. Sess., c. 3, s. 1.)

CASE NOTES

Construction. — Remedial statutes, such as this section, must be construed liberally in the light of the evils sought to be eliminated, the remedies intended to be applied, and the legislative objective. Newsome v. North Carolina State Bd. of Elections, 105 N.C. App. 499, 415 S.E.2d 201 (1992).

Cited in United States v. Onslow County, 683 F. Supp. 1021 (E.D.N.C. 1988).

§ 163-22.3. State Board of Elections littering notification.

At the time an individual files with the State Board of Elections a notice of candidacy pursuant to G.S. 163-106, 163- 112, 163-291, 163-294.2, or 163-323, is certified to the State Board of Elections by a political party executive committee to fill a nomination vacancy pursuant to G.S. 163-114, is certified to the State Board of Elections by a new political party as that party's nominee pursuant to G.S. 163-98, qualifies with the State Board of Elections as an unaffiliated or write-in candidate pursuant to Article 11 of this Chapter, or formally initiates a candidacy with the State Board of Elections pursuant to any statute or local act, the State Board of Elections shall notify the candidate of the provisions concerning campaign signs in G.S. 136-32 and G.S. 14-156, and the rules adopted by the Department of Transportation pursuant to G.S. 136-18. (2001-512, s. 7.)

Editor's Note. — Session Laws 2001-512, s. 15, provides: "This act shall not be construed to obligate the General Assembly to appropriate any funds to implement the provisions of this act. Every agency to which this act applies shall implement the provisions of this act from funds otherwise appropriated or available to the agency."

§ 163-23. Powers of chairman in execution of Board duties.

In the performance of the duties enumerated in this Chapter, the chairman of the State Board of Elections shall have power to administer oaths, issue subpoenas, summon witnesses, and compel the production of papers, books, records and other evidence. Upon the written request or requests of two or more members of the State Board of Elections, he shall issue subpoenas for designated witnesses or identified papers, books, records and other evidence. In the absence of the chairman or upon his refusal to act, any two members of the State Board of Elections may issue subpoenas, summon witnesses, and compel the production of papers, books, records and other evidence. In the absence of the chairman or upon his refusal to act, any member of the Board may administer oaths. (1901, c. 89, s. 7; Rev., s. 4302; C.S., s. 5923; 1933, c. 165, s. 1; 1945, c. 982; 1967, c. 775, s. 1; 1973, c. 793, s. 4.)

§ 163-24. Power of State Board of Elections to maintain order.

The State Board of Elections shall possess full power and authority to maintain order, and to enforce obedience to its lawful commands during its sessions, and shall be constituted an inferior court for that purpose. If any person shall refuse to obey the lawful commands of the State Board of Elections or its chairman, or by disorderly conduct in its hearing or presence shall interrupt or disturb its proceedings, it may, by an order in writing, signed by its chairman, and attested by its secretary, commit the person so offending to the common jail of the county for a period not exceeding 30 days. Such order shall be executed by any sheriff to whom the same shall be delivered, or if a sheriff shall not be present, or shall refuse to act, by any other person who shall be deputed by the State Board of Elections in writing, and the keeper of the jail shall receive the person so committed and safely keep him for such time as shall be mentioned in the commitment: Provided, that any person committed under the provisions of this section shall have the right to post a two hundred dollar ($200.00) bond with the clerk of the superior court and appeal to the superior court for a trial on the merits of his commitment. (1901, c. 89, s. 72; Rev., s. 4376; C.S., s. 5977; 1955, c. 871, s. 4; 1967, c. 775, s. 1; 1995, c. 379, s. 14(e).)

§ 163-25. Authority of State Board to assist in litigation.

The State Board of Elections shall possess authority to assist any county or municipal board of elections in any matter in which litigation is contemplated or has been initiated, provided, the county or municipal board of elections in such county petitions, by majority resolution, for such assistance from the State Board of Elections and, provided further, that the State Board of Elections determines, in its sole discretion by majority vote, to assist in any such matter. It is further stipulated that the State Board of Elections shall not be authorized under this provision to enter into any litigation in assistance to counties, except in those instances where the uniform administration of Chapter 163 of the General Statutes of North Carolina has been, or would be threatened.

The Attorney General shall provide the State Board of Elections with legal assistance in execution of its authority under this section or, in his discretion, recommend that private counsel be employed.

If the Attorney General recommends employment of private counsel, the State Board may employ counsel with the approval of the Governor. (1969, c. 408, s. 1; 1973, c. 793, s. 6; 1983, c. 324, s. 2.)

§ 163-26. Executive Director of State Board of Elections.

There is hereby created the position of Executive Director of the State Board of Elections, who shall perform all duties imposed upon him by statute and such duties as might be assigned to him by the State Board of Election [Elections]. (1973, c. 1272, s. 4; 2001-319, s. 11.)

§ 163-27. Executive Director to be appointed by Board.

The appointment of the Executive Director of the State Board of Elections is extended to May 15, 1989, unless removed for proper cause, and thereafter the Board shall appoint an Executive Director for a term of four years with compensation to be determined by the Department of Personnel. He shall serve, unless removed for cause, until his successor is appointed. Such Executive Director shall be responsible for staffing, administration, execution of the Board's decisions and orders and shall perform such other responsibilities as may be assigned by the Board. In the event of a vacancy, the vacancy shall be filled for the remainder of the term. (1973, c. 1409, s. 3; 1985, c. 62, s. 2; 2001-319, s. 11.)

§ 163-27.1. Emergency powers.

The Executive Director, as chief State elections official, may exercise emergency powers to conduct an election in a district where the normal schedule for the election is disrupted by any of the following:

(1) A natural disaster.
(2) Extremely inclement weather.
(3) An armed conflict involving United States armed forces, or mobilization of those forces, including State National Guard and reserve components.

In exercising those emergency powers, the Executive Director shall avoid unnecessary conflict with the provisions of this Chapter. The Executive Director shall adopt rules describing the emergency powers and the situations in which the emergency powers will be exercised. (1999-455, s. 23; 2001-319, s. 11.)

§ 163-28. State Board of Elections independent agency.

The State Board of Elections shall be and remain an independent regulatory and quasi-judicial agency and shall not be placed within any principal administrative department. The State Board of Elections shall exercise its statutory powers, duties, functions, authority, and shall have all powers and duties conferred upon the heads of principal departments under G.S. 143B-10. (1973, c. 1409, s. 2.)

CASE NOTES

Cited in In re Ramseur, 120 N.C. App. 521, 463 S.E.2d 254 (1995).

§ 163-29: Reserved for future codification purposes.

ARTICLE 4.

County Boards of Elections.

§ 163-30. County boards of elections; appointments; terms of office; qualifications; vacancies; oath of office; instructional meetings.

In every county of the State there shall be a county board of elections, to consist of three persons of good moral character who are registered voters in the county in which they are to act. Members of county boards of elections shall be appointed by the State Board of Elections on the last Tuesday in June 1985, and every two years thereafter, and their terms of office shall continue for two years from the specified date of appointment and until their successors are appointed and qualified. Not more than two members of the county board of elections shall belong to the same political party.

No person shall be eligible to serve as a member of a county board of elections who holds any elective office under the government of the United States, or of the State of North Carolina or any political subdivision thereof.

No person who holds any office in a state, congressional district, county or precinct political party or organization, or who is a campaign manager or treasurer of any candidate or political party in a primary or election, shall be eligible to serve as a member of a county board of elections, provided however that the position of delegate to a political party convention shall not be considered an office for the purpose of this section.

No person shall be eligible to serve as a member of a county board of elections who is a candidate for nomination or election.

No person shall be eligible to serve as a member of a county board of elections who is the wife, husband, son, son-in-law, daughter, daughter-in-law, mother, mother-in-law, father, father-in-law, sister, sister-in-law, brother, brother-in-law, aunt, uncle, niece, or nephew of any candidate for nomination or election. Upon any member of the board of elections becoming ineligible, that member's seat shall be declared vacant. This paragraph only applies if the county board of elections is conducting the election for which the relative is a candidate.

The State chairman of each political party shall have the right to recommend to the State Board of Elections three registered voters in each county for appointment to the board of elections for that county. If such recommendations are received by the Board 15 or more days before the last Tuesday in June 1985, and each two years thereafter, it shall be the duty of the State Board of Elections to appoint the county boards from the names thus recommended.

Whenever a vacancy occurs in the membership of a county board of elections for any cause the State chairman of the political party of the vacating member shall have the right to recommend two registered voters of the affected county for such office, and it shall be the duty of the State Board of Elections to fill the vacancy from the names thus recommended.

At the meeting of the county board of elections required by G.S. 163-31 to be held on Tuesday following the third Monday in July in the year of their appointment the members shall take the following oath of office:

> "I, ______, do solemnly swear (or affirm) that I will support the Constitution of the United States; that I will be faithful and bear true allegiance to the State of North Carolina and to the constitutional powers and authorities which are or may be established for the government thereof; that I will endeavor to support, maintain and defend the Constitution of said State, not inconsistent with the Constitution of the United States; and that I will well and truly execute the duties of the office of member of the ______ County Board of Elections to the best of my knowledge and ability, according to law; so help me God."

Each member of the county board of elections shall attend each instructional meeting held pursuant to G.S. 163-46, unless excused for good cause by the chairman of the board, and shall be paid the sum of twenty-five dollars ($25.00) per day for attending each of those meetings. (1901, c. 89, ss. 6, 11; Rev., ss. 4303, 4304, 4305; 1913, c. 138; C.S., ss. 5924, 5925, 5926; 1921, c. 181, s. 1; 1923, c. 111, s. 1; c. 196; 1933, c. 165, s. 2; 1941, c. 305, s. 1; 1945, c. 758, ss. 1, 2; 1949, c. 672, s. 1; 1953, c. 410, ss. 1, 2; c. 1191, s. 2; 1955, c. 871, s. 1; 1957, c. 182, s. 1; 1959, c. 1203, s. 1; 1967, c. 775, s. 1; 1969, c. 208, s. 1; 1973, c. 793, s. 7; c. 1094; c. 1344, s. 4; 1975, c. 19, s. 66; c. 159, s. 1; 1981, c. 954, s. 1; 1983, c. 617, ss. 1, 2; 1985, c. 472, s. 4; 1997-211, s. 1.)

Editor's Note. — Session Laws 1991, Ex. Sess., c. 1, which was submitted to the Attorney General of the United States pursuant to Section 5 of the Voting Rights Act of 1965, as amended (42 U.S.C. 1973c), received preclearance from the United States Department of Justice on January 3, 1992.

OPINIONS OF ATTORNEY GENERAL

Member of County Board of Elections May Not Also Hold an Elective Office. — See opinion of Attorney General to Mr. John D. Mackie, 41 N.C.A.G. 793 (1972).

§ 163-31. Meetings of county boards of elections; quorum; minutes.

In each county of the State the members of the county board of elections shall meet at the courthouse or board office at noon on the Tuesday following the third Monday in July in the year of their appointment by the State Board of Elections and, after taking the oath of office provided in G.S. 163-30, they shall organize by electing one member chairman and another member secretary of the county board of elections. On the Tuesday following the third Monday in August of the year in which they are appointed the county board of elections shall meet and appoint precinct chief judges and judges of elections. The board may hold other meetings at such times as the chairman of the board, or any two members thereof, may direct, for the performance of duties prescribed by law. A majority of the members shall constitute a quorum for the transaction of board business. The chairman shall notify, or cause to be notified, all members regarding every meeting to be held by the board.

The county board of elections shall keep minutes recording all proceedings and findings at each of its meetings. The minutes shall be recorded in a book which shall be kept in the board office and it shall be the responsibility of the secretary, elected by the board, to keep the required minute book current and accurate. The secretary of the board may designate the director of elections to record and maintain the minutes under his supervision. (1901, c. 89, s. 11; Rev., ss. 4304, 4306; C.S., ss. 5925, 5927; 1921, c. 181, s. 2; 1923, c. 111, s. 1; 1927, c. 260, s. 1; 1933, c. 165, s. 2; 1941, c. 305, s. 1; 1945, c. 758, s. 2; 1953, c. 410, s. 1; c. 1191, s. 2; 1957, c. 182, s. 1; 1959, c. 1203, s. 1; 1966, Ex. Sess., c. 5, s. 2; 1967, c. 775, s. 1; 1969, c. 208, s. 2; 1975, c. 159, s. 2; 1977, c. 626; 1983, c. 617, s. 3; 1993 (Reg. Sess., 1994), c. 762, s. 13; 1995, c. 243, s. 1.)

§ 163-32. Compensation of members of county boards of elections.

In full compensation of their services, members of the county board of elections (including the chairman) shall be paid by the county twenty-five dollars ($25.00) per meeting for the time they are actually engaged in the discharge of their duties, together with reimbursement of expenditures necessary and incidental to the discharge of their duties; provided that members are not entitled to be compensated for more than one meeting held in any one 24-hour period. In its discretion, the board of county commissioners of any county may pay the chairman and members of the county board of elections compensation in addition to the per meeting and expense allowance provided in this paragraph.

In all counties the board of elections shall pay its clerk, assistant clerks, and other employees such compensation as it shall fix within budget appropriations. Counties which adopt full-time and permanent registration shall have authority to pay directors of elections whatever compensation they may fix within budget appropriations. (1901, c. 89, s. 11; Rev., s. 4303; C.S., s. 5925; 1923, c. 111, s. 1; 1933, c. 165, s. 2; 1941, c. 305, s. 1; 1945, c. 758, s. 2; 1953, c. 410, s. 1; c. 843; c. 1191, s. 2; 1955, c. 800; 1957, c. 182, s. 1; 1959, c. 1203, s. 1; 1963, c. 303, s. 1; 1967, c. 775, s. 1; 1971, c. 1166, s. 1; 1973, c. 793, s. 8; c. 1344, s. 5; 1977, c. 626, s. 1; 1991, c. 338, s. 1; 1993 (Reg. Sess., 1994), c. 762, s. 14; 1995, c. 243, s. 1.)

Local Modification to Former § 163-12.
— Hyde, Iredell and Nash: 1941, c. 305, s. 2.

§ 163-33. Powers and duties of county boards of elections.

The county boards of elections within their respective jurisdictions shall exercise all powers granted to such boards in this Chapter, and they shall perform all the duties imposed upon them by law, which shall include the following:

(1) To make and issue such rules, regulations, and instructions, not inconsistent with law, with directives promulgated under the provisions of G.S. 163-132.4, or with the rules, orders, and directives established by the State Board of Elections, as it may deem necessary for the guidance of election officers and voters.

(2) To appoint all chief judges, judges, assistants, and other officers of elections, and designate the precinct in which each shall serve; and, after notice and hearing, to remove any chief judge, judge of elections, assistant, or other officer of election appointed by it for incompetency, failure to discharge the duties of office, failure to qualify within the time prescribed by law, fraud, or for any other satisfactory cause. In exercising the powers and duties of this subdivision, the board may act only when a majority of its members are present at any meeting at which such powers or duties are exercised.

(3) To investigate irregularities, nonperformance of duties, and violations of laws by election officers and other persons, and to report violations to the State Board of Elections. In exercising the powers and duties of this subdivision, the board may act only when a majority of its members are present at any meeting at which such powers or duties are exercised. Provided that in any hearing on an irregularity no board of elections shall consider as evidence the testimony of a voter who cast a ballot, which ballot that voter was not eligible to cast, as to how that voter voted on that ballot.

(4) As provided in G.S. 163-128, to establish, define, provide, rearrange, discontinue, and combine election precincts as it may deem expedient, and to fix and provide for places of registration and for holding primaries and elections.

(5) To review, examine, and certify the sufficiency and validity of petitions and nomination papers.

(6) To advertise and contract for the printing of ballots and other supplies used in registration and elections; and to provide for the delivery of ballots, pollbooks, and other required papers and materials to the voting places.

(7) To provide for the purchase, preservation, and maintenance of voting booths, ballot boxes, registration and pollbooks, maps, flags, cards of instruction, and other forms, papers, and equipment used in registration, nominations, and elections; and to cause the voting places to be suitably provided with voting booths and other supplies required by law.

(8) To provide for the issuance of all notices, advertisements, and publications concerning elections required by law. If the election is on a State bond issue, an amendment to the Constitution, or approval of an act submitted to the voters of the State, the State Board of Elections shall reimburse the county boards of elections for their reasonable additional costs in placing such notices, advertisements, and publications. In addition, the county board of elections shall give notice at least 20 days prior to the date on which the registration books or records are closed that there will be a primary, general or special election, the date on which it will be held, and the hours the voting places will be open for voting in that election. The notice also shall describe the nature and type of election, and the issues, if any, to be submitted to the voters at that election. Notice shall be given by advertisement at least once weekly during the 20-day period in a newspaper having general circulation in the county and by posting a copy of the notice at the courthouse door. Notice may additionally be made on a radio or television station or both, but such notice shall be in addition to the newspaper and other required notice. This subdivision shall not apply in the case of bond elections called under the provisions of Chapter 159.

(9) To receive the returns of primaries and elections, canvass the returns, make abstracts thereof, transmit such abstracts to the proper authorities, and to issue certificates of election to county officers and members of the General Assembly except those elected in districts composed of more than one county.

(10) To appoint and remove the board's clerk, assistant clerks, and other employees; and to appoint and remove precinct transfer assistants as provided in G.S. 163-82.15(g).

(11) To prepare and submit to the proper appropriating officers a budget estimating the cost of elections for the ensuing fiscal year.

(12) To perform such other duties as may be prescribed by this Chapter, by directives promulgated pursuant to G.S. 163-132.4, or by the rules, orders, and directives of the State Board of Elections.

(13) Notwithstanding the provisions of any other section of this Chapter, to have access to any ballot boxes and their contents, any voting machines and their contents, any registration records, pollbooks, voter authorization cards or voter lists, any lists of absentee voters, any lists of presidential registrants under the Voting Rights Act of 1965 as amended, and any other voting equipment or similar records, books or lists in any precinct or municipality over whose elections it has jurisdiction or for whose elections it has responsibility. (1901, c. 89, s. 11; Rev., s. 4306; C.S., s. 5927; 1921, c. 181, s. 2; 1927, c. 260, s. 1; 1933, c. 165, s. 2; 1966, Ex. Sess., c. 5, s. 2; 1967, c. 775, s. 1; 1973, c. 793, ss. 9-11; 1983, c. 392, s. 1; 1989, c. 93, s. 1; 1993 (Reg. Sess., 1994), c. 762, s. 15; 1995 (Reg. Sess., 1996), c. 694, s. 1; 1997-510, s. 1; 1999-424, s. 7(b); 2009-541, s. 2.)

Local Modification. — Town of Calabash: 1989, c. 593, s. 3; 1998-75, ss. 1, 5; town of Carolina Shores: 1998-75, s. 5; town of Hazelwood: 1987, c. 338, s. 8; town of Spruce Pine: 1998-152, s. 2; town of Waynesville: 1987, c. 338, s. 8; Alamance County Board of Elections: 1998-151, s. 9.6; Anson County Board of Commissioners: 1991 (Reg. Sess., 1992), c. 781, s. 8 (but shall only be enforced as provided by Section 5 of the Voting Rights Act of 1965); Union County Board of Elections: 1998-151, s. 9.6.

Editor's Note. — Session Laws 1991, Ex. Sess., c. 1, which was submitted to the Attorney General of the United States pursuant to Section 5 of the Voting Rights Act of 1965, as amended (42 U.S.C. 1973c), received preclearance from the United States Department of Justice on January 3, 1992.

Session Laws 2005-323, s. 8, provides: "The State Board of Elections shall recommend a model code of ethics for members and employees of county boards of elections and of the State Board of Elections. The code shall address the appropriate relations between those members and staff and vendors who do business or seek to do business with boards of elections in North Carolina. It shall address how to avoid both the reality and the appearance of conflicts of interest and impropriety. The State Board shall report its recommended code to the Joint Select Committee on Electronic Voting Systems and to the Joint Legislative Commission on Governmental Operations no later than 60 days after this act becomes law."

The county boards of elections within their respective jurisdictions shall exercise all powers granted to such boards in this Chapter, and they shall perform all the duties imposed upon them by law, which shall include the following:

(1) To make and issue such rules, regulations, and instructions, not inconsistent with law, with directives promulgated under the provisions of G.S. 163-132.4, or with the rules, orders, and directives established by the State Board of Elections, as it may deem necessary for the guidance of election officers and voters.

(12) To perform such other duties as may be prescribed by this Chapter, by directives promulgated pursuant to G.S. 163-132.4, or by the rules, orders, and directives of the State Board of Elections.

....

Effect of Amendments. — Session Laws 2009-541, s. 2, effective August 28, 2009, substituted "with law, with directives promulgated under the provisions of G.S. 163-132.4, or with the rules, orders, and directives established" for "with law or the rules established" in subdivision (1); and substituted "Chapter, by directives promulgated pursuant to G.S. 163-132.4, or by the rules, orders, and directives" for "Chapter or the rules" in subdivision (12).

CASE NOTES

County Board Must Act as Body. — When the State Board of Elections instructs certain county boards of elections to amend their respective returns in accordance with the State Board's rulings on protests challenging the validity of certain ballots, it is necessary for the county boards to hear the challenges and make the amended returns acting as a body in a duly assembled legal session; action taken and amended returns made by two members of the county board of each county, respectively, without notice to the third member, are void as a matter of law. Burgin v. North Carolina State Bd. of Elections, 214 N.C. 140, 198 S.E. 592 (1938).

Action against three county boards of elections challenging method of electing North Carolina superior court judges would be dismissed, since the county boards have no authority to act in a manner inconsistent with the statute governing election of superior court judges. They merely act in a ministerial capacity and can only carry out duties as detailed by statute and the State Board. Republican Party v. Martin, 682 F. Supp. 834 (M.D.N.C. 1988).

Burden of Proof on Challenger of Referendum. — The appellants, who challenged a citywide referendum allowing the sale of mixed beverages, failed to meet their burden of showing that absent the alleged voting irregularities, the referendum would have failed, where the appellants argued that if the five disclosed illegal votes were subtracted, and the five undisclosed illegal votes ignored, the result would have been a tie, 4996 in favor and 4996 against, and the referendum proposition would have failed; because the election occurred prior to the enactment of the amendment to this section, the appellants should have set forth evidence that they objected to the five voters' failure to testify or attempted to compel such testimony. In re Ramseur, 139 N.C. App. 442, 533 S.E.2d 295, 2000 N.C. App. LEXIS 896 (2000).

§ 163-33.1. Power of chairman to administer oaths.

The chairman of the county board of elections is authorized to administer to election officials specified in Articles 4, 5, and 20 of this Chapter the required oath, and may also administer the required oath to witnesses appearing before the county board at a duly called public hearing. (1981, c. 154; 2007-391, s. 5; 2008-187, s. 33(a).)

Editor's Note. — Session Laws 2007-391, s. 1(c), was amended by Session Laws 2008-198, s. 33(a), to eliminate any confusion as to effective dates of the 2007 act. Session Laws 2007-391, s. 5, which substituted "Articles 4, 5, and 20 of this Chapter" for "G.S. 163-80," is effective August 19, 2007.

§ 163-33.2. Chairman and county board to examine voting machines.

Prior to each primary and general election the chairman and members of the county board of elections, in counties where voting machines are used, shall test vote, in a reasonable number of combinations, no less than ten percent (10%) of all voting machines programmed for each primary or election, such machines to be selected at random by the board after programming has been completed, and further, the board shall record the serial numbers of the machines test voted in the official minutes of the board. In the alternative, the board may cause the test voting required herein to be performed by persons qualified to program and test voting equipment. (1981, c. 303.)

§ 163-33.3. County board of elections littering notification.

At the time an individual files with a county board of elections a notice of candidacy pursuant to G.S. 163-106, 163-112, 163-291, or 163-294.2, is certified to a county board of elections by a political party executive committee to fill a nomination vacancy pursuant to G.S. 163-114, qualifies with a county board of elections as an unaffiliated or write-in candidate pursuant to Article 11 of this Chapter, or formally initiates with a county board of elections a candidacy pursuant to any statute or local act, the county board of elections shall notify the candidate of the provisions concerning campaign signs in G.S. 136-32 and G.S. 14-156 and the rules adopted by the Department of Transportation pursuant to G.S. 136-18. (2001-512, s. 8.)

Editor's Note. — Session Laws 2001-512, s. 15, provides: "This act shall not be construed to obligate the General Assembly to appropriate any funds to implement the provisions of this act. Every agency to which this act applies shall implement the provisions of this act from funds otherwise appropriated or available to the agency."

§ 163-34. Power of county board of elections to maintain order.

Each county board of elections shall possess full power to maintain order, and to enforce obedience to its lawful commands during its sessions, and shall be constituted an inferior court for that purpose. If any person shall refuse to obey the lawful commands of any county board of elections, or by disorderly conduct in its hearing or presence shall interrupt or disturb its proceedings, it may, by an order in writing, signed by its chairman, and attested by its secretary, commit the person so offending to the common jail of the county for a period not exceeding 30 days. Such order shall be executed by any sheriff to whom the same shall be delivered, or if a sheriff shall not be present, or shall refuse to act, by any other person who shall be deputed by the county board of elections in writing, and the keeper of the jail shall receive the person so committed and safely keep him for such time as shall be mentioned in the commitment: Provided, that any person committed under the provisions of this section shall have the right to post a two hundred dollar ($200.00) bond with the clerk of the superior court and appeal to the superior court for a trial on the merits of his commitment. (1901, c. 89, s. 72; Rev., s. 4376; C.S., s. 5977; 1955, c. 871, s. 4; 1967, c. 775, s. 1; 2004-203, s. 57.)

§ 163-35. Director of elections to county board of elections; appointment; compensation; duties; dismissal.

(a) In the event a vacancy occurs in the office of county director of elections in any of the county boards of elections in this State, the county board of elections shall submit the name of the person it recommends to fill the vacancy, in accordance with provisions specified in this section, to the Executive Director of the State Board of Elections who shall issue a letter of appointment. A person shall not serve as a director of elections if he:

(1) Holds any elective public office;
(2) Is a candidate for any office in a primary or election;
(3) Holds any office in a political party or committee thereof;
(4) Is a campaign chairman or finance chairman for any candidate for public office or serves on any campaign committee for any candidate;
(5) Has been convicted of a felony in any court unless his rights of citizenship have been restored pursuant to the provisions of Chapter 13 of the General Statutes of North Carolina;
(6) Has been removed at any time by the State Board of Elections following a public hearing; or
(7) Is a member or a spouse, child, spouse of child, parent, sister, or brother of a member of the county board of elections by whom he would be employed.

(b) Appointment, Duties; Termination. — Upon receipt of a nomination from the county board of elections stating that the nominee for director of elections is submitted for appointment upon majority selection by the county board of elections the Executive Director shall issue a letter of appointment of such nominee to the chairman of the county board of elections within 10 days after receipt of the nomination. Thereafter, the county board of elections shall enter in its official minutes the specified duties, responsibilities and designated authority assigned to the director by the county board of elections. The specified duties and responsibilities shall include adherence to the duties delegated to the county board of elections pursuant to G.S. 163-33. A copy of the specified duties, responsibilities and designated authority assigned to the director shall be filed with the State Board of Elections.

The county board of elections may, by petition signed by a majority of the board, recommend to the Executive Director of the State Board of Elections the termination of the employment of the county board's director of elections. The petition shall clearly state the reasons for termination. Upon receipt of the petition, the Executive Director shall forward a copy of the petition by certified mail, return receipt requested, to the county director of elections involved. The county director of elections may reply to the petition within 15 days of receipt thereof. Within 20 days of receipt of the county director of elections' reply or the expiration of the time period allowed for the filing of the reply, the State Executive Director shall render a decision as to the termination or retention of the county director of elections. The decision of the Executive Director of the State Board of Elections shall be final unless the decision is, within 20 days from the official date on which it was made, deferred by the State Board of Elections. If the State Board defers the decision, then the State Board shall make a final decision on the termination after giving the county director of elections an opportunity to be heard and to present witnesses and information to the State Board, and then notify the Executive Director of its decision in writing. Any one or more members of the State Board designated by the remaining members of the State Board may conduct the hearing and make a final determination on the termination. For the purposes of this subsection, the member(s) designated by the remaining members of the State Board shall possess the same authority conferred upon the chairman pursuant to G.S. 163-23. If the decision, rendered after the hearing, results in concurrence with the decision entered by the Executive Director, the decision becomes final. If the decision rendered after the hearing is contrary to that entered by the Executive Director, then the Executive Director shall, within 15 days from the written notification, enter an amended decision consistent with the results of the decision by the State Board of Elections or its designated member(s).

Upon majority vote on the recommendation of the Executive Director, the State Board of Elections may initiate proceedings for the termination of a county director of elections for just cause. If the State Board votes to initiate proceedings for termination, the State Board shall state the reasons for the termination in writing and send a copy by certified mail, return receipt requested, to the county director of elections. The director has 15 days to reply in writing to the notice. The State Board of Elections shall also notify the chair of the county board of elections and the chair of the county board of commissioners that the State Board has initiated termination proceedings. The State Board shall make a final decision on the termination after giving the county director of elections an opportunity to be heard, present witnesses, and provide information to the State Board. Any one or more members of the State Board designated by the remaining members of the State Board may conduct the hearing and make a final decision. For the purposes of this subsection, the member(s) designated by the remaining members of the State Board shall possess the same authority conferred upon the chairman pursuant to G.S. 163-23.

A county director of elections may be suspended, with pay, without warning for causes relating to personal conduct detrimental to service to the county or to the State Board of Elections, pending the giving of written reasons, in order to avoid the undue disruption of work or to protect the safety of persons or property or for other serious reasons. Any suspension may be initiated by the Executive Director but may not be for more than five days. Upon placing a county director of elections on suspension, the Executive Director shall, as soon as possible, reduce to writing the reasons for the suspension and forward copies to the county director of elections, the members of the county board of elections, the chair of the county board of commissioners, and the State Board of Elections. If no action for termination has been taken within five days, the county director of elections shall be fully reinstated.

Termination of any county director of elections shall comply with this subsection.

(c) Compensation of Directors of Elections. — Compensation paid to directors of elections in all counties maintaining full-time registration (five days per week) shall be in the form of a salary in an amount recommended by the county board of elections and approved by the Board of County Commissioners and shall be commensurate with the salary paid to directors in counties similarly situated and similar in population and number of registered voters.

The Board of County Commissioners in each county, whether or not the county maintains full-time or modified full-time registration, shall compensate the director of elections at a minimum rate of twelve dollars ($12.00) per hour for hours worked in attendance to his or her duties as prescribed by law, including rules and regulations adopted by the State Board of Elections. In addition, the county shall pay to the director an hourly wage of at least twelve dollars ($12.00) per hour for all hours worked in excess of those prescribed in rules and regulations adopted by the State Board of Elections, when such additional hours have been approved by the county board of elections and such approval has been recorded in the official minutes of the county board of elections.

In addition to the compensation provided for herein, the director of elections to the county board of elections shall be granted the same vacation leave, sick leave, and petty leave as granted to all other county employees. It shall also be the responsibility of the Board of County Commissioners to appropriate sufficient funds to compensate a replacement for the director of elections when authorized leave is taken.

(d) Duties. — The director of elections may be empowered by the county board of elections to perform such administrative duties as might be assigned by the board and the chairman. In addition, the director of elections may be authorized by the chairman to execute the responsibilities devolving upon the chairman provided such authorization by any chairman shall in no way transfer the responsibility for compliance with the law. The chairman shall remain liable for proper execution of all matters specifically assigned to him by law.

The county board of elections shall have authority, by resolution adopted by majority vote, to delegate to its director of elections so much of the administrative detail of the election functions, duties, and work of the board, its officers and members, as is now, or may hereafter be vested in the board or its members as the county board of elections may see fit: Provided, that the board shall not delegate to a director of elections any of its quasi-judicial or policy-making duties and authority. Such a resolution shall require adherence to the duties delegated to the county board of elections pursuant to G.S. 163-33. Within the limitations imposed upon the director of elections by the resolution of the county board of elections the acts of a properly appointed director of elections shall be deemed to be the acts of the county board of elections, its officers and members.

(e) Training and Certification. — The State Board of Elections shall conduct a training program consisting of four weeks for each new county director of elections. The director shall complete that program. Each director appointed after May 1995 shall successfully complete a certification program as provided in G.S. 163-82.24(b) within three years after appointment or by January 1, 2003, whichever occurs later. (1953, c. 843; 1955, c. 800; 1963, c. 303, s. 1; 1967, c. 775, s. 1; 1971, c. 1166, s. 2; 1973, c. 859, s. 1; 1975, c. 211, ss. 1, 2; c. 713; 1977, c. 265, s. 21; c. 626, s. 1; c. 1129, s. 1; 1981, cc. 84, 221; 1983, c. 697; 1985,

c. 763; 1991, c. 338, s. 2; 1993 (Reg. Sess., 1994), c. 762, s. 16; 1995, c. 243, s. 1; 1999-426, s. 7(a); 2001-319, ss. 1(a), 1(b), 11; 2004-203, s. 58; 2009-541, ss. 3, 4(a).)

Editor's Note. — Session Laws 2009-541, s. 4(b), provides: "This section is effective when it becomes law, and every county board of elections shall amend or adopt the resolution of duties and responsibilities required by this act on or before January 1, 2010."

Effect of Amendments. — Session Laws 2009-541, ss. 3 and 4(a), effective August 28, 2009, added the present third sentence in the first paragraph of subsection (b); and, in the second paragraph of subsection (d), added the present second sentence and substituted "upon the director of elections" for "upon him" in the present third sentence.

CASE NOTES

As to determination of compensation under subsection (c) of this section as it read prior to the 1977 amendments to this section, see Goodman v. Wilkes County Bd. of Comm'rs, 37 N.C. App. 226, 245 S.E.2d 590 (1978).

Where a county supervisor of elections agreed that she retired and was rehired as a county employee, but was not rehired by the county board of elections or the North Carolina Board of Elections, the supervisor was not re-appointed after retirement under the procedures in G.S. 163-35(a); therefore, the North Carolina Board of Elections could end the supervisor's employment without following the procedures in § 163-35(b). Revels v. Robeson County Bd. of Elections, 167 N.C. App. 358, 605 S.E.2d 219, 2004 N.C. App. LEXIS 2167 (2004).

§ 163-36. Modified full-time offices.

The State Board of Elections shall promulgate rules permitting counties that have fewer than 6,501 registered voters to operate a modified full-time elections office to the extent that the operation of a full-time office is not necessary. Nothing in this section shall preclude any county from keeping an elections office open at hours consistent with the hours observed by other county offices. (1993 (Reg. Sess., 1994), c. 762, s. 6; 1999-426, s. 8(a).)

§ 163-37. Duty of county board of commissioners.

The respective boards of county commissioners shall appropriate reasonable and adequate funds necessary for the legal functions of the county board of elections, including reasonable and just compensation of the director of elections. (1999-424, s. 3(a).)

ARTICLE 4A.

Political Activities by Board of Elections Members and Employees.

§ 163-38. Applicability of Article.

This Article applies to members and employees of the State Board of Elections and of each county and municipal board of elections. With regard to prohibitions in this Article concerning candidates, referenda, and committees, the prohibitions do not apply if the candidate or referendum will not be on the ballot in an area within the jurisdiction of the board, or if the political committee or referendum committee is not involved with an election or referendum that will be on the ballot in an area within the jurisdiction of the board. (2000-114, s. 1; 2007-391, s. 14(a).)

Effect of Amendments. — Session Laws 2007-391, s. 14(a), effective January 1, 2008, added "and Employees" in the article catchline, and inserted "and employees" in the first sentence of this section.

§ 163-39. Limitation on political activities.

No individual subject to this Article shall:

(1) Make written or oral statements intended for general distribution or dissemination to the public at large supporting or opposing the nomination or election of one or more clearly identified candidates for public office.

(2) Make written or oral statements intended for general distribution or dissemination to the public at large supporting or opposing the passage of one or more clearly identified referendum proposals.

(3) Solicit contributions for a candidate, political committee, or referendum committee.

Individual expressions of opinion, support, or opposition not intended for general public distribution shall not be deemed a violation of this Article. Nothing in this Article shall be deemed to prohibit participation in a political party convention as a delegate. Nothing in this Article shall be deemed to prohibit a board member or board employee from making a contribution to a candidate, political committee, or referendum committee. Nothing in this Article shall be deemed to prohibit a board member or board employee from advising other government entities as to technical matters related to election administration or revision of electoral district boundaries. (2000-114, s. 1; 2007-391, s. 14(a).)

Effect of Amendments. — Session Laws 2007-391, s. 14(a), effective January 1, 2008, inserted "or board employee" preceding "from making a contribution" in the third sentence of the last paragraph, and added the last sentence.

§ 163-40. Violation may be ground for removal.

A violation of this Article may be a ground to remove a State Board of Elections member under G.S. 143B-16, a county board of elections member under G.S. 163-22(c), or a municipal board of elections member under G.S. 163-280(i). A violation of this Article may be a ground for dismissal of an employee of the State Board of Elections or of a county board of elections. No criminal penalty shall be imposed for a violation of this Article. (2000-114, s. 1; 2007-391, s. 14(a).)

Effect of Amendments. — Session Laws 2007-391, s. 14(a), effective January 1, 2008, added the second sentence.

§ 163-40.1. Definitions.

The provisions of Article 22A of this Chapter apply to the definition and proof of terms used in this Article. (2000-114, s. 1.)

Cross References. — For definition sections in Article 22A of Chapter 163, see G.S. 163-278.6, 163-278.39B, and 163-278.40.

ARTICLE 5.

Precinct Election Officials.

§ 163-41. Precinct chief judges and judges of election; appointment; terms of office; qualifications; vacancies; oaths of office.

(a) Appointment of Chief Judge and Judges. — At the meeting required by G.S. 163-31 to be held on the Tuesday following the third Monday in August of the year in which they are appointed, the county board of elections shall appoint one person to act as chief judge and two other persons to act as judges of election for each precinct in the county. Their terms of office shall continue for two years from the specified date of appointment and until their successors are appointed and qualified, except that if a nonresident of the precinct is appointed as chief judge or judge for a precinct, that person's term of office shall end if the board of elections appoints a qualified resident of the precinct of the same party to replace the nonresident chief judge or judge. It shall be their duty to conduct the primaries and elections within their respective precincts. Persons appointed to these offices must be registered voters and residents of the county in which the precinct is located, of good repute, and able to read and write. Not more than one judge in each precinct shall belong to the same political party as the chief judge.

The term "precinct official" shall mean chief judges and judges appointed pursuant to this section, and all assistants appointed pursuant to G.S. 163-42, unless the context of a statute clearly indicates a more restrictive meaning.

No person shall be eligible to serve as a precinct official, as that term is defined above, who holds any elective office under the government of the United States, or of the State of North Carolina or any political subdivision thereof.

No person shall be eligible to serve as a precinct official who is a candidate for nomination or election.

No person shall be eligible to serve as a precinct official who holds any office in a state, congressional district, county, or precinct political party or political organization, or who is a manager or treasurer for any candidate or political party, provided however that the position of delegate to a political party convention shall not be considered an office for the purpose of this subsection.

The chairman of each political party in the county where possible shall recommend two registered voters in each precinct who are otherwise qualified, are residents of the precinct, have good moral character, and are able to read and write, for appointment as chief judge in the precinct, and he shall also recommend where possible the same number of similarly qualified voters for appointment as judges of election in that precinct. If such recommendations are received by the county board of elections no later than the fifth day preceding the date on which appointments are to be made, it must make precinct appointments from the names of those recommended. Provided that if only one name is submitted by the fifth day preceding the date on which appointments are to be made, by a party for judge of election by the chairman of one of the two political parties in the county having the greatest numbers of registered voters in the State, the county board of elections must appoint that person.

If the recommendations of the party chairs for chief judge or judge in a precinct are insufficient, the county board of elections by unanimous vote of all of its members may name to serve as chief judge or judge in that precinct registered voters in that precinct who were not recommended by the party chairs. If, after diligently seeking to fill the positions with registered voters of the precinct, the county board still has an insufficient number of officials for the precinct, the county board by unanimous vote of all of its members may appoint to the positions registered voters in other precincts in the same county who meet the qualifications other than residence to be precinct officials in the precinct, provided that where possible the county board shall seek and adopt the recommendation of the county chairman of the political party affected. In making its appointments, the county board shall assure, wherever possible, that no precinct has a chief judge and judges all of whom are registered with the same party. In no instance shall the county board appoint nonresidents of the precinct to a majority of the three positions of chief judge and judge in a precinct.

If, at any time other than on the day of a primary or election, a chief judge or judge of election shall be removed from office, or shall die or resign, or if for any other cause there be a vacancy in a precinct election office, the chairman of the county board of elections shall appoint another in his place, promptly notifying him of his appointment. If at all possible, the chairman of the county board of elections shall consult with the county chairman of the political party of the vacating official, and if the chairman of the county political party nominates a qualified voter of that precinct to fill the vacancy, the chairman of the county board of elections shall appoint that person. In filling such a vacancy, the chairman shall appoint a person who belongs to the same political party as that to which the vacating member belonged when appointed. If the chairman of the county board of elections did not appoint a person upon recommendation of the chairman of the party to fill such a vacancy, then the term of office of the person appointed to fill the vacancy shall expire upon the conclusion of the next canvass held by the county board of elections under this Chapter, and any successor must be a person nominated by the chairman of the party of the vacating officer.

If any person appointed chief judge shall fail to be present at the voting place at the hour of opening the polls on primary or election day, or if a vacancy in that office shall occur on primary or election day for any reason whatever, the precinct judges of election shall appoint another to act as chief judge until such time as the chairman of the county board of elections shall appoint to fill the vacancy. If such appointment by the chairman of the county board of elections is not a person nominated by the county chairman of the political party of the vacating officer, then the term of office of the person appointed to fill the vacancy shall expire upon the conclusion of the next canvass held by the county board of elections under this Chapter. If a judge of election shall fail to be present at the voting place at the hour of opening the polls on primary or election day, or if a vacancy in that office shall occur on primary or election day for any reason whatever, the chief judge shall appoint another to act as judge until such time as the chairman of the county board of elections shall appoint to fill the vacancy. Persons appointed to fill vacancies shall, whenever possible, be chosen from the same political party as the person whose vacancy is being filled, and all such appointees shall be sworn before acting.

As soon as practicable, following their training as prescribed in G.S. 163-82.24, each chief judge and judge of election shall take and subscribe the following oath of office to be administered by an officer authorized to administer oaths and file it with the county board of elections:

"I, ________, do solemnly swear (or affirm) that I will support the Constitution of the United States; that I will be faithful and bear true allegiance to the State of North Carolina, and to the constitutional powers and authorities which are or may be established for the government thereof; that I will endeavor to support, maintain and defend the Constitution of said State not inconsistent with the Constitution of the United States; that I will administer the duties of my office as chief judge of (judge of election in) ________ precinct, ________ County, without fear or favor; that I will not in any manner request or seek to persuade or induce any voter to vote for or against any particular candidate or proposition; and that I will not keep or make any memorandum of anything occurring within a voting booth, unless I am called upon to testify in a judicial proceeding for a violation of the election laws of this State; so help me, God."

Notwithstanding the previous paragraph, a person appointed chief judge by the judges of election under this section, or appointed judge of election by the chief judge under this section may take the oath of office immediately upon appointment.

Before the opening of the polls on the morning of the primary or election, the chief judge shall administer the oath set out in the preceding paragraph to each assistant, and any judge of election not previously sworn, substituting for the words "chief judge of" the words "assistant in" or "judge of election in" whichever is appropriate.

(b) Special Registration Commissioners Abolished; Optional Training. — The office of special registration commissioner is abolished. The State Board of Elections and county boards of elections may provide training to persons assisting in voter registration.

(b1) Repealed by Session Laws 1985, c. 387, s. 1.1.

(c) Publication of Names of Precinct Officials. — Immediately after appointing chief judges and judges as herein provided, the county board of elections shall publish the names of the persons appointed in some newspaper having general circulation in the county or, in lieu thereof, at the courthouse door, and shall notify each person appointed of his appointment, either by letter or by having a notice served upon him by the sheriff. Notice may additionally be made on a radio or television station or both, but such notice shall be in addition to the newspaper and other required notice. (1901, c. 89, ss. 8, 9, 16; Rev., ss. 4307, 4308, 4309; C.S., ss. 5928, 5929, 5930; 1923, c. 111, s. 2; 1929, c. 164, s. 18; 1933, c. 165, s. 3; 1947, c. 505, s. 2; 1953, c. 843; c. 1191, s. 3; 1955, c. 800; 1957, c. 784, s. 1; 1963, c. 303, s. 1; 1967, c. 775, s. 1; 1973, c. 435; c. 1223, s. 2; 1975, c. 159, ss. 3, 4; c. 711; c. 807, s. 1; 1979, c. 766, s. 1; c. 782; 1981, c. 628, ss. 1, 2; c. 954, ss. 2, 4; 1981 (Reg. Sess., 1982), c. 1265, s. 7; 1983, c. 617, s. 5; 1985, c. 387; c. 563, ss. 9, 10; c. 600, s. 7.1; c. 759, ss. 7, 7.1, 8; 1987, c. 80; c. 491, s. 4.1; 1987 (Reg. Sess., 1988), c. 1028, s. 12; 1989, c. 93, s. 2; 1993 (Reg. Sess., 1994), c. 762, s. 3; 1995 (Reg. Sess., 1996), c. 734, s. 1.)

Local Modification to Former § 163-15. — Durham: 1937, c. 299.

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 61, effective January 1, 1995, provides: "Any person who on December 31, 1994, was a registrar under G.S. 163-41 shall be a chief judge under G.S. 163-41."

Legal Periodicals. — For article on, "Racial Gerrymandering and the Voting Rights Act in North Carolina," see 9 Campbell L. Rev. 255 (1987).

CASE NOTES

The board of elections had no authority to appoint two registrars (now chief judges) from the same party in the same voting precinct. Mullen v. Morrow, 123 N.C. 773, 31 S.E. 1003 (1898).

Irregular Appointments Held Insufficient to Void Election. — Where neither the regular registrar of a precinct nor the person appointed registrar (now chief judge) for one day under former G.S. 163-17 resided in the area in which the special annexation election was held, nevertheless, they were at least de facto registrars during the time they served as such, and in the absence of any evidence that the result of the election was affected thereby, their appointments would be deemed irregularities but insufficient to void the election. McPherson v. City Council of Burlington, 249 N.C. 569, 107 S.E.2d 147 (1959).

Cited in United States v. McLean, 808 F.2d 1044 (4th Cir. 1987).

OPINIONS OF ATTORNEY GENERAL

Special Registration Commissioners. — Under Session Laws 1985, c. 387, each county is required to appoint at least one special registration commissioner per 2,500 residents from each political party (Democrat and Republican). However, no county is required to appoint more than 100 special registration commissioners from each political party, and each county must appoint at least five from each party. See opinion of Attorney General to Mr. Alex K. Brock, Executive Secretary-Director (now the Executive Director), State Board of Elections, 55 N.C.A.G. 5 (1985).

County election boards may appoint special registration commissioners in numbers exceeding statutory requirements. See opinion of Attorney General to Mr. Alex K. Brock, Executive Secretary-Director (now the Executive Director), State Board of Elections, 55 N.C.A.G. 5 (1985).

§ 163-41.1. Certain relatives prohibited from serving together.

(a) The following categories of relatives are prohibited from serving as precinct officials of the same precinct: spouse, child, spouse of a child, sister or brother.

(b) No precinct official who is the wife, husband, mother, father, son, daughter, brother or sister of any candidate for nomination or election may serve as precinct official during any primary or election in which such candidate participates. The county board of elections shall temporarily disqualify any such official for the specific primary or election involved and shall have authority to appoint a substitute official, from the same political party, to serve only during the primary or election at which such conflict exists. (1975, c. 745; 1979, c. 411, s. 2.)

§ 163-41.2. Discharge of precinct official unlawful.

(a) No employer may discharge or demote any employee because the employee has been appointed as a precinct official and is serving as a precinct official on election day or canvass day.

(b) An employee discharged or demoted in violation of this section shall be entitled to be reinstated to that employee's former position. The burden of proof shall be upon the employee.

(c) The statute of limitations for actions under this section shall be one year pursuant to G.S. 1-54.

(d) This section does not apply unless the employee provides the employer with not less than 30 days written notice, before the date the leave is to begin, of the employee's intention to take leave to serve as a precinct official.

(e) As used in this section, "precinct official" has the same meaning as in G.S. 163-41(a). (2001-169, s. 1.)

§ 163-42. Assistants at polls; appointment; term of office; qualifications; oath of office.

Each county and municipal board of elections is authorized, in its discretion, to appoint two or more assistants for each precinct to aid the chief judge and judges. Not more than two assistants shall be appointed in precincts having 500 or less registered voters. Assistants shall be qualified voters of the county in which the precinct is located. When the board of elections determines that assistants are needed in a precinct an equal number shall be appointed from different political parties, unless the requirement as to party affiliation cannot be met because of an insufficient number of voters of different political parties within the county.

In the discretion of the county board of elections, a precinct assistant may serve less than the full day prescribed for chief judges and judges in G.S. 163-47(a).

The chairman of each political party in the county shall have the right to recommend from three to 10 registered voters in each precinct for appointment as precinct assistants in that precinct. If the recommendations are received by it no later than the thirtieth day prior to the primary or election, the board shall make appointments of the precinct assistants for each precinct from the names thus recommended. If the recommendations of the party chairs for precinct assistant in a precinct are insufficient, the county board of elections by unanimous vote of all of its members may name to serve as precinct assistant in that precinct registered voters in that precinct who were not recommended by the party chairs. If, after diligently seeking to fill the positions with registered voters of the precinct, the county board still has an insufficient number of precinct assistants for the precinct, the county board by unanimous vote of all of its members may appoint to the positions registered voters in other precincts in the same county who meet the qualifications other than residence to be precinct officials in the precinct. In making its appointments, the county board shall assure, wherever possible, that no precinct has precinct officials all of whom are registered with the same party. In no instance shall the county board appoint nonresidents of the precinct to a majority of the positions as precinct assistant in a precinct.

In addition, a county board of elections by unanimous vote of all of its members may appoint any registered voter in the county as emergency election-day assistant, as long as that voter is otherwise qualified to be a precinct official. The State Board of Elections shall determine for each election the number of emergency election-day assistants each county may have, based on population, expected turnout, and complexity of election duties. The county board by unanimous vote of all of its members may assign emergency election-day assistants on the day of the election to any precinct in the county where the number of precinct officials is insufficient because of an emergency occurring within 48 hours of the opening of the polls that prevents an appointed precinct official from serving. A person appointed to serve as emergency election-day assistant shall be trained and paid like other precinct assistants in accordance with G.S. 163-46. A county board of elections shall apportion the appointments as emergency election-day assistant among registrants of each political party so as to make possible the staffing of each precinct with officials of more than one party, and the county board shall make assignments so that no precinct has precinct officials all of whom are registered with the same party.

Before entering upon the duties of the office, each assistant shall take the oath prescribed in G.S. 163-41(a) to be administered by the chief judge of the precinct for which the assistant is appointed. Assistants serve for the particular primary or election for which they are appointed, unless the county board of elections appoints them for a term to expire on the date appointments are to be made pursuant to G.S. 163-41. (1929, c. 164, s. 35; 1933, c. 165, s. 24; 1953, c. 1191, s. 3; 1967, c. 775, s. 1; 1973, c. 793, s. 95; c. 1359, ss. 1-3; 1975, c. 19, s. 67; 1977, c. 95, ss. 1, 2; 1981, c. 954, s. 3; 1983, c. 617, s. 4; 1985, c. 563, ss. 8, 8.1; 1993 (Reg. Sess., 1994), c. 762, s. 17; 1995 (Reg. Sess., 1996), c. 554, s. 1; c. 734, s. 2.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 61, effective January 1, 1995, provides: "Any person who on December 31, 1994, was a registrar under G.S. 163-41 shall be a chief judge under G.S. 163-41."

OPINIONS OF ATTORNEY GENERAL

Appointment of Assistants in Each Precinct. — See opinion of Attorney General to Mr. Alex Brock, Executive Secretary, State Board of Elections, 40 N.C.A.G. 291 (1970).

§ 163-42.1. Student election assistants.

A student of at least 17 years of age at the time of any election or primary in which the student works shall be eligible to be appointed as a student election assistant. To be eligible a student must have all the following qualifications:

(1) Be a United States citizen.
(2) Be a resident of the county in which the student is appointed.
(3) Be enrolled in a secondary educational institution, including a home school as defined in G.S. 115C-563(a), with an exemplary academic record as determined by that institution.
(4) Be recommended by the principal or director of the secondary educational institution in which the student is enrolled.
(5) Have the consent of a parent, legal custodian, or guardian.

The county board of elections may appoint student election assistants, following guidelines which shall be issued by the State Board of Elections. No more than two student election assistants shall be assigned to any voting place. Every student election assistant shall work under the direct supervision of the election judges. The student election assistants shall attend the same training as a precinct assistant, shall be sworn in the same manner as a precinct assistant, and shall be compensated in the same manner as precinct assistants. The county board of elections shall prescribe the duties of a student election assistant, following guidelines which shall be issued by the State Board of Elections. Under no circumstances may students ineligible to register to vote be appointed and act as precinct judges or observers in any election. The date of birth of a student election assistant shall be kept confidential. (2003-278, s. 1; 2004-127, s. 17(e).)

§ 163-43. Ballot counters; appointment; qualifications; oath of office.

The county board of elections of any county may authorize the use of precinct ballot counters to aid the chief judges and judges of election in the counting of ballots in any precinct or precincts within the county. The county board of elections shall appoint the ballot counters it authorizes for each precinct or, in its discretion, the board may delegate authority to make such appointments to the precinct chief judge, specifying the number of ballot counters to be appointed for each precinct. A ballot counter must be a resident of the county in which the precinct is located.

No person shall be eligible to serve as a ballot counter, who holds any elective office under the government of the United States, or of the State of North Carolina or any political subdivision thereof.

No person shall be eligible to serve as a ballot counter, who serves as chairman of a state, congressional district, county, or precinct political party or political organization.

No person who is the wife, husband, mother, father, son, daughter, brother or sister of any candidate for nomination or election may serve as ballot counter during any primary or election in which such candidate qualifies.

No person shall be eligible to serve as a ballot counter who is a candidate for nomination or election.

Upon acceptance of appointment, each ballot counter shall appear before the precinct chief judge at the voting place immediately at the close of the polls on the day of the primary or election and take the following oath to be administered by the chief judge:

"I, ______, do solemnly swear (or affirm) that I will support the Constitution of the United States; that I will be faithful and bear true allegiance to the State of North Carolina, and to the constitutional powers and authorities which are or may be established for the government thereof; that I will endeavor to support, maintain and defend the Constitution of said State not inconsistent with the Constitution of the United States; that I will honestly discharge the duties of ballot counter in ______ precinct, ______ County for primary (or election) held this day, and that I will fairly and honestly tabulate the votes cast in said primary (or election); so help me, God."

The names and addresses of all ballot counters serving in any precinct, whether appointed by the county board of elections or by the chief judge, shall be reported by the chief judge to the county board of elections at the county canvass following the primary or election. (1953, c. 843; 1955, c. 800; 1963, c. 303, s. 1; 1967, c. 775, s. 1; 1981, c. 954, s. 5; 1985, c. 563, s. 10.1; 1993 (Reg. Sess., 1994), c. 762, s. 18; 1995 (Reg. Sess., 1996), c. 734, s. 3.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 61, effective January 1, 1995, provides: "Any person who on December 31, 1994, was a registrar under G.S. 163-41 shall be a chief judge under G.S. 163-41."

§ **163-44:** Repealed by Session Laws 1973, c. 793, s. 13.

§ 163-45. Observers; appointment.

The chair of each political party in the county shall have the right to designate two observers to attend each voting place at each primary and election and such observers may, at the option of the designating party chair, be relieved during the day of the primary or election after serving no less than four hours and provided the list required by this section to be filed by each chair contains the names of all persons authorized to represent such chair's political party. Not more than two observers from the same political party shall be permitted in the voting enclosure at any time. This right shall not extend to the chair of a political party during a primary unless that party is participating in the primary. In any election in which an unaffiliated candidate is named on the ballot, the candidate or the candidate's campaign manager shall have the right to appoint two observers for each voting place consistent with the provisions specified herein. Persons appointed as observers must be registered voters of the county for which appointed and must have good moral character. No person who is a candidate on the ballot in a primary or election may serve as an observer or runner in that primary or election. Observers shall take no oath of office.

Individuals authorized to appoint observers must submit in writing to the chief judge of each precinct a signed list of the observers appointed for that precinct. Individuals authorized to appoint observers must, prior to 10:00 A.M. on the fifth day prior to any primary or general election, submit in writing to the chair of the county board of elections two signed copies of a list of observers appointed by them, designating the precinct for which each observer is appointed. Before the opening of the voting place on the day of a primary or general election, the chair shall deliver one copy of the list to the chief judge for each affected precinct. The chair shall retain the other copy. The chair, or the chief judge and judges for each affected precinct, may for good cause reject any appointee and require that another be appointed. The names of any persons appointed in place of those persons rejected shall be furnished in writing to the chief judge of each affected precinct no later than the time for opening the voting place on the day of any primary or general election, either by the chair of the county board of elections or the person making the substitute appointment.

If party chairs appoint observers at one-stop sites under G.S. 163-227.2, those party chairs shall provide a list of the observers appointed before 10:00 A.M. on the fifth day before the observer is to observe.

An observer shall do no electioneering at the voting place, and shall in no manner impede the voting process or interfere or communicate with or observe any voter in casting a ballot, but, subject to these restrictions, the chief judge and judges of elections shall permit the observer to make such observation and take such notes as the observer may desire.

Whether or not the observer attends to the polls for the requisite time provided by this section, each observer shall be entitled to obtain at times specified by the State Board of Elections, but not less than three times during election day with the spacing not less than one hour apart, a list of the persons who have voted in the precinct so far in that election day. Counties that use an “authorization to vote document” instead of poll books may comply with the requirement in the previous sentence by permitting each observer to inspect election records so that the observer may create a list of persons who have voted in the precinct so far that election day; each observer shall be entitled to make the inspection at times specified by the State Board of Elections, but not less than three times during election day with the spacing not less than one hour apart.

Instead of having an observer receive the voting list, the county party chair may send a runner to do so, even if an observer has not been appointed for that precinct. The runner may be the precinct party chair or any person named by the county party chair. Each county party chair using runners in an election shall provide to the county board of elections before 10:00 A.M. on the fifth day before election day a list of the runners to be used. That party chair must notify the chair of the county board of elections or the board chair’s designee of the names of all runners to be used in each precinct before the runner goes to the precinct. The runner may receive a voter list from the precinct on the same schedule as an observer. Whether obtained by observer or runner, each party is entitled to only one voter list at each of the scheduled times. No runner may enter the voting enclosure except when necessary to announce that runner’s presence and to receive the list. The runner must leave immediately after being provided with the list. (1929, c. 164, s. 36; 1953, c. 843; 1955, c. 800; c. 871, s. 7; 1959, c. 616, s. 2; 1963, c. 303, s. 1; 1967, c. 775, s. 1; 1973, c. 793, ss. 14, 94; 1977, c. 453; 1991, c. 727, s. 3; 1993 (Reg. Sess., 1994), c. 762, s. 19; 1995 (Reg. Sess., 1996), c. 688, s. 1; c. 734, s. 4.1; 2005-428, s. 1(a); 2007-391, s. 22; 2008-187, s. 33(a).)

Editor’s Note. — Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 61, effective January 1, 1995, provides: “Any person who on December 31, 1994, was a registrar under G.S. 163-41 shall be a chief judge under G.S. 163-41.”

Session Laws 2007-391, s. 1(c), was amended by Session Laws 2008-198, s. 33(a), to eliminate any confusion as to effective dates of the 2007 act. Session Laws 2007-391, s. 22, which added the third paragraph, and in the last paragraph, added “even if an observer has not been appointed for that precint” at the end of the first sentence, and added the third sentence, is effective August 19, 2007.

OPINIONS OF ATTORNEY GENERAL

Use of Video Cameras and Cellular Telephones by Observers. — Videotaping of voters by observers designated by a political party pursuant to this section is outside their permissible statutory activities and is inconsistent with the right of voters to vote by secret ballot, but the discreet use of cellular phones is permissible. See opinion of Attorney General to Gary O. Bartlett, Executive Secretary-Director (now the Executive Director), State Board of Elections, 1998 N.C.A.G. 43 (10/22/98).

§ 163-46. Compensation of precinct officials and assistants.

The precinct chief judge shall be paid the state minimum wage for his services on the day of a primary, special or general election. Judges of election shall each be paid the state minimum wage for their services on the day of a primary, special or general election. Assistants, appointed pursuant to G.S. 163-42, shall each be paid the state minimum wage for their services on the day of a primary, special or general election. Ballot counters appointed pursuant to G.S. 163-43 shall be paid a minimum of five dollars ($5.00) for their services on the day of a primary, general or special election. If an election official is being paid an hourly wage or daily fee on an election day and the official is performing additional election duties away from the assigned precinct voting place, the official shall not be entitled to any additional monies for those services, except for reimbursable expenses in performing the services.

If the county board of elections requests the presence of a chief judge or judge at the county canvass, the chief judge shall be paid the sum of twenty dollars ($20.00) per day and judges shall be paid the sum of fifteen dollars ($15.00) per day. If the county board of elections requests a precinct official, including chief judge or judge, to personally deliver official ballots or other official materials to the county board of elections, the precinct official shall be paid the sum of twenty dollars ($20.00) per day and judges shall be paid the sum of fifteen dollars ($15.00) per day.

The chairman of the county board of elections, along with the director of elections, shall conduct an instructional meeting prior to each primary and general election which shall be attended by each chief judge and judge of election, unless excused by the chairman, and such precinct election officials shall be paid the sum of fifteen dollars ($15.00) for attending the instructional meetings required by this section.

In its discretion, the board of county commissioners of any county may provide funds with which the county board of elections may pay chief judges, judges, assistants, and ballot counters in addition to the amounts specified in this section. Observers shall be paid no compensation for their services.

A person appointed to serve as chief judge, or judge of election when a previously appointed chief judge or judge fails to appear at the voting place or leaves his post on the day of an election or primary shall be paid the same compensation as the chief judge or judge appointed prior to that date.

For the purpose of this section, the phrase "the State minimum wage," means the amount set by G.S. 95-25.3(a). For the purpose of this section, no other provision of Article 2A of Chapter 95 of the General Statutes shall apply. (1901, c. 89, s. 42; Rev., s. 4311; C.S., s. 5932; 1927, c. 260, s. 2; 1931, c. 254, s. 16; 1933, c. 165, s. 3; 1935, c. 421, s. 1; 1939, c. 264, s. 1; 1941, c. 304, s. 1; 1945, c. 758, s. 3; 1947, c. 505, s. 11; 1951, c. 1009, s. 1; 1953, c. 843; 1955, c. 800; 1957, c. 182, s. 2; 1963, c. 303, s. 1; 1967, c. 775, s. 1; 1969, c. 24; 1971, c. 604; 1973, c. 793, ss. 15, 16, 94; 1977, c. 626, s. 1; 1979, c. 403; 1981, c. 796, ss. 1, 2; 1993 (Reg. Sess., 1994), c. 762, s. 20; 1995, c. 243, s. 1; 2001-398, s. 5; 2003-278, s. 3.)

Local Modification. — Richmond: 1969, c. 507.

Local Modification to Former § 163-20. — Beaufort: 1941, c. 304, s. 2; Bladen: 1935, c. 421; Chowan: 1941, c. 304, s. 2; Hyde: 1935, c. 421; 1941, c. 304, s. 2; Lincoln: 1963, c. 874; Mecklenburg: 1937, c. 382; Person: 1941, c. 304, s. 2; Wake: 1935, c. 421; Watauga: 1939, c. 264.

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 61, effective January 1, 1995, provides: "Any person who on December 31, 1994, was a registrar under G.S. 163-41 shall be a chief judge under G.S. 163-41."

Session Laws 2001-398, s. 16, provides: "The State Board of Elections shall adopt temporary rules pursuant to G.S. 150B-21.1(a5) prior to the first election following the effective date of this act."

§ 163-47. Powers and duties of chief judges and judges of election.

(a) The chief judges and judges of election shall conduct the primaries and elections within their respective precincts fairly and impartially, and they shall enforce peace and good order in and about the place of registration and voting. On the day of each primary and general and special election, the precinct chief judge and judges shall remain at the voting place from the time fixed by law for the commencement of their duties there until they have completed all those duties, and they shall not separate nor shall any one of them leave the voting place except for unavoidable necessity.

(b) On the day of an election or primary, the chief judge shall have charge of the registration list for the purpose of passing on the registration of persons who present themselves at the polls to vote.

(c) The chief judge and judges shall hear challenges of the right of registered voters to vote as provided by law.

(d) The chief judge and judges shall count the votes cast in their precincts and make such returns of the same as is provided by law.

(e) The chief judge and judges shall make such an accounting to the chairman of the county board of elections for ballots and for election supplies as is required by law.

(f) The chief judge and judges of election shall act by a majority vote on all matters not assigned specifically by law to the chief judge or to a judge. (1901, c. 89, s. 41; Rev., s. 4312; C.S., s. 5933; 1933, c. 165, s. 3; 1939, c. 263, s. 31/2; 1947, c. 505, s. 3; 1967, c. 775, s. 1; 1973, c. 793, s. 17; 1993 (Reg. Sess., 1994), c. 762, s. 4.)

Local Modification. — Orange: 1999-255, s. 6.

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 61, effective January 1, 1995, provides: "Any person who on December 31, 1994, was a registrar under G.S. 163-41 shall be a chief judge under G.S. 163-41."

CASE NOTES

Absence of Judges. — Under former statute, in the absence of fraud it was not material to the validity of an election that the persons appointed judges to hold it electioneered or were absent from their posts at different times during the day. Wilson v. Peterson, 69 N.C. 113 (1873).

§ 163-48. Maintenance of order at place of registration and voting.

The chief judge and judges of election shall enforce peace and good order in and about the place of registration and voting. They shall especially keep open and unobstructed the place at which voters or persons seeking to register or vote have access to the place of registration and voting. They shall prevent and stop improper practices and attempts to obstruct, intimidate, or interfere with any person in registering or voting. They shall protect challenger and witnesses against molestation and violence in the performance of their duties, and they may eject from the place of registration or voting any challenger or witness for violation of any provisions of the election laws. They shall prevent riots, violence, tumult, or disorder.

In the discharge of the duties prescribed in the preceding paragraph of this section, the chief judge and judges may call upon the sheriff, the police, or other peace officers to aid them in enforcing the law. They may order the arrest of any person violating any provision of the election laws, but such arrest shall not prevent the person arrested from registering or voting if he is entitled to do so. The sheriff, police officers, and other officers of the peace shall immediately obey and aid in the enforcement of any lawful order made by the precinct election officials in the enforcement of the election laws. The chief judge and judges of election of any precinct, or any two of such election officials, shall have the authority to deputize any person or persons as police officers to aid in maintaining order at the place of registration or voting. (1901, c. 89, s. 72; Rev., s. 4376; C.S., s. 5977; 1955, c. 871, s. 4; 1967, c. 775, s. 1; 1993 (Reg. Sess., 1994), c. 762, s. 21.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 61, effective January 1, 1995, provides: "Any person who on December 31, 1994, was a registrar under G.S. 163-41 shall be a chief judge under G.S. 163-41."

§§ 163-49 through 163-53: Reserved for future codification purposes.

SUBCHAPTER III. QUALIFYING TO VOTE.

Article 6.

Qualifications of Voters.

§ 163-54. Registration a prerequisite to voting.

Only such persons as are legally registered shall be entitled to vote in any primary or election held under this Chapter. (1901, c. 89, s. 12; Rev., s. 4317; C.S., s. 5938; 1967, c. 775, s. 1.)

CASE NOTES

Statute requiring registration must be complied with to constitute one a qualified voter. Smith v. City of Wilmington, 98 N.C. 343, 4 S.E. 489 (1887); Pace v. Raleigh, 140 N.C. 65, 52 S.E. 277 (1905).

When duly made, registration is prima facie evidence of the right to vote. State ex rel. DeBerry v. Nicholson, 102 N.C. 465, 9 S.E. 545 (1889); State ex rel. Hampton v. Waldrop, 104 N.C. 453, 10 S.E. 694 (1889).

§ 163-55. Qualifications to vote; exclusion from electoral franchise.

(a) Residence Period for State Elections. — Every person born in the United States, and every person who has been naturalized, and who shall have resided in the State of North Carolina and in the precinct, ward, or other election district in which the person offers to vote for 30 days next preceding an election, shall, if otherwise qualified as prescribed in this Chapter, be qualified to vote in any election held in this State. Removal from one precinct, ward, or other election district to another in this State shall not operate to deprive any person of the right to vote in the precinct, ward, or other election district from which he has removed until 30 days after the person's removal.

Except as otherwise provided in this Chapter, the following classes of persons shall not be allowed to vote in this State:

(1) Persons under 18 years of age.

(2) Any person adjudged guilty of a felony against this State or the United States, or adjudged guilty of a felony in another state that also would be a felony if it had been committed in this State, unless that person shall be first restored to the rights of citizenship in the manner prescribed by law.

(b) Precincts and Election Districts. — For purposes of qualification to vote in an election, a person's residence in a precinct, ward, or election district shall be determined in accordance with G.S. 163-57. When an election district encompasses more than one precinct, then for purposes of those offices to be elected from that election district a person shall also be deemed to be resident in the election district which includes the precinct in which that person resides. An election district may include a portion of a county, an entire county, a portion of the State, or the entire State. When a precinct has been divided among two or more election districts for purposes of elections to certain offices, then with respect to elections to those offices a person shall be deemed to be resident in only that election district which includes the area of the precinct in which that person resides. Qualification to vote in referenda shall be treated the same as qualification for elections to fill offices.

(c) Elections. — For purposes of the 30-day residence requirement to vote in an election in subsection (a) of this section, the term "election" means the day of the primary, second primary, general election, special election, or referendum. (19th amendt. U.S. Const.; amendt. State Const., 1920; 1901, c. 89, ss. 14, 15; Rev., ss. 4315, 4316; C.S., ss. 5936, 5937; Ex. Sess. 1920, c. 18, s. 1; 1933, c. 165, s. 4; 1945, c. 758, s. 7; 1955, c. 871, s. 2; 1967, c. 775, s. 1; 1971, c. 1231, s. 1; 1973, c. 793, s. 18; 2005-2, s. 2; 2008-150, s. 5(a); 2009-541, s. 5.)

Cross References. — As to restoration of citizenship, see Chapter 13.

Editor's Note. — Session Laws 2005-2, s. 1, provides: "The General Assembly makes the following findings:

"(1) In 2003, the General Assembly enacted S.L. 2003-226, which contained a number of changes to the State's election laws, designed in part to implement provisions of the federal Help America Vote Act of 2002 (HAVA) in such a way as to avoid having separate laws for federal and State elections and otherwise to encourage and expand the exercise of the franchise. One such enactment was codified as G.S. 163-166.11, which spells out procedures for the casting of provisional official ballots. A voter's eligibility to cast a provisional official ballot depends on being a registered voter in the jurisdiction in which the voter seeks to vote. The 'jurisdiction' in which a voter in North Carolina registers to vote is the county. This is the unmistakable meaning of G.S. 163-82.1 and has not heretofore been challenged or questioned.

"(2) In S.L. 2003-226, the General Assembly expressly stated its intent to 'ensure that the State of North Carolina has a system for all elections that complies with the requirements for federal elections set forth in' HAVA. It was then and is now the intent of the General Assembly that the provisions of HAVA be broadly construed and that they be implemented in North Carolina in a manner to ensure a unified system of federal and State elections in compliance with HAVA.

"(3) When it enacted G.S. 163-166.11, it was then and is now the intent of the General Assembly that any individual who is a registered voter in a county but whose name does not appear on the official list of registered voters at the voting place at which that voter appears be allowed to cast a provisional official ballot.

"(4) When it enacted G.S. 163-166.11, it was then and is now the intent of the General Assembly that all provisional ballots be counted for all those ballot items for which a voter was eligible to vote. In enacting G.S. 163-166.11 in 2003, the General Assembly was fully mindful of and intended to reinforce the fact that prior statutory enactments in 2001 had already recognized the right of a voter to cast a provisional ballot and to have that ballot counted for all items for which that voter was eligible to vote. See G.S. 163-182.2(a)(4). Even prior to 2003, the General Statutes recognized the right of a registered voter to cast a provisional ballot and to have that ballot counted for all those items for which the voter was duly qualified to vote.

"(5) When it enacted G.S. 163-166.11, it was then and is now the intent of the General Assembly that the State Board of Elections act in a manner that would result in a single system for federal and State elections, rather than one system for federal elections and another for State elections. In enacting G.S. 163-166.11 in 2003, the General Assembly was mindful of and intended to reinforce the fact that it had already provided in 2001 in G.S. 163-166.7(c)(6) that the State Board of Elections would adopt rules to ensure that voters 'not clearly eligible to vote in the precinct but who seek to vote there are given proper assistance in voting a provisional official ballot or guidance to another voting place where they are eligible to vote.' The possibility of out-of-precinct provisional voting was thus recognized by the General Assembly as early as 2001.

"(6) The law regarding provisional ballots does not rest solely on G.S. 163-82.15(e), which addresses the narrow circumstance of 'Unreported Move[s] to Another Precinct Within the County.' Though that statute mentions two ways in which precinct officials may process registrants, it is not exclusive. G.S. 163-82.15(e) is part of the statutory Article on voter registration, rather than on voting, and should be read in that context. It was enacted in 1994, before provisional voting was codified in North Carolina. The enactment of G.S. 163-166.7(c)(6) in 2001 is the authority giving the State Board of Elections the duty to apply the broader laws of provisional voting, including G.S. 163-166.11. Any reading of G.S. 163-166.11 that would limit that statute's provisions to the narrower class of voting situations governed by the earlier enacted provisions of G.S. 163-82.15(e) would ignore the long-standing principle of statutory construction that statutes relating to the same subject matter should be reconciled in such a manner as to effect the scope and meaning of the later enactment and read in a manner that would tend most completely to secure the rights of all persons affected by the legislation. It was then and is now the intent of the General Assembly in enacting G.S. 163-166.11 to expand the exercise of the franchise, not to limit it or to restrict it by the terms of earlier and narrower enactments.

"(7) The State Board of Elections and all county boards of elections were following the intent of the General Assembly when they administered G.S. 163-166.11 and the earlier enacted statutes in G.S. 163-182.2(a)(4) and G.S. 163-166.7(c)(6) to count in whole or in part ballots cast by registered voters in the county who voted outside their resident precincts in the July 20, 2004, Primary, the August 17, 2004, Second Primary, and the November 2, 2004, General Election.

"(8) Several hundred thousand registered North Carolina voters cast ballots outside their resident precincts during the one-stop absentee balloting ('early voting') period pursuant to G.S. 163-227.2 prior to the General Election in November 2004, during the two primaries in 2004, and then on the date of the General Election in November 2004. There is no statutory basis upon which to distinguish out-of-precinct voting that occurred on the date of the General Election in November 2004 from out-of-precinct voting that occurred during the First and Second Primaries in 2004 or that occurred during the period of one-stop absentee ('early') voting prior to the General Election of 2004.

"(9) The General Assembly takes note of the fact that of those registered voters who happened to vote provisional ballots outside their resident precincts on the day of the November 2004 General Election, a disproportionately high percentage were African-American.

"(10) The General Assembly notes that in addition to provisional voting on the date of the General Election pursuant to G.S. 163-166.11, the General Statutes abound with provisions that allow voters to cast votes outside their resident precincts:

"a. Civilian absentee voting by mail, G.S. 163-226.

"b. Military and overseas citizens absentee voting, G.S. 163-245.

"c. One-stop absentee (early) voting, G.S. 163-227.2.

"d. Voting in a voting place on a lot adjacent to the precinct, G.S. 163-128.

"e. Temporarily voting in an adjacent precinct, G.S. 163-128.

"f. Voting in a precinct outside the voting place where no suitable facility exists inside it or adjacent to it, G.S. 163-130.1.

"g. Voting at a central location in the county by voters who no longer live in the precinct where their name is listed on registration lists, G.S. 163-82.15(e).

"All those provisions were enacted prior to G.S. 163-166.11. Most were enacted decades before. As many as 1,000,000 people in North Carolina may have cast out-of-precinct votes using all out-of-precinct methods in 2004.

"(11) It would be fundamentally unfair to discount the provisional official ballots cast by properly registered and duly qualified voters voting and acting in reliance on the statutes adopted by the General Assembly and administered by the State Board of Elections in accordance with its intent. Moreover, to subtract such ballots only from the count for the General Election of 2004 without also doing so for the First or Second Primaries of 2004 would create a bizarre result in which out-of-precinct provisional ballots are allowed to count for some elections but not others. The General Assembly did not and does not now intend to create such a system.

"(12) Even if the State Board of Elections had misread the language and intent of the General Statutes concerning provisional voting, which it did not do, it has been the long-standing and hitherto unquestioned law of this State, confirmed by prior decisions of the North Carolina Supreme Court, that an innocent voter's ballot shall not be disqualified because of errors or omissions by elections officials. This fundamental principle was adopted by Justice Samuel J. Ervin Jr. in the case of *Owens v. Chaplin,* 228 N.C. 705 (1948) using the following language:

> 'We can conceive of no principle which permits the disfranchisement of innocent voters for the mistake, or even the willful misconduct, of election officials in performing the duty cast upon them. The object of elections is to ascertain the popular will, and not to thwart it. The object of election laws is to secure the rights of duly-qualified electors, and not to defeat them.'

"See also *Appeal of Judicial Review by Republican Candidates for Election in Clay County,* 45 N.C. App. 556 (1980).

"The General Assembly endorses and reaffirms this fundamental principle.

"(13) It is the will of the people, as expressed through their representatives in the General Assembly, that the validity of the primaries and elections conducted in 2004 and certified by a county board of elections or the State Board of Elections, not be called into question by retroactively revisiting the propriety of provisional ballots cast by duly registered voters of a county.

"(14) To avoid all doubt and remove any possible future question as to the General Assembly's plain intent with respect to the subject of provisional voting, and to avoid misinterpretation of any other statute, the General Assembly enacts Sections 2 through 5 of this act."

Effect of Amendments. — Session Laws 2008-150, s. 5(a), effective August 2, 2008, added subsection (c).

Session Laws 2009-541, s. 5, effective August 28, 2009, substituted "Except as otherwise provided in this Chapter" for "Except as provided in G.S. 163-59" at the beginning of the second paragraph of subsection (a).

Legal Periodicals. — For note on the constitutionality of denying voting rights to convicted criminals, see 50 N.C.L. Rev. 903 (1972).

For comment, "State Durational Residence Requirements as a Violation of the Equal Protection Clause," see 3 N.C. Cent. L.J. 233 (1972).

For survey of 1972 case law on student suffrage, see 51 N.C.L. Rev. 1060 (1973).

CASE NOTES

A state may constitutionally continue the "historic exclusion" of felons from the franchise without regard to whether such exclusion can pass muster under the equal protection clause, because U.S. Const., Amend. XIV expressly allows the exclusion of felons from the franchise without reduction of representation. Fincher v. Scott, 352 F. Supp. 117 (M.D.N.C. 1972), aff'd, 411 U.S. 961, 93 S. Ct. 2151, 36 L. Ed. 2d 681 (1973).

Argument that denial of right to vote for being a convicted felon is cruel and unusual punishment is without merit. Fincher v. Scott, 352 F. Supp. 117 (M.D.N.C. 1972), aff'd, 411 U.S. 961, 93 S. Ct. 2151, 36 L. Ed. 2d 681 (1973).

Former One-Year Residency Requirement Unconstitutional. — The former one-year durational residency requirement necessary in order to register to vote in a local North Carolina election was violative of the equal protection clause of U.S. Const., Amend. XIV. Andrews v. Cody, 327 F. Supp. 793 (M.D.N.C. 1971), aff'd, 405 U.S. 1034, 92 S. Ct. 1306, 31 L. Ed. 2d 576 (1972).

As to effect of conviction of infamous crime, see In re Reid, 119 N.C. 641, 26 S.E. 337 (1896).

As to imprisonment for misdemeanor, see People ex rel. Boyer v. Teague, 106 N.C. 576, 11 S.E. 665 (1890).

The General Assembly cannot in any way change the constitutional qualifications of voters in state, county, township, city or town elections. People ex rel. Van Bokkelen v. Canaday, 73 N.C. 198, 21 Am. R. 465 (1875).

Qualifications for voting in a municipal election are the same as in a general election. People ex rel. Van Bokkelen v. Canaday, 73 N.C. 198, 21 Am. R. 465 (1875); State ex rel. Echerd v. Viele, 164 N.C. 122, 80 S.E. 408 (1913); Gower v. Carter, 194 N.C. 293, 139 S.E. 604 (1927).

Residence of University Student for Voting Purposes. — The fact that one is a student in a university does not entitle him to vote where the university is situated, nor does it of itself prevent his voting there. He may vote at the seat of the university if he has his residence there and is otherwise qualified. Hall v. Wake County Bd. of Elections, 280 N.C. 600, 187 S.E.2d 52 (1972).

A student who intends to remain in his college community only until graduation should not for that reason alone be denied the right to vote in that community. Insofar as Hall v. Wake

County Bd. of Elections, 280 N.C. 600, 187 S.E.2d 52 (1972), may be interpreted to the contrary, it is modified accordingly. Lloyd v. Babb, 296 N.C. 416, 251 S.E.2d 843 (1979).

Where X was under age of majority and Y was a citizen of Syria, not of North Carolina, they were disqualified to vote in an election for mayor. State ex rel. Gower v. Carter, 195 N.C. 697, 143 S.E. 513 (1928).

Provisional Ballots Cast in Incorrect Precinct. — North Carolina Board of Elections, pursuant to G.S. 163-82.15(e), improperly counted provisional ballots cast by voters on election day in a general election at precincts other than the voter's correct precinct of residence. James v. Bartlett, 359 N.C. 260, 607 S.E.2d 638, 2005 N.C. LEXIS 146 (2005).

Cited in Glover v. North Carolina, 301 F. Supp. 364 (E.D.N.C. 1969); Broughton v. North Carolina, 717 F.2d 147 (4th Cir. 1983); United States v. McLean, 904 F.2d 216 (4th Cir. 1990).

§ 163-56: Repealed by Session Laws 1973, c. 793, s. 19.

§ 163-57. Residence defined for registration and voting.

All election officials in determining the residence of a person offering to register or vote, shall be governed by the following rules, so far as they may apply:

(1) That place shall be considered the residence of a person in which that person's habitation is fixed, and to which, whenever that person is absent, that person has the intention of returning.

a. In the event that a person's habitation is divided by a State, county, municipal, precinct, ward, or other election district, then the location of the bedroom or usual sleeping area for that person with respect to the location of the boundary line at issue shall be controlling as the residency of that person.

b. If the person disputes the determination of residency, the person may request a hearing before the county board of elections making the determination of residency. The procedures for notice of hearing and the conduct of the hearing shall be as provided in G.S. 163-86. The presentation of an accurate and current determination of a person's residence and the boundary line at issue by map or other means available shall constitute prima facie evidence of the geographic location of the residence of that person.

c. In the event that a person's residence is not a traditional residence associated with real property, then the location of the usual sleeping area for that person shall be controlling as to the residency of that person. Residence shall be broadly construed to provide all persons with the opportunity to register and to vote, including stating a mailing address different from residence address.

(2) A person shall not be considered to have lost that person's residence if that person leaves home and goes into another state, county, municipality, precinct, ward, or other election district of this State, for temporary purposes only, with the intention of returning.

(3) A person shall not be considered to have gained a residence in any county, municipality, precinct, ward, or other election district of this State, into which that person comes for temporary purposes only, without the intention of making that county, municipality, precinct, ward, or other election district a permanent place of abode.

(4) If a person removes to another state or county, municipality, precinct, ward, or other election district within this State, with the intention of making that state, county, municipality, precinct, ward, or other election district a permanent residence, that person shall be considered to have lost residence in the state, county, municipality, precinct, ward, or other election district from which that person has removed.

(5) If a person removes to another state or county, municipality, precinct, ward, or other election district within this State, with the intention of remaining there an indefinite time and making that state, county, municipality, precinct, ward, or other election district that person's place of residence, that person shall be considered to have lost that person's place of residence in this State, county, municipality, precinct, ward, or other election district from which that person has removed, notwithstanding that person may entertain an intention to return at some future time.

(6) If a person goes into another state, county, municipality, precinct, ward, or other election district, or into the District of Columbia, and while there exercises the right of a citizen by voting in an election, that person shall be considered to have lost residence in that State, county, municipality, precinct, ward, or other election district from which that person removed.

(7) School teachers who remove to a county, municipality, precinct, ward, or other election district in this State for the purpose of teaching in the schools of that county temporarily and with the intention or expectation of returning during vacation periods to live where their parents or other relatives reside in this State and who do not have the intention of becoming residents of the county, municipality, precinct, ward, or other election district to which they have moved to teach, for purposes of registration and voting shall be considered residents of the county, municipality, precinct, ward, or other election district in which their parents or other relatives reside.

(8) If a person removes to the District of Columbia or other federal territory to engage in the government service, that person shall not be considered to have lost residence in this State during the period of such service unless that person votes in the place to which the person removed, and the place at which that person resided at the time of that person's removal shall be considered and held to be the place of residence.

(9) If a person removes to a county, municipality, precinct, ward, or other election district to engage in the service of the State government, that person shall not be considered to have lost residence in the county, municipality, precinct, ward, or other election district from which that person removed, unless that person votes in the place to which the person removed, and the place at which that person resided at the time of that person's removal shall be considered and held to be the place of residence.

(9a) The establishment of a secondary residence by an elected official outside the district of the elected official shall not constitute prima facie evidence of a change of residence.

(10) For the purpose of voting a spouse shall be eligible to establish a separate domicile.

(11) So long as a student intends to make the student's home in the community where the student is physically present for the purpose of attending school while the student is attending school and has no intent to return to the student's former home after graduation, the student may claim the college community as the student's domicile. The student need not also intend to stay in the college community beyond graduation in order to establish domicile there. This subdivision is intended to codify the case law. (19th amendt. U.S. Const.; amendt. State Const., 1920; 1901, c. 89, s. 15; Rev., s. 4316; C.S., s. 5937; Ex. Sess. 1920, c. 18, s. 1; 1933, c. 165, s. 4; 1945, c. 758, s. 7; 1955, c. 871, s. 2; 1967, c. 775, s. 1; 1981, c. 184; 1991, c. 727, s. 5.1;

1993 (Reg. Sess., 1994), c. 762, s. 22; 2001-316, s. 1; 2005-428, s. 3(b); 2006-262, s. 2.1.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 61, effective January 1, 1995, provides: "Any person who on December 31, 1994, was a registrar under G.S. 163-41 shall be a chief judge under G.S. 163-41."

Session Laws 2006-262, s. 5, provides: "Section 4 of this act becomes effective January 1, 2007. The remainder of this act is effective when it becomes law, except that any criminal penalty resulting from this act becomes effective October 1, 2006. Prosecutions for offenses committed before October 1, 2006, are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Legal Periodicals. — For survey of 1972 case law on student suffrage, see 51 N.C.L. Rev. 1060 (1973).

CASE NOTES

I. In General.
II. Residence of Students.

I. IN GENERAL.

This section defines residence for registration and voting, and incorporates the caselaw on the subject of domicile. Hall v. Wake County Bd. of Elections, 280 N.C. 600, 187 S.E.2d 52 (1972).

"Residence" Is Synonymous with Domicile. — Residence as a prerequisite to the right to vote in this State, within the purview of N.C. Const., Art. VI, § 2, is synonymous with domicile, which denotes a permanent dwelling place to which a person, when absent, intends to return. State ex rel. Owens v. Chaplin, 228 N.C. 705, 47 S.E.2d 12, rehearing denied, 229 N.C. 797, 48 S.E.2d 37 (1948). See also, State ex rel. Hannon v. Grizzard, 89 N.C. 115 (1883).

"Residence," when used in the election law, means domicile. Hall v. Wake County Bd. of Elections, 280 N.C. 600, 187 S.E.2d 52 (1972).

Meaning of "Residence" Is Judicial Question. — The meaning of the term "residence" for voting purposes, as used in N.C. Const., Art. VI, § 2, is a judicial question, and cannot be made a matter of legislative construction, because the legislature cannot prescribe any qualifications for voters different from those found in the organic law. State ex rel. Owens v. Chaplin, 228 N.C. 705, 47 S.E.2d 12, rehearing denied, 229 N.C. 797, 48 S.E.2d 37 (1948).

Test of Domicile. — A person has domicile for voting purposes at a given place if he (1) has abandoned his prior home, (2) has a present intention to make that place his home, and (3) has no intention presently to leave that place. Lloyd v. Babb, 296 N.C. 416, 251 S.E.2d 843 (1979).

Evidence of Domicile. — A person's testimony regarding his intention with respect to acquiring a new domicile or retaining his old one is competent evidence, but it is not conclusive of the question. All of the surrounding circumstances and the conduct of the person must be taken into consideration. Hall v. Wake County Bd. of Elections, 280 N.C. 600, 187 S.E.2d 52 (1972).

Domicile can be proved by various kinds of direct and circumstantial evidence. Lloyd v. Babb, 296 N.C. 416, 251 S.E.2d 843 (1979).

As to evidence of length of residence and domicile, see People ex rel. Boyer v. Teague, 106 N.C. 576, 11 S.E. 665 (1890).

Right of teachers in a locality to vote therein depends on whether they were residents therein only for the scholastic year. A question is incompetent that asks them of their intention to make the locality their legal residence, since the answer involves a question of law as to what constitutes a sufficient legal residence to qualify them to vote. State ex rel. Gower v. Carter, 195 N.C. 697, 143 S.E. 513 (1928).

Indefiniteness of intention to return to county of domicile is insufficient to establish loss of voting residence, where no other has been acquired or intended. State ex rel. Owens v. Chaplin, 229 N.C. 797, 48 S.E.2d 37 (1948).

Evidence Held Insufficient to Show Loss of Domicile. — Uncontroverted testimony which disclosed that electors whose votes were challenged on the ground of nonresidence left their homes and moved to another state or to another county in this State for temporary purposes, but that at no time did they intend to make the other state or the other county in this State a permanent home, was insufficient to support a finding that they had lost their domicile in the county for the purpose of voting. State ex rel. Owens v. Chaplin, 228 N.C. 705, 47 S.E.2d 12, rehearing denied, 229 N.C. 797, 48 S.E.2d 37 (1948).

Domicile Not Properly Established. — Board of Elections erred in determining that defendant was a qualified candidate in an election because he was not legally registered to vote in the ward as he had not properly established domicile. Farnsworth v. Jones, 114 N.C. App. 182, 441 S.E.2d 597 (1994).

Applied in Webb v. Nolan, 361 F. Supp. 418 (M.D.N.C. 1972).

II. RESIDENCE OF STUDENTS.

There is a rebuttable presumption that a student who leaves his parents' home for college is not a resident for voting purposes of the place where the college is located. The effect of this presumption is to place the burden of going forward with some proof of residence on a student seeking to register to vote. As with other persons, the student has the burden of persuasion on the issue. Lloyd v. Babb, 296 N.C. 416, 251 S.E.2d 843 (1979).

The presumption is that a student who leaves his parents' home to enter college is not domiciled in the college town to which he goes; however, this presumption is rebuttable. Hall v. Wake County Bd. of Elections, 280 N.C. 600, 187 S.E.2d 52 (1972).

Rebuttable presumption regarding students' domicile does not treat students differently from the rest of the population, but is merely a specialized statement of the general rule that the burden of proof is on one alleging a change in domicile. Lloyd v. Babb, 296 N.C. 416, 251 S.E.2d 843 (1979).

And there is no denial of equal protection in the use of the rebuttable presumption that a student who leaves his parents' home to go to college is not domiciled in the place where the college is located. Lloyd v. Babb, 296 N.C. 416, 251 S.E.2d 843 (1979).

Student need not intend to stay in college community beyond graduation to establish domicile there. — A student who intends to remain in college community only until graduation should not for that reason alone be denied the right to vote in that community. Insofar as Hall v. Wake County Bd. of Elections, 280 N.C. 600, 187 S.E.2d 52 (1972), may be interpreted to the contrary, it is modified accordingly. Lloyd v. Babb, 296 N.C. 416, 251 S.E.2d 843 (1979).

Test of Student's Domicile. — A student is entitled to register to vote at the place where he is attending school if he can show by his declarations and by objective facts that he (1) has abandoned his prior home, (2) has a present intention of making the place where he is attending school his home, and (3) intends to remain in the college town at least as long as he is a student there and until he acquires a new domicile. Lloyd v. Babb, 296 N.C. 416, 251 S.E.2d 843 (1979).

A student's residence for voting purposes is a question of fact dependent upon the circumstances of each individual's case. There is no permissible manner for making group determinations of residence. Lloyd v. Babb, 296 N.C. 416, 251 S.E.2d 843 (1979).

Whether a student's voting residence is at the location of the college he is attending or at the location where he lived before he entered college is a question of fact which depends upon the circumstances of each individual case. Hall v. Wake County Bd. of Elections, 280 N.C. 600, 187 S.E.2d 52 (1972).

Registrar (now chief judge) is not bound by student's mere statements as to his intent, no more than he is bound by the statements of anyone seeking to register to vote. Lloyd v. Babb, 296 N.C. 416, 251 S.E.2d 843 (1979).

It is reasonable for election officials to inquire of students seeking to register more thoroughly than of other persons. This additional screening procedure is not an impermissible attempt to "fence out" a segment of the community because of the way they may vote, but is instead a permissible attempt to determine who are members of the relevant community. Lloyd v. Babb, 296 N.C. 416, 251 S.E.2d 843 (1979).

In order to determine whether in fact a student has abandoned his prior home and presently intends to make the college town his home and intends to remain in the college town at least as long as he is a student there, a registrar (now chief judge) should make inquiry of students more searching and extensive than may generally be necessary with respect to other residents. The kinds of questions that should be asked are generally set out in Hall v. Wake County Bd. of Elections, 280 N.C. 600, 187 S.E.2d 52 (1972). A registrar is not limited to these questions. One that should be asked of all persons seeking to register is "Are you now registered to vote, and, if so, where?" Lloyd v. Babb, 296 N.C. 416, 251 S.E.2d 843 (1979).

Constitutionality of Inquiry. — The use of direct and circumstantial evidence, including the results of inquiries into a student's ownership of property, vacation plans, etc., to determine the domicile of the student is not an unjustifiable intrusion into the private affairs of students attempting to register to vote, and is not an attempt to make unconstitutional classifications on the basis of wealth, travel, and property ownership. Lloyd v. Babb, 296 N.C. 416, 251 S.E.2d 843 (1979).

Constitutionality of Use of Questionnaire. — The use of a questionnaire and the application of a presumption of nonresidency in order to place the burden of producing some evidence of residency upon student seeking to register is constitutionally permissible, where the practices and guidelines utilized are not devices to keep students who are legal residents from voting, but rather are designed to help registrars (now chief judges) obtain the necessary facts to determine whether a student is entitled to vote in a particular locality. Lloyd v. Babb, 296 N.C. 416, 251 S.E.2d 843 (1979).

Courts May Order That Inquiries of Students Follow a Set Questionnaire. — If necessary to ensure that registrars (now chief judges) comply with the law and make the necessary inquiries as to residence, a court may order that their inquiries be in the form of a questionnaire to be devised by the court or by the county board of elections under the court's supervision. Lloyd v. Babb, 296 N.C. 416, 251 S.E.2d 843 (1979).

§ 163-58: Repealed by Session Laws 1985, c. 563, s. 3.

§ 163-59. Right to participate or vote in party primary.

No person shall be entitled to vote or otherwise participate in the primary election of any political party unless that person complies with all of the following:

(1) Is a registered voter.
(2) Has declared and has had recorded on the registration book or record the fact that the voter affiliates with the political party in whose primary the voter proposes to vote or participate.
(3) Is in good faith a member of that party.

Notwithstanding the previous paragraph, any unaffiliated voter who is authorized under G.S. 163-119 may also vote in the primary if the voter is otherwise eligible to vote in that primary except for subdivisions (2) and (3) of the previous paragraph.

Any person who will become qualified by age to register and vote in the general election for which the primary is held, even though not so qualified by the date of the primary, shall be entitled to register for the primary and general election prior to the primary and then to vote in the primary after being registered. Such person may register not earlier than 60 days nor later than the last day for making application to register under G.S. 163-82.6(c) prior to the primary. In addition, persons who will become qualified by age to register and vote in the general election for which the primary is held, who do not register during the special period may register to vote after such period as if they were qualified on the basis of age, but until they are qualified by age to vote, they may vote only in primary elections. Such a person also may register and vote in the primary and general election pursuant to G.S. 163-82.6A(f). (1915, c. 101, s. 5; 1917, c. 218; C.S., s. 6027; 1959, c. 1203, s. 6; 1967, c. 775, s. 1; 1971, c. 1166, s. 4; 1973, c. 793, s. 20; 1981, c. 33, s. 1; 1983, c. 324, s. 3; 1987, c. 408, s. 4; c. 457, s. 1; 1991 (Reg. Sess., 1992), c. 1032, s. 5; 1993 (Reg. Sess., 1994), c. 762, s. 23; 2007-391, s. 28; 2008-187, s. 33(a); 2009-541, s. 6.)

Cross References. — As to challenges on the day of a primary or election, see G.S. 163-87. As to definition of "political party" and creation of new parties, see G.S. 163-96.

Editor's Note. — Session Laws 2007-391, s. 1(c), was amended by Session Laws 2008-198, s. 33(a), to eliminate any confusion as to effective dates of the 2007 act. Session Laws 2007-391, s. 28, which deleted "or residence" following "qualified by age" in the first sentence of the last paragraph, is effective August 19, 2007.

Effect of Amendments. — Session Laws 2009-541, s. 6, effective August 28, 2009, in the first paragraph, substituted "unless that person complies with all of the following" for "unless he" at the end of the introductory language, deleted "and" at the end of subdivisions (1) and (2), and substituted both uses of "the voter" in subdivision (2) for "he"; and, in the last paragraph, deleted "or regular municipal election" following the first use of "general election" in the first sentence and following "general election" in the third sentence, and added the last sentence.

Legal Periodicals. — For note, "North Carolina General Assembly Amends Election Laws to Allow Unaffiliated Voters to Vote in Party Primaries," see 66 N.C.L. Rev. 1208 (1988).

CASE NOTES

Nonmembers. — G.S. 163-59, which applied to the primary elections of district court judges, was not unconstitutional as plaintiff's rights were not violated by plaintiff's exclusion from the particular party primary; the State could legitimately allow political parties to close their primaries to nonmembers. Neier v. State, 151 N.C. App. 228, 565 S.E.2d 229, 2002 N.C. App. LEXIS 716 (2002).

Cited in Hooks v. Eure, 423 F. Supp. 55 (W.D.N.C. 1976).

OPINIONS OF ATTORNEY GENERAL

Elected member of town council who ceases to reside in town may not continue to serve on town council. See opinion of Attorney General to Mr. John C. Wessell, III, Town Attorney, Surf City (Pender County), 58 N.C.A.G. 28 (1988).

Section 160A-63 Provides for Filling Vacancy Created by Official's Departure. — Upon arriving at a determination that an elected town official has removed his residence to another electoral jurisdiction, a town council, pursuant to the provisions of G.S. 160A-63, may fill the vacancy created by the official's departure. See opinion of Attorney General to Mr. John C. Wessell, III, Town Attorney, Surf City (Pender County), 58 N.C.A.G. 28 (1988).

§§ 163-60 through 163-64: Reserved for future codification purposes.

ARTICLE 7.

Registration of Voters.

§§ 163-65 through 163-82: Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 1.

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 72, effective July 16, 1994, provides for circumstances under which a voter registration application is valid if, before January 1, 1995, the applicant submits the form by mail or in person.

Former G.S. 163-66.1 had previously been repealed by Session Laws 1989 (Reg. Sess., 1990), c. 1066, s. 30; former G.S. 163-67.1 had previously been repealed by Session Laws 1973, c. 859, s. 2; former G.S. 163-68 had previously been repealed by Session Laws 1973, c. 793, s. 24; and former G.S. 163-73 had previously been repealed by Session Laws 1973, c. 793, s. 29.

ARTICLE 7A.

Registration of Voters.

§ 163-82.1. General principles of voter registration.

(a) Prerequisite to Voting. — No person shall be permitted to vote who has not been registered under the provisions of this Article or registered as previously provided by law.

(b) County Board's Duty to Register. — A county board of elections shall register, in accordance with this Article, every person qualified to vote in that county who makes an application in accordance with this Article.

(c) Permanent Registration. — Every person registered to vote by a county board of elections in accordance with this Article shall remain registered until:

(1) The registrant requests in writing to the county board of elections to be removed from the list of registered voters; or

(2) The registrant becomes disqualified through death, conviction of a felony, or removal out of the county; or

(3) The county board of elections determines, through the procedure outlined in G.S. 163-82.14, that it can no longer confirm where the voter resides.

(d) Preregistration. — A person who is at least 16 years of age but will not be 18 years of age by the date of the next election and who is otherwise qualified to register may preregister to vote and shall be automatically registered upon reaching the age of eligibility following verification of the person's qualifications and address in accordance with G.S. 163-82.7. (1953, c. 843; 1955, c. 800; 1963, c. 303, s. 1; 1965, c. 1116, s. 1; 1967, c. 775, s. 1; 1973, c. 793, s. 25; 1975, c. 395; 1981, c. 39, s. 1; c. 87, s. 1; c. 308, s. 1; 1985, c. 211, ss. 1, 2; 1993 (Reg. Sess., 1994), c. 762, s. 2; 2009-541, s. 7(a).)

Effect of Amendments. — Session Laws 2009-541, s. 7(a), effective January 1, 2010, added subsection (d).

CASE NOTES

Editor's Note. — *The cases cited below were decided under former G.S. 163-72 and prior law.*

Power of General Assembly to Enact Registration Laws. — While the General Assembly cannot add to the qualifications prescribed by the Constitution for voters, it has the power, and it is its duty, to enact such registration laws as will protect the rights of duly qualified voters, and no person is entitled to vote until he has complied with the requirements of those laws. Harris v. Scarborough, 110 N.C. 232, 14 S.E. 737 (1892), overruled on other grounds, State ex rel. Quinn v. Lattimore, 120 N.C. 426, 26 S.E. 640 (1897).

But a vote received and deposited by the judges of election is presumed to be a legal vote, although the voter may not have complied with the requirements of the registration law; and it then devolves upon the party contesting to show that it was an illegal vote and this cannot be shown by showing that the registration law had not been complied with. State ex rel. Quinn v. Lattimore, 120 N.C. 426, 26 S.E. 640 (1897).

Requirements of the Registration Act are Mandatory. — Harris v. Scarborough, 110 N.C. 232, 14 S.E. 737 (1892), overruled on other grounds, State ex rel. Quinn v. Lattimore, 120 N.C. 426, 26 S.E. 640 (1897).

But Right to Register Differs from Right to Reject a Vote. — But, while a party offering to vote without registration may be refused for not complying with the registration law, if the party is allowed to vote and his vote is received and deposited, the vote will not afterwards be held to be illegal if he is otherwise qualified to vote. State ex rel. Quinn v. Lattimore, 120 N.C. 426, 26 S.E. 640 (1897).

Denial of registration and voting to persons qualified to vote vitiates the election, particularly where it would affect the result, even though the denial was by accident or mistake. McDowell v. Rutherford Ry. Constr. Co., 96 N.C. 514, 2 S.E. 351 (1887). See also, Perry v. Whitaker, 17 N.C. 475 (1874); People ex rel. Van Bokkelen v. Canaday, 73 N.C. 198, 21 Am. R. 465 (1875).

Effect of Irregularities. — Where the disregard of constitutional or statutory directions does not affect the result, it does not warrant a rejection of the vote. If none are incompetent to vote, the registration must be accepted as the act of a public officer, which entitles the electors to vote, notwithstanding irregularities as to administering the oath, the registrar's (now chief judge's) appointment, etc. State ex rel. DeBerry v. Nicholson, 102 N.C. 465, 9 S.E. 545 (1889).

Registration by One Other Than Registrar. — The fact that a qualified voter was registered by a third person, with whom the registrar (now chief judge) had left the books, does not disqualify him to vote, where such registration has been accepted as sufficient by the registrar. State ex rel. Quinn v. Lattimore, 120 N.C. 426, 26 S.E. 638 (1897).

Article VI, § 2, Const., 1868, was satisfied by an oath to support the federal and state Constitutions. All valid laws, whether State or national, were included by implication. State ex rel. DeBerry v. Nicholson, 102 N.C. 465, 9 S.E. 545 (1889).

Failure to administer oath would not invalidate a school tax election to determine whether such tax should be levied, in the absence of fraud or improper motive. Gibson v. Board of Comm'rs, 163 N.C. 510, 79 S.E. 976 (1913).

It will be presumed that the oath was

taken with uplifted hand in the absence of direct evidence to the contrary. State ex rel. DeBerry v. Nicholson, 102 N.C. 465, 9 S.E. 545 (1889).

§ 163-82.2. Chief State Election Official.

The Executive Director of the State Board of Elections is the "Chief State Election Official" of North Carolina for purposes of P.L. 103-31, The National Voter Registration Act of 1993, subsequently referred to in this Article as the "National Voter Registration Act". As such the Executive Director is responsible for coordination of State responsibilities under the National Voter Registration Act. (1993 (Reg. Sess., 1994), c. 762, s. 2; 2001-319, s. 11.)

§ 163-82.3. Voter registration application forms.

(a) Form Developed by State Board of Elections. — The State Board of Elections shall develop an application form for voter registration. Any person may use the form to apply to do any of the following:

(1) Register to vote.
(2) Change party affiliation or unaffiliated status.
(3) Report a change of address within a county.
(4) Report a change of name.
(5) Preregister to vote.

The county board of elections for the county where the applicant resides shall accept the form as application for any of those purposes if the form is submitted as set out in G.S. 163-82.3.

(b) Interstate Form. — The county board of elections where an applicant resides shall accept as application for any of the purposes set out in subsection (a) of this section the interstate registration form designed by the Federal Election Commission pursuant to section 9 of the National Voter Registration Act, if the interstate form is submitted in accordance with G.S. 163-82.6.

(c) Agency Application Form. — The county board of elections where an applicant resides shall accept as application for any of the purposes set out in subsection (a) of this section a form developed pursuant to G.S. 163-82.19 or G.S. 163-82.20. (1991 (Reg. Sess., 1992), c. 1044, s. 18(a); 1993, c. 74, s. 1; 1993 (Reg. Sess., 1994), c. 762, s. 2; 2009-541, s. 8(a).)

Effect of Amendments. — Session Laws 2009-541, s. 8(a), effective January 1, 2010, added subdivision (a)(5); and made minor punctuation changes in subdivisions (a)(1)-(3).

§ 163-82.4. Contents of application form.

(a) Information Requested of Applicant. — The form required by G.S. 163-82.3(a) shall request the applicant's:

(1) Name,
(2) Date of birth,
(3) Residence address,
(4) County of residence,
(5) Date of application,
(6) Gender,
(7) Race,
(7a) Ethnicity,
(8) Political party affiliation, if any, in accordance with subsection (c) of this section,
(9) Telephone number (to assist the county board of elections in contacting the voter if needed in processing the application),

(10) Drivers license number or, if the applicant does not have a drivers license number, the last four digits of the applicant's social security number,

and any other information the State Board finds is necessary to enable officials of the county where the person resides to satisfactorily process the application. The form shall require the applicant to state whether currently registered to vote anywhere, and at what address, so that any prior registration can be cancelled. The portions of the form concerning race and ethnicity shall include as a choice any category shown by the most recent decennial federal census to compose at least one percent (1%) of the total population of North Carolina. The county board shall make a diligent effort to complete for the registration records any information requested on the form that the applicant does not complete, but no application shall be denied because an applicant does not state race, ethnicity, gender, or telephone number. The application shall conspicuously state that provision of the applicant's telephone number is optional. If the county board maintains voter records on computer, the free list provided under this subsection shall include telephone numbers if the county board enters the telephone number into its computer records of voters.

(a1) No Drivers License or Social Security Number Issued. — The State Board shall assign a unique identifier number to an applicant for voter registration if the applicant has not been issued either a current and valid drivers license or a social security number. That unique identifier number shall serve to identify that applicant for voter registration purposes.

(b) Notice of Requirements, Attestation, Notice of Penalty, and Notice of Confidentiality. — The form required by G.S. 163-82.3(a) shall contain, in uniform type, the following:

(1) A statement that specifies each eligibility requirement (including citizenship) and an attestation that the applicant meets each such requirement, with a requirement for the signature of the applicant, under penalty of a Class I felony under G.S. 163-275(13).

(2) A statement that, if the applicant declines to register to vote, the fact that the applicant has declined to register will remain confidential and will be used only for voter registration purposes.

(3) A statement that, if the applicant does register to vote, the office at which the applicant submits a voter registration application will remain confidential and will be used only for voter registration purposes.

(c) Party Affiliation or Unaffiliated Status. — The application form described in G.S. 163-82.3(a) shall provide a place for the applicant to state a preference to be affiliated with one of the political parties in G.S. 163-96, or a preference to be an "unaffiliated" voter. Every person who applies to register shall state his preference. If the applicant fails to declare a preference for a party or for unaffiliated status, that person shall be listed as "unaffiliated", except that if the person is already registered to vote in the county and that person's registration already contains a party affiliation, the county board shall not change the registrant's status to "unaffiliated" unless the registrant clearly indicates a desire in accordance with G.S. 163-82.17 for such a change. An unaffiliated registrant shall not be eligible to vote in any political party primary, except as provided in G.S. 163-119, but may vote in any other primary or general election. The application form shall so state.

(d) Citizenship and Age Questions. — Voter registration application forms shall include all of the following:

(1) The following question and statement:

a. "Are you a citizen of the United States of America?" and boxes for the applicant to check to indicate whether the applicant is or is not a citizen of the United States.

b. "If you checked 'no' in response to this question, do not submit this form."

(2) The following questions and statement:

a. "Will you be 18 years of age on or before election day?" and boxes for the applicant to check to indicate whether the applicant will be 18 years of age or older on election day.

b. "Are you at least 16 years of age and understand that you must be 18 years of age on or before election day to vote?" and boxes for the applicant to check to indicate whether the applicant is at least 16 years of age and understands that the applicant must be at least 18 years of age or older by election day to vote.

c. "If you checked 'no' in response to both of these questions, do not submit this form."

(3) Repealed by Session Laws 2009-541, s. 9(a), effective January 1, 2010.

(e) Correcting Registration Forms. — If the voter fails to complete any required item on the voter registration form but provides enough information on the form to enable the county board of elections to identify and contact the voter, the voter shall be notified of the omission and given the opportunity to complete the form at least by 5:00 P.M. on the day before the county canvass as set in G.S. 163-182.5(b). If the voter corrects that omission within that time and is determined by the county board of elections to be eligible to vote, the board shall permit the voter to vote. If the information is not corrected by election day, the voter shall be allowed to vote a provisional official ballot. If the correct information is provided to the county board of elections by at least 5:00 P.M. on the day before the county canvass, the board shall count any portion of the provisional official ballot that the voter is eligible to vote. (1901, c. 89, s. 12; Rev., s. 4319; C.S., s. 5940; Ex. Sess. 1920, c. 93; 1933, c. 165, s. 5; 1951, c. 984, s. 1; 1953, c. 843; 1955, c. 800; c. 871, s. 2; 1957, c. 784, s. 2; 1963, c. 303, s. 1; 1967, c. 775, s. 1; 1971, c. 1166, s. 6; 1973, c. 793, s. 27; c. 1223, s. 3; 1975, c. 234, s. 2; 1979, c. 135, s. 1; c. 539, ss. 1-3; c. 797, ss. 1, 2; 1981, c. 222; c. 308, s. 2; 1991 (Reg. Sess., 1992), c. 1044, s. 18(a); 1993, c. 74, s. 1; 1993 (Reg. Sess., 1994), c. 762, s. 2; 1999-424, s. 7(c), (d); 1999-453, s. 8(a); 2003-226, s. 9; 2004-127, s. 4; 2005-428, s. 15; 2007-391, s. 20; 2008-187, s. 33(a); 2009-541, s. 9(a).)

Editor's Note. — Session Laws 1999-453, s. 10, provides that prosecutions for, or sentences based on, offenses occurring before the relevant effective date in this act are not abated or affected by this act, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences.

Session Laws 1999-453, s. 1, provides that the act shall be known as "The Campaign Reform Act of 1999."

Session Laws 1999-453, s. 11, contains a severability clause.

Session Laws 2003-226, s. 1, provides: "The purpose of this act is to ensure that the State of North Carolina has a system for all North Carolina elections that complies with the requirements for federal elections set forth in the federal Help America Vote Act of 2002, Public Law 107-252, 116 Stat. 1666 (2002), codified at 42 U.S.C. §§ 15481-15485.

"The General Assembly finds that the education and training of election officials as required by G.S. 163-82.34 has met and continues to meet the mandate for the education and training of precinct officials and other election officials in section 254(a)(3) of the Help America Vote Act of 2002. The General Assembly further finds that the establishment, development, and continued operation of the statewide list maintenance program for voter registration set forth in G.S. 163-82.14 has met and continues to meet the mandates of section 303(a)(2) of the Help America Vote Act of 2002.

"In certain other areas of the election statutes and other laws, the General Assembly finds that the statutes must be amended to comply with the Help America Vote Act."

Session Laws 2007-391, s. 1(c), was amended by Session Laws 2008-198, s. 33(a), to eliminate any confusion as to effective dates of the 2007 act. Session Laws 2007-391, s. 20, which rewrote subsection (e), is effective August 19, 2007.

Effect of Amendments. — Session Laws 2009-541, s. 9(a), effective January 1, 2010, rewrote subsection (d).

§ 163-82.5. Distribution of application forms.

The State Board of Elections shall make the forms described in G.S. 163-82.3 available for distribution through governmental and private entities, with particular emphasis on making them available for organized voter registration drives. (1991 (Reg. Sess., 1992), c. 1044, s. 18(a); 1993, c. 74, s. 1; 1993 (Reg. Sess., 1994), c. 762, s. 2.)

§ 163-82.6. Acceptance of application forms.

(a) How the Form May Be Submitted. — The county board of elections shall accept any form described in G.S. 163-82.3 if the applicant submits the form by mail, facsimile transmission, transmission of a scanned document, or in person. The applicant may delegate the submission of the form to another person. Any person who communicates to an applicant acceptance of that delegation shall deliver that form so that it is received by the appropriate county board of elections in time to satisfy the registration deadline in subdivision (1) or (2) of subsection (c) of this section for the next election. It shall be a Class 2 misdemeanor for any person to communicate to the applicant acceptance of that delegation and then fail to make a good faith effort to deliver the form so that it is received by the county board of elections in time to satisfy the registration deadline in subdivision (1) or (2) of subsection (c) of this section for the next election. It shall be an affirmative defense to a charge of failing to make a good faith effort to deliver a delegated form by the registration deadline that the delegatee informed the applicant that the form would not likely be delivered in time for the applicant to vote in the next election. It shall be a Class 2 misdemeanor for any person to sell or attempt to sell a completed voter registration form or to condition its delivery upon payment.

(a1) Misdemeanors. — It shall be a Class 2 misdemeanor for any person to do any of the following:

(1) To communicate to the applicant acceptance of the delegation described in subsection (a) of this section and then fail to make a good faith effort to deliver the form so that it is received by the county board of elections in time to satisfy the registration deadline in subdivision (1) or (2) of subsection (c) of this section for the next election. It shall be an affirmative defense to a charge of failing to make a good faith effort to deliver a delegated form by the registration deadline that the delegatee informed the applicant that the form would not likely be delivered in time for the applicant to vote in the next election.

(2) To sell or attempt to sell a completed voter registration form or to condition its delivery upon payment.

(3) To change a person's information on a voter registration form prior to its delivery to a county board of elections.

(4) To coerce a person into marking a party affiliation other than the party affiliation the person desires.

(5) To offer a person a voter registration form that has a party affiliation premarked unless the person receiving the form has requested the premarking.

(b) Signature. — The form shall be valid only if signed by the applicant. An electronically captured image of the signature of a voter on an electronic voter registration form offered by a State agency shall be considered a valid signature for all purposes for which a signature on a paper voter registration form is used.

(c) Registration Deadlines for a Primary or Election. — In order to be valid for a primary or election, except as provided in G.S. 163-82.6A, the form:

(1) If submitted by mail, must be postmarked at least 25 days before the primary or election, except that any mailed application on which the postmark is missing or unclear is validly submitted if received in the mail not later than 20 days before the primary or election,

(2) If submitted in person, by facsimile transmission, or by transmission of a scanned document, must be received by the county board of elections by a time established by that board, but no earlier than 5:00 P.M., on the twenty-fifth day before the primary or election,

(3) If submitted through a delegatee who violates the duty set forth in subsection (a) of this section, must be signed by the applicant and given to the delegatee not later than 25 days before the primary or election, except as provided in subsection (d) of this section.

(c1) If the application is submitted by facsimile transmission or transmission of a scanned document, a permanent copy of the completed, signed form shall be delivered to the county board no later than 20 days before the election.

(d) Instances When Person May Register and Vote on Primary or Election Day. — If a person has become qualified to register and vote between the twenty-fifth day before a primary or election and primary or election day, then that person may apply to register on primary or election day by submitting an application form described in G.S. 163-82.3(a) or (b) to:

(1) A member of the county board of elections;

(2) The county director of elections; or

(3) The chief judge or a judge of the precinct in which the person is eligible to vote,

and, if the application is approved, that person may vote the same day. The official in subdivisions (1) through (3) of this subsection to whom the application is submitted shall decide whether the applicant is eligible to vote. The applicant shall present to the official written or documentary evidence that the applicant is the person he represents himself to be. The official, if in doubt as to the right of the applicant to register, may require other evidence satisfactory to that official as to the applicant's qualifications. If the official determines that the person is eligible, the person shall be permitted to vote in the primary or election and the county board shall add the person's name to the list of registered voters. If the official denies the application, the person shall be permitted to vote a challenged ballot under the provisions of G.S. 163-88.1, and may appeal the denial to the full county board of elections. The State Board of Elections shall promulgate rules for the county boards of elections to follow in hearing appeals for denial of primary or election day applications to register. No person shall be permitted to register on the day of a second primary unless he shall have become qualified to register and vote between the date of the first primary and the date of the succeeding second primary.

(e) For purposes of subsection (d) of this section, persons who "become qualified to register and vote" during a time period:

(1) Include those who during that time period are naturalized as citizens of the United States or who are restored to citizenship after a conviction of a felony; but

(2) Do not include persons who reach the age of 18 during that time period, if those persons were eligible to register while 17 years old during an earlier period.

(f) The county board of elections shall forward by electronic means any application submitted for the purpose of preregistration to the State Board of Elections. No later than 60 days prior to the first election in which the applicant will be legally entitled to vote, the State Board of Elections shall notify the appropriate county board of elections to verify the qualifications and address of the applicant in accordance with G.S. 163-82.7. (1901, c. 89, ss. 18, 21; Rev., ss. 4322, 4323; C.S., ss. 5946, 5947; 1923, c. 111, s. 3; 1933, c. 165, s.

5; 1947, c. 475; 1953, c. 843; 1955, c. 800; 1957, c. 784, ss., 3, 4; 1961, c. 382; 1963, c. 303, ss. 1, 2; 1967, c. 761, s. 3; c. 775, s. 1; 1969, c. 750, ss. 1, 2; 1977, c. 626, s. 1; 1979, c. 539, s. 5; c. 766, s., 2; 1981, c. 33, s. 2; 1981 (Reg. Sess., 1982), c. 1265, s. 6; 1983, c. 553; 1985, c. 260, s. 1; 1991, c. 363, s. 1; 1991 (Reg. Sess., 1992), c. 1032, s. 1; 1991 (Reg. Sess., 1992), c. 1044, s. 18(a); 1993, c. 74, s. 1; 1993 (Reg. Sess., 1994), c. 762, s. 2; 1995, c. 243, s. 1; 1997-456, s. 27; 1999-426, s. 1(a), (b); 2001-315, s. 1; 2001-319, s. 6(a); 2003-226, s. 4; 2004-127, s. 9(a); 2007-253, s. 2; 2007-391, s. 16(a); 2008-150, s. 5(d), (e); 2009-541, s. 10(a).)

Editor's Note. — Former subsection (d) of this section was renumbered as subsections (d) and (e) pursuant to Session Laws 1997-456, s. 27 which authorized the Revisor of Statutes to renumber or reletter sections and parts of sections having a number or letter designation that is incompatible with the General Assembly's computer database.

Session Laws 2003-226, s. 1, provides: "The purpose of this act is to ensure that the State of North Carolina has a system for all North Carolina elections that complies with the requirements for federal elections set forth in the federal Help America Vote Act of 2002, Public Law 107-252, 116 Stat. 1666 (2002), codified at 42 U.S.C. §§ 15481-15485.

"The General Assembly finds that the education and training of election officials as required by G.S. 163-82.34 has met and continues to meet the mandate for the education and training of precinct officials and other election officials in section 254(a)(3) of the Help America Vote Act of 2002. The General Assembly further finds that the establishment, development, and continued operation of the statewide list maintenance program for voter registration set forth in G.S. 163-82.14 has met and continues to meet the mandates of section 303(a)(2) of the Help America Vote Act of 2002.

"In certain other areas of the election statutes and other laws, the General Assembly finds that the statutes must be amended to comply with the Help America Vote Act."

Session Laws 2007-253, s. 4, provides: "The State Board of Elections shall monitor the implementation of this act and determine the feasibility and timetable for expanding same-day registration and voting to all voting places on Election Day. The State Board shall report its findings no later than March 1, 2009, to the Joint Legislative Commission on Governmental Operations of the General Assembly."

Session Laws 2007-253, s. 5, provides: "Sections 1, 2, and 3 of this act become effective as follows:

"(1) If preclearance under Section 5 of the Voting Rights Act of 1965 is obtained before September 1, 2007, those sections are effective with regard to registration and voting for any primary or election held on or after October 9, 2007.

"(2) If preclearance is obtained during September 2007, those sections are effective with regard to registration and voting for any primary or election held on or after November 6, 2007.

"(3) If preclearance is obtained on or after October 1, 2007, those sections are effective with regard to registration and voting for any primary or election held on or after the 60th day after preclearance is obtained." Session Laws 2007-253 received preclearance from the U.S. Department of Justice by letter dated August 16, 2007.

Effect of Amendments. — Session Laws 2008-150, s. 5(d) and (e), effective August 2, 2008, in subsections (c) and (d), substituted "a primary or election" for "an election" each time it appears in the introductory language, and inserted "primary or" before "election" throughout.

Session Laws 2009-541, s. 10(a), effective January 1, 2010, added subsection (f).

CASE NOTES

Editor's Note. *— The cases cited below were decided under former G.S. 163-67 and prior law.*

Time for Books to Remain Open Under Former Law. — Where the charter of a city or town provided that for the issuance of bonds an election should be held "under the rules and regulations presented by law for regular elections," it referred to former G.S. 163-31, requiring that the books of registration should be kept open for twenty days, and construing that section in connection with G.S. 160-37 (now repealed) it was held that the former was for the purpose of a new and original registration, and the latter, in providing for only seven days, was for the purpose of revising the registration books so that electors might be registered whose names were not on the former books. Hardee v. City of Henderson, 170 N.C. 572, 87 S.E. 498 (1916).

Registration on Day of Election. — Where a person otherwise legally qualified, who had not been allowed to register because at that time he had not been a resident of the State for one year, but who became qualified in that respect on or before the day of election, asked to be allowed to register on election day and tendered his ballot, such vote should have been received. State ex rel. Quinn v. Lattimore, 120 N.C. 426, 26 S.E. 638 (1897).

Compliance Held Sufficient. — The statutory requirement that the registration be kept open and accessible for a specified time is regarded as essential by the courts in passing upon the validity of bonds to be issued by a municipality; but where it appeared that the books were afterwards opened for a time actually sufficient to afford all an opportunity to register, though short of the legal period, and it further appeared that the election had been hotly contested by both sides, it would be deemed sufficient. Hill v. Skinner, 169 N.C. 405, 86 S.E. 351 (1915).

Failure to keep registry open for twenty days, as required by former G.S. 163-31, for the purposes of issuance of bonds in a special school district, did not of itself render invalid the issuance of the bonds accordingly approved, when it appeared that the matter was fully known and discussed, opportunity was offered every voter to register, there was nothing to show that every elector desiring to vote had not done so, and there was no opposition to the measure manifested. Hammond v. McRae, 182 N.C. 747, 110 S.E. 102 (1921).

§ 163-82.6A. In-person registration and voting at one-stop sites.

(a) Who May Register in Person. — In accordance with the provisions in this section, an individual who is qualified to register to vote may register in person and then vote at a one-stop voting site in the person's county of residence during the period for one-stop voting provided under G.S. 163-227.2. For purposes of this section, a one-stop voting site includes the county board of elections office, if that office is used for one-stop voting.

(b) Both Attestation and Proof of Residence Required. — To register and vote under this section, the person shall do both of the following:

(1) Complete a voter registration form as prescribed in G.S. 163-82.4, including the attestation requirement of G.S. 163-82.4(b) that the person meets each eligibility requirement. Such attestation is signed under penalty of a Class I felony under G.S. 163-275(13); and

(2) Provide proof of residence by presenting any of the following valid documents that show the person's current name and current residence address: a North Carolina drivers license, a photo identification from a government agency, or any of the documents listed in G.S. 163-166.12(a)(2). The State Board of Elections may designate additional documents or methods that suffice and shall prescribe procedures for establishing proof of residence.

(c) Voting With Retrievable Ballot. — A person who registers under this section shall vote a retrievable absentee ballot as provided in G.S. 163-227.2 immediately after registering. If a person declines to vote immediately, the registration shall be processed, and the person may later vote at a one-stop voting site under this section in the same election.

(d) Verification of Registration; Counting of Ballot. — Within two business days of the person's registration under this section, the county board of elections in conjunction with the State Board of Elections shall verify the North Carolina drivers license or Social Security number in accordance with G.S. 163-82.12, update the statewide registration database and search for possible duplicate registrations, and proceed under G.S. 163-82.7 to verify the person's address. The person's vote shall be counted unless the county board determines that the applicant is not qualified to vote in accordance with the provisions of this Chapter.

(e) Change of Registration at One-Stop Voting Site. — A person who is already registered to vote in the county may update the information in the registration record in accordance with procedures prescribed by the State Board of Elections, but an individual's party affiliation may not be changed during the one-stop voting period before any first or second partisan primary in which the individual is eligible to vote.

(f) Voting in Primary. — Any person who will become qualified by age to register and vote in the general election for which a partisan or nonpartisan primary is held, even though not so qualified by the date of the primary, may register for the primary and general election prior to the primary and then vote in the primary and general election after being registered in accordance with the provisions of this section. (2007-253, s. 1; 2009-541, s. 11.)

Editor's Note. — Session Laws 2007-253, s. 4, provides: "The State Board of Elections shall monitor the implementation of this act and determine the feasibility and timetable for expanding same-day registration and voting to all voting places on Election Day. The State Board shall report its findings no later than March 1, 2009, to the Joint Legislative Commission on Governmental Operations of the General Assembly."

Session Laws 2007-253, s. 5, makes this section effective with regard to registration and voting for primaries or elections held on or after October 9, 2007.

Session Laws 2007-253, s. 5, provides: "Sections 1, 2, and 3 of this act become effective as follows:

"(1) If preclearance under Section 5 of the Voting Rights Act of 1965 is obtained before September 1, 2007, those sections are effective with regard to registration and voting for any primary or election held on or after October 9, 2007.

"(2) If preclearance is obtained during September 2007, those sections are effective with regard to registration and voting for any primary or election held on or after November 6, 2007.

"(3) If preclearance is obtained on or after October 1, 2007, those sections are effective with regard to registration and voting for any primary or election held on or after the 60th day after preclearance is obtained.

"The remainder of this act is effective when it becomes law. The State Board of Elections may adopt any necessary procedures to implement this act at any time after this act becomes law."

Session Laws 2007-253 received preclearance from the U.S. Department of Justice by letter dated August 16, 2007.

Effect of Amendments. — Session Laws 2009-541, s. 11, effective August 28, 2009, added subsection (f).

§ 163-82.7. Verification of qualifications and address of applicant; denial or approval of application.

(a) Tentative Determination of Qualification. — When a county board of elections receives an application for registration submitted pursuant to G.S. 163-82.6, the board either:

(1) Shall make a determination that the applicant is not qualified to vote at the address given, or

(2) Shall make a tentative determination that the applicant is qualified to vote at the address given, subject to the mail verification notice procedure outlined in subsection (c) of this section

within a reasonable time after receiving the application.

(b) Denial of Registration. — If the county board of elections makes a determination pursuant to subsection (a) of this section that the applicant is not qualified to vote at the address given, the board shall send, by certified mail, a notice of denial of registration. The notice of denial shall contain the date on which registration was denied, and shall be mailed within two business days after denial. The notice of denial shall inform the applicant of alternatives that the applicant may pursue to exercise the franchise. If the applicant disagrees with the denial, the applicant may appeal the decision under G.S. 163-82.18.

(c) Verification of Address by Mail. — If the county board of elections tentatively determines that the applicant is qualified to vote at the address given, then the county board shall send a notice to the applicant, by nonforwardable mail, at the address the applicant provides on the application form. The notice shall state that the county will register the applicant to vote if the Postal Service does not return the notice as undeliverable to the county board. The notice shall also inform the applicant of the precinct and voting place to which the applicant will be assigned if registered.

(d) Approval of Application. — If the Postal Service does not return the notice as undeliverable, the county board shall register the applicant to vote.

(e) Second Notice if First Notice Is Returned as Undeliverable. — If the Postal Service returns the notice as undeliverable, the county board shall send a second notice by nonforwardable mail to the same address to which the first was sent. If the second notice is not returned as undeliverable, the county board shall register the applicant to vote.

(f) Denial of Application Based on Lack of Verification of Address. — If the Postal Service returns as undeliverable the notice sent by nonforwardable mail pursuant to subsection (e) of this section, the county board shall deny the application. The county board need not try to notify the applicant further.

(g) Voting When Verification Process Is Incomplete. — In cases where an election occurs before the process of verification outlined in this section has had time to be completed, the county board of elections shall be guided by the following rules:

(1) If the county board has made a tentative determination that an applicant is qualified to vote under subsection (a) of this section, then that person shall not be denied the right to vote in person in an election unless the Postal Service has returned as undeliverable two notices to the applicant: one mailed pursuant to subsection (c) of this section and one mailed pursuant to subsection (e) of this section. This subdivision does not preclude a challenge to the voter's qualifications under Article 8 of this Chapter.

(2) If the Postal Service has returned as undeliverable a notice sent within 25 days before the election to the applicant under subsection (c) of this section, then the applicant may vote only in person in that first election and may not vote by absentee ballot except in person under G.S. 163-227.2. The county board of elections shall establish a procedure at the voting site for:

a. Obtaining the correct address of any person described in this subdivision who appears to vote in person; and

b. Assuring that the person votes in the proper place and in the proper contests.

If a notice mailed under subsection (c) or subsection (e) of this section is returned as undeliverable after a person has already voted by absentee ballot, then that person's ballot may be challenged in accordance with G.S. 163-89.

(3) If a notice sent pursuant to subsection (c) or (e) of this section is returned by the Postal Service as undeliverable after a person has already voted in an election, then the county board shall treat the person as a registered voter but shall send a confirmation mailing pursuant to G.S. 163-82.14(d)(2) and remove or retain the person on the registration records in accordance with that subdivision. (1991 (Reg. Sess., 1992), c. 1044, s. 18(a); 1993, c. 74, s. 1; 1993 (Reg. Sess., 1994), c. 762, s. 2; 1999-455, s. 16.)

CASE NOTES

Editor's Note. — *The cases cited below were decided under former G.S. 163-72 and prior law.*

Inquiry as to Qualifications of Voters. — Registrars (now chief judges) of election may ask an elector if he had resided in the State 12 months next preceding the election (now 30 days) and four months in the district in which he offers to vote (now also 30 days). They may ask an elector as to his age and residence, as well as the township and county from whence he removed, in the case of a removal since the last election, and as to the name by which he is commonly known. If, in reply to such questions, the elector answers that he is 21 (now 18) years old, and has resided in the State 12 months (now 30 days) and in the county four months (now also 30 days) preceding the election, it is the duty of the registrar, upon his taking the prescribed oath, to record his name as a voter; but bystanders may require him to be sworn as to his residence. In re Reid, 119 N.C. 641, 26 S.E. 337 (1896).

Sufficiency of Response as to Residence. — In answer to the question of residence the designation of the county of residence is sufficient, but the designation of the state merely is insufficient. Harris v. Scarborough, 110 N.C. 232, 14 S.E. 737 (1892), overruled on other grounds, State ex rel. Quinn v. Lattimore, 120 N.C. 426, 26 S.E. 638 (1897).

§ 163-82.8. Voter registration cards.

(a) Authority to Issue Card. — With the approval of the board of county commissioners, the county board of elections may issue to each voter in the county a voter registration card, or may issue cards to all voters registered after January 1, 1995.

(b) Content and Format of Card. — At a minimum, the voter registration card shall:

(1) List the voter's name, address, and voting place;
(2) Contain the address and telephone number of the county board of elections, along with blanks to report a change of address within the county, change of name, and change of party affiliation; and
(3) Be wallet size.

No voter registration card may be issued by a county board of elections unless the State Board of Elections has approved the format of the card.

(c) Ways County Board and Registrant May Use Card. — If the county board of elections issues voter registration cards, the county board may use that card as a notice of tentative approval of the voter's application pursuant to G.S. 163-82.7(c), provided that the mailing contains the statements and information required in that subsection. The county board may also satisfy the requirements of G.S. 163-82.15(b), 163-82.16(b), or 163-82.17(b) by sending the registrant a replacement of the voter registration card to verify change of address, change of name, or change of party affiliation. A registrant may use the card to report a change of address, change of name, or change of party affiliation, satisfying G.S. 163-82.15, 163-82.16, or 163-82.17.

(d) Card as Evidence of Registration. — A voter registration card shall be evidence of registration but shall not preclude a challenge as permitted by law.

(e) Display of Card May Not Be Required to Vote. — No county board of elections may require that a voter registration card be displayed in order to vote. (1901, c. 89, ss. 18, 21; Rev., ss. 4322, 4323; C.S., ss. 5946, 5947; 1923, c. 111, s. 3; 1933, c. 165, s. 5; 1947, c. 475; 1953, c. 843; 1955, c. 800; 1957, c. 784, ss. 3, 4; 1961, c. 382; 1963, c. 303, ss. 1, 2; 1967, c. 761, s. 3; c. 775, s. 1; 1969, c. 750, ss. 1, 2; 1977, c. 626, s. 1; 1979, c. 539, s. 5; c. 766, s. 2; 1981, c. 33, s. 2; 1981 (Reg. Sess., 1982), c. 1265, s. 6; 1983, c. 553; 1985, c. 260, s. 1; 1991, c. 363, s. 1; 1991 (Reg. Sess., 1992), c. 1032, s. 1; 1993 (Reg. Sess., 1994), c. 762, s. 2.)

§ 163-82.9. Cancellation of prior registration.

If an applicant indicates on an application form described in G.S. 163-82.3 a current registration to vote in any other county, municipality, or state, the county board of elections, upon registering the person to vote, shall send a notice to the appropriate officials in the other county, municipality, or state and shall ask them to cancel the person's voter registration there. If an applicant completes an application form described in G.S. 163-82.3 except that the applicant neglects to complete the portion of the form that authorizes cancellation of previous registration in another county, the State Board of Elections shall notify the county board of elections in the previous county of the new registration, and the board in the previous county shall cancel the registration. The State Board of Elections shall adopt rules to prevent disenfranchisement in the implementation of this section. Those rules shall include adequate notice to the person whose previous registration is to be cancelled. (1973, c. 793, s. 28; c. 1223, s. 4; 1977, c. 265, s. 3; 1983, c. 411, ss. 1, 2; 1993 (Reg. Sess., 1994), c. 762, s. 2; 1995, c. 509, s. 115; 2005-428, s. 9.)

§ 163-82.10. Official record of voter registration.

(a) Official Record. — The State voter registration system is the official voter registration list for the conduct of all elections in the State. The State Board of Elections and the county board of elections may keep copies of voter registration data, including voter registration applications, in any medium and format expressly approved by the Department of Cultural Resources pursuant to standards and conditions established by the Department and mutually agreed to by the Department and the State Board of Elections. A completed and signed registration application form, if available, described in G.S. 163-82.3, once approved by the county board of elections, becomes backup to the official registration record of the voter. Full or partial social security numbers, dates of birth, the identity of the public agency at which the voter registered under G.S. 163-82.20, and drivers license numbers that may be generated in the voter registration process, by either the State Board of Elections or a county board of elections, are confidential and shall not be considered public records and subject to disclosure to the general public under Chapter 132 of the General Statutes. Cumulative data based on those items of information may be publicly disclosed as long as information about any individual cannot be discerned from the disclosed data. Disclosure of information in violation of this subsection shall not give rise to a civil cause of action. This limitation of liability does not apply to the disclosure of information in violation of this subsection as a result of gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable. The signature of the voter, either on the paper application or an electronically captured image of it, may be viewed by the public but may not be copied or traced except by election officials for election administration purposes. Any such copy or tracing is not a public record.

(a1) Paperless, Instant Electronic Transfer. — The application described in G.S. 163-82.3 may be either a paper hard copy or an electronic document.

(b) Access to Registration Records. — Upon request by that person, the county board of elections shall provide to any person a list of the registered voters of the county or of any precinct or precincts in the county. The county board may furnish selective lists according to party affiliation, gender, race, date of registration, precinct name, precinct identification code, congressional district, senate district, representative district, and, where applicable, county commissioner district, city governing board district, fire district, soil and water conservation district, and voter history including primary, general, and special districts, or any other reasonable category. No list produced under this section shall contain a voter's date of birth. However, lists may be produced according to voters' ages. Both the following shall apply to all counties:

(1) The county board of elections shall make the voter registration information available to the public on electronic or magnetic medium. For purposes of this section, "electronic or magnetic medium" means any of the media in use by the State Board of Elections at the time of the request.

(2) Information requested on electronic or magnetic medium shall contain the following: voter name, county voter identification number, residential address, mailing address, sex, race, age but not date of birth,

party affiliation, precinct name, precinct identification code, congressional district, senate district, representative district, and, where applicable, county commissioner district, city governing board district, fire district, soil and water conservation district, and any other district information available, and voter history including primary, general, and special districts, or any other reasonable category.

The county board shall require each person to whom a list is furnished to reimburse the board for the actual cost incurred in preparing it, except as provided in subsection (c) of this section. Actual cost for the purpose of this section shall not include the cost of any equipment or any imputed overhead expenses. When furnishing information under this subsection to a purchaser on a magnetic medium provided by the county board or the purchaser, the county board may impose a service charge of up to twenty-five dollars ($25.00).

(c) Free Lists. — A county board shall provide, upon written request, one free list of all the registered voters in the county to the State chair of each political party and to the county chair of each political party once in every odd-numbered year, once during the first six calendar months of every even-numbered year, and once during the latter six calendar months of every even-numbered year. Each free list shall include the name, address, gender, age but not date of birth, race, political affiliation, voting history, precinct, precinct name, precinct identification code, congressional district, senate district, representative district, and, where applicable, county commissioner district, city governing board district, fire district, soil and water conservation district, and voter history including primary, general, and special districts of each registered voter. All free lists shall be provided as soon as practicable on one of any electronic or magnetic media, but no later than 30 days after written request. Each State party chair shall provide the information on the media received from the county boards or a copy of the media containing the data itself to candidates of that party who request the data in writing. As used in this section, "political party" means a political party as defined in G.S. 163-96.

(d) Exception for Address of Certain Registered Voters. — Notwithstanding subsections (b) and (c) of this section, if a registered voter submits to the county board of elections a copy of a protective order without attachments, if any, issued to that person under G.S. 50B-3 or a lawful order of any court of competent jurisdiction restricting the access or contact of one or more persons with a registered voter or a current and valid Address Confidentiality Program authorization card issued pursuant to the provisions of Chapter 15C of the General Statutes, accompanied by a signed statement that the voter has good reason to believe that the physical safety of the voter or a member of the voter's family residing with the voter would be jeopardized if the voter's address were open to public inspection, that voter's address is a public record but shall be kept confidential as long as the protective order remains in effect or the voter remains a certified program participant in the Address Confidentiality Program. That voter's name, precinct, and the other data contained in that voter's registration record shall remain a public record. That voter's signed statement submitted under this subsection is a public record but shall be kept confidential as long as the protective order remains in effect or the voter remains a certified program participant in the Address Confidentiality Program. It is the responsibility of the voter to provide the county board with a copy of the valid protective order in effect or a current and valid Address Confidentiality Program authorization card issued pursuant to the provisions of Chapter 15C of the General Statutes. The voter's actual address shall be used for any election-related purpose by any board of elections. That voter's address shall be available for inspection by a law enforcement agency or by a person identified in a court order, if inspection of the address by that person is directed by that court order. It shall not be a violation of this section if the address of a voter who is participating in the Address Confidentiality Program is discovered by a member of the public in public records disclosed by a county board of elections prior to December 1, 2001. Addresses required to be kept confidential by this section shall not be made available to the jury commission under the provisions of G.S. 9-2. (1901, c. 89, s. 83; Rev., s. 4382; C.S., s. 6016; 1931, c. 80; 1939, c. 263, s. 31/2; 1949, c. 916, ss. 6, 7; 1953, c. 843; 1955, c. 800; 1959, c. 883; 1963, c. 303, s. 1; 1965, c. 1116, s. 1; 1967, c. 775, s. 1; 1973, c. 793, ss. 22, 25; 1975, c. 12; c. 395; 1979, 2nd Sess., c. 1242; 1981, c. 39, s. 1; c. 87, s.1; c. 308, s. 1; c. 656; 1983, c. 218, ss. 1, 2; 1985, c. 211, ss. 1, 2; c. 472, s. 1; 1993 (Reg. Sess., 1994), c. 762, s. 2; 1995 (Reg. Sess., 1996), c. 688, s. 2; 2001-396, s. 1; 2002-171, s. 8; 2003-226, ss. 2, 3; 2003-278, s. 6; 2004-127, s. 17(c); 2005-428, s. 10(a), (b); 2007-391, s. 19; 2008-187, s. 33(a); 2009-541, s. 12.)

Cross References. — As to the use and confidential nature of actual addresses of Address Confidentiality Program participants by boards of elections for election-related purposes, see G.S. 15C-8.

Editor's Note. — Session Laws 2003-226, s. 1, provides: "The purpose of this act is to ensure that the State of North Carolina has a system for all North Carolina elections that complies with the requirements for federal elections set forth in the federal Help America Vote Act of 2002, Public Law 107-252, 116 Stat. 1666 (2002), codified at 42 U.S.C. §§ 15481-15485.

"The General Assembly finds that the education and training of election officials as required by G.S. 163-82.34 has met and continues to meet the mandate for the education and training of precinct officials and other election officials in section 254(a)(3) of the Help America Vote Act of 2002. The General Assembly further finds that the establishment, development, and continued operation of the statewide list maintenance program for voter registration set forth in G.S. 163-82.14 has met and continues to meet the mandates of section 303(a)(2) of the Help America Vote Act of 2002.

"In certain other areas of the election statutes and other laws, the General Assembly finds that the statutes must be amended to comply with the Help America Vote Act."

Subsections (b) and (c), as rewritten by Session Laws 2005-428, ss. 10(a) and (b), effective September 22, 2005, are applicable to all primaries and elections held on or after that date.

Session Laws 2007-391, s. 1(c), was amended by Session Laws 2008-198, s. 33(a), to eliminate any confusion as to effective dates of the 2007 act. Session Laws 2007-391, s. 20, is effective August 19, 2007.

Effect of Amendments. — Session Laws 2009-541, s. 12, effective August 28, 2009, in subsection (a), added the present second sentence, and deleted the former last sentence, which read: "The county board of elections shall maintain custody of any paper hard copy registration records of voters in the county and shall keep them in a place where they are secure."

OPINIONS OF ATTORNEY GENERAL

Editor's Note. *— The opinions below were rendered under former G.S. 163-65.*

Loose-Leaf Registration Required in Municipality Where Local Act Contains No Provisions Regarding Registration. — See opinion of Attorney General to Mr. Herman Edwards, Murphy Town Attorney, 40 N.C.A.G. 465 (1970).

County Board of Commissioners Must Provide Adequate Funds to Ensure That Registration Records Are Kept in a Safe Place. — See opinion of Attorney General to Mr. Alex K. Brock, Executive Secretary, State Board of Elections, 40 N.C.A.G. 76 (1969).

Duty to Keep Social Security Numbers Confidential. — Social Security account numbers appearing on voter registration application cards maintained in the offices of county boards of elections and obtained since 1974 without the disclosure required by the Privacy Act of 1974 must be kept confidential. See opinion of Attorney General to Sheila Stafford Pope, General Counsel, Secretary of State, N.C. General Assembly, 1999 N.C.A.G. 19 (6/24/99).

§ 163-82.10A. Permanent voter registration numbers.

The statewide voter registration system shall assign to each voter a unique registration number. That number shall be permanent for that voter and shall not be changed or reassigned by the county board of elections. (2001-319, s. 8.1(a); 2003-226, s. 10.)

Editor's Note. — Session Laws 2003-226, s. 1, provides: "The purpose of this act is to ensure that the State of North Carolina has a system for all North Carolina elections that complies with the requirements for federal elections set forth in the federal Help America Vote Act of 2002, Public Law 107-252, 116 Stat. 1666 (2002), codified at 42 U.S.C. §§ 15481-15485.

"The General Assembly finds that the education and training of election officials as required by G.S. 163-82.34 has met and continues to meet the mandate for the education and training of precinct officials and other election officials in section 254(a)(3) of the Help America Vote Act of 2002. The General Assembly further finds that the establishment, development, and continued operation of the statewide list maintenance program for voter registration set forth in G.S. 163-82.14 has met and continues to meet the mandates of section 303(a)(2) of the Help America Vote Act of 2002.

"In certain other areas of the election statutes and other laws, the General Assembly finds that the statutes must be amended to comply with the Help America Vote Act."

§ 163-82.10B. Confidentiality of date of birth.

Boards of elections shall keep confidential the date of birth of every voter-registration applicant and registered voter, except in the following situations:

(1) When a voter has filed notice of candidacy for elective office under G.S. 163-106, 163-122, 163-123, or 163-294.2, or 163-323, has been nominated as a candidate under G.S. 163-98 or G.S. 163-114, or has otherwise formally become a candidate for elective office. The exception of this subdivision does not extend to an individual who meets the definition of "candidate" only by beginning a tentative candidacy by receiving funds or making payments or giving consent to someone else to receive funds or transfer something of value for the purpose of exploring a candidacy.

(2) When a voter is serving in an elective office.

(3) When a voter has been challenged pursuant to Article 8 of this Chapter.

(4) When a voter-registration applicant or registered voter expressly authorizes in writing the disclosure of that individual's date of birth.

The disclosure of an individual's age does not constitute disclosure of date of birth in violation of this section.

The county board of elections shall give precinct officials access to a voter's date of birth where necessary for election administration, consistent with the duty to keep dates of birth confidential.

Disclosure of a date of birth in violation of this section shall not give rise to a civil cause of action. This limitation of liability does not apply to the disclosure of a date of birth in violation of this subsection as a result of gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable. (2004-127, s. 17(a).)

§ 163-82.11. Establishment of statewide computerized voter registration.

(a) Statewide System as Official List. — The State Board of Elections shall develop and implement a statewide computerized voter registration system to facilitate voter registration and to provide a central database containing voter registration information for each county. The system shall serve as the single system for storing and managing the official list of registered voters in the State. The system shall serve as the official voter registration list for the conduct of all elections in the State. The system shall encompass both software development and purchasing of the necessary hardware for the central and distributed-network systems.

(b) Uses of Statewide System. — The State Board of Elections shall develop and implement the system so that each county board of elections can do all the following:

(1) Verify that an applicant to register in its county is not also registered in another county.
(2) Be notified automatically that a registered voter in its county has registered to vote in another county.
(3) Receive automatically data about a person who has applied to vote at a drivers license office or at another public agency that is authorized to accept voter registration applications.

(c) Compliance With Federal Law. — The State Board of Elections shall update the statewide computerized voter registration list and database to meet the requirements of section 303(a) of the Help America Vote Act of 2002 and to reflect changes when citizenship rights are restored under G.S. 13-1.

(d) Role of County and State Boards of Elections. — Each county board of elections shall be responsible for registering voters within its county according to law. Each county board of elections shall maintain its records by using the statewide computerized voter registration system in accordance with rules promulgated by the State Board of Elections. Each county board of elections shall enter through the computer system all additions, deletions, and changes in its list of registered voters promptly to the statewide computer system.

(e) Cooperation on List for Jury Commission. — The State Board of Elections shall assist the Division of Motor Vehicles in providing to the county jury commission of each county, as required by G.S. 20-43.4, a list of all registered voters in the county and all persons in the county with drivers license records. The list of registered voters provided by the State Board of Elections shall not include any registered voter who has been inactive for eight years or more. (1993 (Reg. Sess., 1994), c. 762, s. 2; 2003-226, s. 6; 2007-512, s. 4.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 769, ss. 16 and 16.1, provided for a needs assessment and requirements analysis for computerized voter registration, Session Laws 1995, c. 507, s. 13.2 provided for the promulgation of rules for a statewide computerized voter registration system, and Session Laws 1997-443, s. 31, provided for a statewide data elections management system to prescribe data format, data communication, and data content standards.

Session Laws 2003-226, s. 1, provides: "The purpose of this act is to ensure that the State of North Carolina has a system for all North Carolina elections that complies with the requirements for federal elections set forth in the federal Help America Vote Act of 2002, Public Law 107-252, 116 Stat. 1666 (2002), codified at 42 U.S.C. §§ 15481-15485.

"The General Assembly finds that the education and training of election officials as required by G.S. 163-82.34 has met and continues to meet the mandate for the education and training of precinct officials and other election officials in section 254(a)(3) of the Help America Vote Act of 2002. The General Assembly further finds that the establishment, development, and continued operation of the statewide list maintenance program for voter registration set forth in G.S. 163-82.14 has met and continues to meet the mandates of section 303(a)(2) of the Help America Vote Act of 2002.

"In certain other areas of the election statutes and other laws, the General Assembly finds that the statutes must be amended to comply with the Help America Vote Act."

§ 163-82.12. Promulgation of guidelines relating to computerized voter registration.

The State Board of Elections shall make all guidelines necessary to administer the statewide voter registration system established by this Article. All county boards of elections shall follow these guidelines and cooperate with the State Board of Elections in implementing guidelines. These guidelines shall include provisions for all of the following:

(1) Establishing, developing, and maintaining a computerized central voter registration file.
(2) Linking the central file through a network with computerized voter registration files in each of the counties.

(3) Interacting with the computerized drivers license records of the Division of Motor Vehicles and with the computerized records of other public agencies authorized to accept voter registration applications.
(4) Protecting and securing the data.
(5) Converting current voter registration records in the counties in computer files that can be used on the statewide computerized registration system.
(6) Enabling the statewide system to determine whether the voter identification information provided by an individual is valid.
(7) Enabling the statewide system to interact electronically with the Division of Motor Vehicles system to validate identification information.
(8) Enabling the Division of Motor Vehicles to provide real-time interface for the validation of the drivers license number and last four digits of the social security number.
(8b) Notifying voter-registration applicants whose drivers license or last four digits of social security number does not result in a validation, attempting to resolve the discrepancy, initiating investigations under G.S. 163-33(3) or challenges under Article 8 of this Chapter where warranted, and notifying any voters of the requirement under G.S. 163-166.2(b2) to present identification when voting.
(9) Enabling the statewide system to assign a unique identifier to each legally registered voter in the State.
(10) Enabling the State Board of Elections to assist the Division of Motor Vehicles in providing to the jury commission of each county, as required by G.S. 20-43.4, a list of all registered voters in the county and all persons in the county with drivers license records.

These guidelines shall not be considered to be rules subject to Article 2A of Chapter 150B of the General Statutes. However, the State Board shall publish in the North Carolina Register the guidelines and any changes to them after adoption, with that publication noted as information helpful to the public under G.S. 150B-21.17(a)(6). Copies of those guidelines shall be made available to the public upon request or otherwise by the State Board. (1993 (Reg. Sess., 1994), c. 762, s. 2; 2003-226, s. 7(a); 2007-391, s. 21(b); 2008-187, s. 33(a).)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 769, ss. 16 and 16.1, provided for a needs assessment and requirements analysis for computerized voter registration, Session Laws 1995, c. 507, s. 13.2 provided for the promulgation of rules for a statewide computerized voter registration system, and Session Laws 1997-443, s. 31, provided for a statewide data elections management system to prescribe data format, data communication, and data content standards.

Session Laws 2003-226, s. 1, provides: "The purpose of this act is to ensure that the State of North Carolina has a system for all North Carolina elections that complies with the requirements for federal elections set forth in the federal Help America Vote Act of 2002, Public Law 107-252, 116 Stat. 1666 (2002), codified at 42 U.S.C. §§ 15481-15485.

"The General Assembly finds that the education and training of election officials as required by G.S. 163-82.34 has met and continues to meet the mandate for the education and training of precinct officials and other election officials in section 254(a)(3) of the Help America Vote Act of 2002. The General Assembly further finds that the establishment, development, and continued operation of the statewide list maintenance program for voter registration set forth in G.S. 163-82.14 has met and continues to meet the mandates of section 303(a)(2) of the Help America Vote Act of 2002.

"In certain other areas of the election statutes and other laws, the General Assembly finds that the statutes must be amended to comply with the Help America Vote Act."

Session Laws 2007-391, s. 1(c), was amended by Session Laws 2008-198, s. 33(a), to eliminate any confusion as to effective dates of the 2007 act. Session Laws 2007-391, s. 20, is effective August 19, 2007.

§ 163-82.13. Access to statewide voter registration file.

(a) Free Copy for Political Parties. — Beginning January 1, 1996, the State Board of Elections shall make available free of charge, upon written request, one magnetic copy of the statewide computerized voter registration file to the chairman of each political party as defined in G.S. 163-96 as soon as practicable after the close of registration before every statewide primary and election. The file made available to the political party chairmen shall contain the name, address, gender, age but not date of birth, race, voting history, political affiliation, and precinct of every registered voter in the State. If a county board enters telephone numbers into its computer lists of registered voters, then the free list provided under this subsection shall include telephone numbers.

(b) Copies for Sale to Others. — Beginning January 1, 1996, the State Board of Elections shall sell, upon written request, to other public and private organizations and persons magnetic copies of the statewide computerized voter registration file. The State Board of Elections may sell selective lists of registered voters according to county, congressional or legislative district, party affiliation, gender, age but not date of birth, race, date of registration, or any other reasonable category, or a combination of categories. The State Board of Elections shall require all persons to whom any list is furnished under this subsection to reimburse the board for the actual cost incurred in preparing it. (1993 (Reg. Sess., 1994), c. 762, s. 2; 2004-127, s. 17(d).)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 769, ss. 16 and 16.1, provided for a needs assessment and requirements analysis for computerized voter registration, Session Laws 1995, c. 507, s. 13.2 provided for the promulgation of rules for a statewide computerized voter registration system, and Session Laws 1997-443, s. 31, provided for a statewide data elections management system to prescribe data format, data communication, and data content standards.

§ 163-82.14. List maintenance.

(a) Uniform Program. — The State Board of Elections shall adopt a uniform program that makes a reasonable effort:

(1) To remove the names of ineligible voters from the official lists of eligible voters, and

(2) To update the addresses and other necessary data of persons who remain on the official lists of eligible voters.

That program shall be nondiscriminatory and shall comply with the provisions of the Voting Rights Act of 1965, as amended, and with the provisions of the National Voter Registration Act. The State Board of Elections, in addition to the methods set forth in this section, may use other methods toward the ends set forth in subdivisions (1) and (2) of this subsection, including address-updating services provided by the Postal Service. Each county board of elections shall conduct systematic efforts to remove names from its list of registered voters in accordance with this section and with the program adopted by the State Board. The county boards of elections shall complete their list maintenance mailing program by April 15 of every odd-numbered year, unless the State Board of Elections approves a different date for the county.

(b) Death. — The Department of Health and Human Services shall furnish free of charge to the State Board of Elections every month, in a format prescribed by the State Board of Elections, the names of deceased persons who were residents of the State. The State Board of Elections shall distribute every month to each county board of elections the names on that list of deceased persons who were residents of that county. The Department of Health and Human Services shall base each list upon information supplied by death certifications it received during the preceding month. Upon the receipt of those names, each county board of elections shall remove from its voter registration records any person the list shows to be dead. The county board need not send any notice to the address of the person so removed.

(c) Conviction of a Felony. —

(1) Report of Conviction Within the State. — The State Board of Elections, on or before the fifteenth day of every month, shall report to the county board of elections of that county the name, county of residence, and residence address if available, of each individual against whom a final judgment of conviction of a felony has been entered in that county in the preceding calendar month.

(2) Report of Federal Conviction. — The Executive Director of the State Board of Elections, upon receipt of a notice of conviction sent by a United States Attorney pursuant to section 8(g) of the National Voter Registration Act, shall notify the appropriate county boards of elections of the conviction.

(3) County Board's Duty Upon Receiving Report of Conviction. — When a county board of elections receives a notice pursuant to subdivision (1) or (2) of this subsection relating to a resident of that county and that person is registered to vote in that county, the board shall, after giving 30 days' written notice to the voter at his registration address, and if the voter makes no objection, remove the person's name from its registration records. If the voter notifies the county board of elections of his objection to the removal within 30 days of the notice, the chairman of the board of elections shall enter a challenge under G.S. 163-85(c)(5), and the notice the county board received pursuant to this subsection shall be prima facie evidence for the preliminary hearing that the registrant was convicted of a felony.

(d) Change of Address. — A county board of elections shall conduct a systematic program to remove from its list of registered voters those who have moved out of the county, and to update the registration records of persons who have moved within the county. The county board shall remove a person from its list if the registrant:

(1) Gives confirmation in writing of a change of address for voting purposes out of the county. "Confirmation in writing" for purposes of this subdivision shall include:

a. A report to the county board from the Department of Transportation or from a voter registration agency listed in G.S. 163-82.20 that the voter has reported a change of address for voting purposes outside the county;

b. A notice of cancellation received under G.S. 163-82.9; or

c. A notice of cancellation received from an election jurisdiction outside the State.

(2) Fails to respond to a confirmation mailing sent by the county board in accordance with this subdivision and does not vote or appear to vote in an election beginning on the date of the notice and ending on the day after the date of the second general election for the United States House of Representatives that occurs after the date of the notice. A county board sends a confirmation notice in accordance with this subdivision if the notice:

a. Is a postage prepaid and preaddressed return card, sent by forwardable mail, on which the registrant may state current address;

b. Contains or is accompanied by a notice to the effect that if the registrant did not change residence but remained in the county, the registrant should return the card not later than the deadline for registration by mail in G.S. 163-82.6(c)(1); and

c. Contains or is accompanied by information as to how the registrant may continue to be eligible to vote if the registrant has moved outside the county.

A county board shall send a confirmation mailing in accordance with this subdivision to every registrant after every congressional election if the county board has not confirmed the registrant's address by another means.

(3) Any registrant who is removed from the list of registered voters pursuant to this subsection shall be reinstated if the voter appears to vote and gives oral or written affirmation that the voter has not moved out of the county but has maintained residence continuously within the county. That person shall be allowed to vote as provided in G.S. 163-82.15(f). (1953, c. 843; 1955, c. 800; 1963, c. 303, s. 1; 1965, c. 1116, s. 1; 1967, c. 775, s. 1; 1973, c. 793, ss. 25, 28; c. 1223, s. 4; 1975, c. 395; 1977, c. 265, s. 3; 1981, c. 39, s. 1; c. 87, s. 1; c. 308, s. 1; 1983, c. 411, ss. 1, 2; 1985, c. 211, ss. 1, 2; 1987, c. 691, s. 1; 1993 (Reg. Sess., 1994), c. 762, s. 2; 1997-443, s. 11A.117; 1999-453, s. 7(a), (b); 2001-319, ss. 8(a), 11; 2005-428, s. 14; 2007-391, ss. 18, 32; 2008-187, s. 33(a).)

Editor's Note. — Subdivision (d)(3), added by Session Laws 2005-428, s. 14, effective September 22, 2005, is applicable to all primaries and elections held on or after that date.

Session Laws 2007-391, s. 1(c), was amended by Session Laws 2008-198, s. 33(a), to eliminate any confusion as to effective dates of the 2007 act. Session Laws 2007-391, s. 20, which added the last sentence in subsection (a), and in subdivision (c)(1), substituted "State Board of Elections" for "clerk of superior court" and deleted the former last sentence, is effective August 19, 2007.

§ 163-82.15. Change of address within the county.

(a) Registrant's Duty to Report. — No registered voter shall be required to re-register upon moving from one precinct to another within the same county. Instead, a registrant shall notify the county board of the change of address by the close of registration for an election as set out in G.S. 163-82.6(c). In addition to any other method allowed by G.S. 163-82.6, the form may be submitted by electronic facsimile, under the same deadlines as if it had been submitted in person. The registrant shall make the notification by means of a voter registration form as described in G.S. 163-82.3, or by another written notice, signed by the registrant, that includes the registrant's full name, former residence address, new residence address, and the registrant's attestation that the registrant moved at least 30 days before the next primary or election from the old to the new address.

(b) Verification of New Address by Mail. — When a county board of elections receives a notice that a registrant in that county has changed residence within the same county, the county board shall send a notice, by nonforwardable mail, to the registrant at the new address. The notice shall inform the registrant of any new precinct and voting place that will result from the change of address, and it shall state whether the registrant shall vote at the new voting place during the upcoming election or at a later election. If the Postal Service returns the county board's notice to the registrant as undeliverable, the county board shall either:

(1) Send a second notice by nonforwardable mail to the new address and, if it is returned as undeliverable, send to the registrant's old address a confirmation notice as described in G.S. 163-82.14(d)(2); or

(2) Send to the registrant's old address a confirmation notice as described in G.S. 163-82.14(d)(2) without first sending a second nonforwardable notice to the new address.

In either case, if the registrant does not respond to the confirmation notice as described in G.S. 163-82.14(d)(2), then the county board shall proceed with the removal of the registrant from the list of voters in accordance with G.S. 163-82.14(d).

(c) Board's Duty to Make Change. — If the county board confirms the registrant's new address in accordance with subsection (b) of this section, the county board shall as soon as practical change the record to reflect the new address.

(d) Unreported Move Within the Same Precinct. — A registrant who has moved from one address to another within the same precinct shall, notwithstanding failure to notify the county board of the change of address before an election, be permitted to vote at the voting place of that precinct upon oral or written affirmation by the registrant of the change of address before a precinct official at that voting place.

(e) Unreported Move to Another Precinct Within the County. — If a registrant has moved from an address in one precinct to an address in another precinct within the same county more than 30 days before an election and has failed to notify the county board of the change of address before the close of registration for that election, the county board shall permit that person to vote in that election. The county board shall permit the registrant described in this subsection to vote at the registrant's new precinct, upon the registrant's written affirmation of the new address, or, if the registrant prefers, at a central location in the county to be chosen by the county board. If the registrant appears at the old precinct, the precinct officials there shall send the registrant to the new precinct or, if the registrant prefers, to the central location, according to rules which shall be prescribed by the State Board of Elections. At the new precinct, the registrant shall be processed by a precinct transfer assistant, according to rules which shall be prescribed by the State Board of Elections. Any voter subject to this subsection may instead vote a provisional ballot according to the provisions of G.S. 163-166.11.

(f) When Registrant Disputes Registration Records. — If the registration records indicate that the registrant has moved outside the precinct, but the registrant denies having moved from the address within the precinct previously shown on the records, the registrant shall be permitted to vote at the voting place for the precinct where the registrant claims to reside, if the registrant gives oral or written affirmation before a precinct official at that voting place.

(g) Precinct Transfer Assistants. — The county board of elections shall either designate a board employee or appoint other persons to serve as precinct transfer assistants to receive the election-day transfers of the voters described in subsection (e) of this section. In addition, board members and employees may perform the duties of precinct transfer assistants. The State Board of Elections shall promulgate uniform rules to carry out the provisions of this section, and shall define in those rules the duties of the precinct transfer assistant. (1979, c. 135, s. 2; 1983, c. 392, s. 2; 1984, Ex. Sess., c. 3, ss. 1, 2; 1987, c. 549, s. 1; 1989, c. 427; 1991, c. 12, s. 1; 1991 (Reg. Sess., 1992), c. 1032, s. 3; 1993 (Reg. Sess., 1994), c. 762, s. 2; 2001-314, s. 1; 2005-2, s. 3; 2006-262, s. 2.)

Editor's Note. — Session Laws 2005-2, s. 1, provides: "The General Assembly makes the following findings:

"(1) In 2003, the General Assembly enacted S.L. 2003-226, which contained a number of changes to the State's election laws, designed in part to implement provisions of the federal Help America Vote Act of 2002 (HAVA) in such a way as to avoid having separate laws for federal and State elections and otherwise to encourage and expand the exercise of the franchise. One such enactment was codified as G.S. 163-166.11, which spells out procedures for the casting of provisional official ballots. A voter's eligibility to cast a provisional official ballot depends on being a registered voter in the jurisdiction in which the voter seeks to vote. The 'jurisdiction' in which a voter in North Carolina registers to vote is the county. This is the unmistakable meaning of G.S. 163-82.1 and has not heretofore been challenged or questioned.

"(2) In S.L. 2003-226, the General Assembly expressly stated its intent to 'ensure that the State of North Carolina has a system for all elections that complies with the requirements for federal elections set forth in' HAVA. It was then and is now the intent of the General Assembly that the provisions of HAVA be broadly construed and that they be implemented in North Carolina in a manner to ensure a unified system of federal and State elections in compliance with HAVA.

"(3) When it enacted G.S. 163-166.11, it was then and is now the intent of the General Assembly that any individual who is a registered voter in a county but whose name does not appear on the official list of registered voters at the voting place at which that voter appears be allowed to cast a provisional official ballot.

"(4) When it enacted G.S. 163-166.11, it was then and is now the intent of the General Assembly that all provisional ballots be counted for all those ballot items for which a voter was eligible to vote. In enacting G.S. 163-166.11 in 2003, the General Assembly was fully mindful of and intended to reinforce the fact that prior statutory enactments in 2001 had already recognized the right of a voter to cast a provisional ballot and to have that ballot counted for all items for which that voter was eligible to vote. See G.S. 163-182.2(a)(4). Even prior to 2003, the General Statutes recognized the right of a registered voter to cast a provisional ballot and to have that ballot counted for all those items for which the voter was duly qualified to vote.

"(5) When it enacted G.S. 163-166.11, it was then and is now the intent of the General Assembly that the State Board of Elections act in a manner that would result in a single system for federal and State elections, rather than one system for federal elections and another for State elections. In enacting G.S. 163-166.11 in 2003, the General Assembly was mindful of and intended to reinforce the fact that it had already provided in 2001 in G.S. 163-166.7(c)(6) that the State Board of Elections would adopt rules to ensure that voters 'not clearly eligible to vote in the precinct but who seek to vote there are given proper assistance in voting a provisional official ballot or guidance to another voting place where they are eligible to vote.' The possibility of out-of-precinct provisional voting was thus recognized by the General Assembly as early as 2001.

"(6) The law regarding provisional ballots does not rest solely on G.S. 163-82.15(e), which addresses the narrow circumstance of 'Unreported Move[s] to Another Precinct Within the County.' Though that statute mentions two ways in which precinct officials may process registrants, it is not exclusive. G.S. 163-82.15(e) is part of the statutory Article on voter registration, rather than on voting, and should be read in that context. It was enacted in 1994, before provisional voting was codified in North Carolina. The enactment of G.S. 163-166.7(c)(6) in 2001 is the authority giving the State Board of Elections the duty to apply the broader laws of provisional voting, including G.S. 163-166.11. Any reading of G.S. 163-166.11 that would limit that statute's provisions to the narrower class of voting situations governed by the earlier enacted provisions of G.S. 163-82.15(e) would ignore the long-standing principle of statutory construction that statutes relating to the same subject matter should be reconciled in such a manner as to effect the scope and meaning of the later enactment and read in a manner that would tend most completely to secure the rights of all persons affected by the legislation. It was then and is now the intent of the General Assembly in enacting G.S. 163-166.11 to expand the exercise of the franchise, not to limit it or to restrict it by the terms of earlier and narrower enactments.

"(7) The State Board of Elections and all county boards of elections were following the intent of the General Assembly when they administered G.S. 163-166.11 and the earlier enacted statutes in G.S. 163-182.2(a)(4) and G.S. 163-166.7(c)(6) to count in whole or in part ballots cast by registered voters in the county who voted outside their resident precincts in the July 20, 2004, Primary, the August 17, 2004, Second Primary, and the November 2, 2004, General Election.

"(8) Several hundred thousand registered North Carolina voters cast ballots outside their resident precincts during the one-stop absentee balloting ('early voting') period pursuant to G.S. 163-227.2 prior to the General Election in November 2004, during the two primaries in 2004, and then on the date of the General Election in November 2004. There is no statutory basis upon which to distinguish out-of-precinct voting that occurred on the date of the General Election in November 2004 from out-of-precinct voting that occurred during the First and Second Primaries in 2004 or that occurred during the period of one-stop absentee ('early') voting prior to the General Election of 2004.

"(9) The General Assembly takes note of the fact that of those registered voters who happened to vote provisional ballots outside their resident precincts on the day of the November 2004 General Election, a disproportionately high percentage were African-American.

"(10) The General Assembly notes that in addition to provisional voting on the date of the

General Election pursuant to G.S. 163-166.11, the General Statutes abound with provisions that allow voters to cast votes outside their resident precincts:

"a. Civilian absentee voting by mail, G.S. 163-226.

"b. Military and overseas citizens absentee voting, G.S. 163-245.

"c. One-stop absentee (early) voting, G.S. 163-227.2.

"d. Voting in a voting place on a lot adjacent to the precinct, G.S. 163-128.

"e. Temporarily voting in an adjacent precinct, G.S. 163-128.

"f. Voting in a precinct outside the voting place where no suitable facility exists inside it or adjacent to it, G.S. 163-130.1.

"g. Voting at a central location in the county by voters who no longer live in the precinct where their name is listed on registration lists, G.S. 163-82.15(e).

"All those provisions were enacted prior to G.S. 163-166.11. Most were enacted decades before. As many as 1,000,000 people in North Carolina may have cast out-of-precinct votes using all out-of-precinct methods in 2004.

"(11) It would be fundamentally unfair to discount the provisional official ballots cast by properly registered and duly qualified voters voting and acting in reliance on the statutes adopted by the General Assembly and administered by the State Board of Elections in accordance with its intent. Moreover, to subtract such ballots only from the count for the General Election of 2004 without also doing so for the First or Second Primaries of 2004 would create a bizarre result in which out-of-precinct provisional ballots are allowed to count for some elections but not others. The General Assembly did not and does not now intend to create such a system.

"(12) Even if the State Board of Elections had misread the language and intent of the General Statutes concerning provisional voting, which it did not do, it has been the long-standing and hitherto unquestioned law of this State, confirmed by prior decisions of the North Carolina Supreme Court, that an innocent voter's ballot shall not be disqualified because of errors or omissions by elections officials. This fundamental principle was adopted by Justice Samuel J. Ervin Jr. in the case of *Owens v. Chaplin,* 228 N.C. 705 (1948) using the following language: 'We can conceive of no principle which permits the disfranchisement of innocent voters for the mistake, or even the willful misconduct, of election officials in performing the duty cast upon them. The object of elections is to ascertain the popular will, and not to thwart it. The object of election laws is to secure the rights of duly-qualified electors, and not to defeat them.'

"See also *Appeal of Judicial Review by Republican Candidates for Election in Clay County,* 45 N.C. App. 556 (1980).

"The General Assembly endorses and reaffirms this fundamental principle.

"(13) It is the will of the people, as expressed through their representatives in the General Assembly, that the validity of the primaries and elections conducted in 2004 and certified by a county board of elections or the State Board of Elections, not be called into question by retroactively revisiting the propriety of provisional ballots cast by duly registered voters of a county.

"(14) To avoid all doubt and remove any possible future question as to the General Assembly's plain intent with respect to the subject of provisional voting, and to avoid misinterpretation of any other statute, the General Assembly enacts Sections 2 through 5 of this act."

Subsection (e), as amended by Session Laws 2005-2, s. 3, effective March 2, 2005, which added the last sentence, is applicable to all elections held after January 1, 2004.

Session Laws 2006-262, s. 5, provides that s. 2 of this act, which substituted "the registrant's attestation that the registrant moved at least 30 days before the next primary or election" for "date of moving" near the end of the last sentence in subsection (a), is effective when it becomes law, except that any criminal penalty resulting from Session Laws 2006-262 becomes effective October 1, 2006. Prosecutions for offenses committed before October 1, 2006, are not abated or affected by Session Laws 2006-262, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

CASE NOTES

Provisional Ballots Cast in Incorrect Precinct. — North Carolina Board of Elections, pursuant to G.S. 163-82.15(e), improperly counted provisional ballots cast by voters on election day in a general election at precincts other than the voter's correct precinct of residence. James v. Bartlett, 359 N.C. 260, 607 S.E.2d 638, 2005 N.C. LEXIS 146 (2005).

§ 163-82.15A. Administrative change of registration when county line is adjusted.

When a boundary between counties is established by legislation or under G.S. 153A-18, the Executive Director shall direct the county boards of elections involved to administratively change the voter registration of any voter whose county of residence is altered by the establishment of the boundary. The voter shall not be required to submit a new application to register, and the provisions of G.S. 163-57 shall apply to the determination of residency. The Executive Director shall prescribe a method of notifying the voter of the change of county registration, the correct precinct, and other relevant information. (2005-428, s. 3(a).)

Editor's Note. — Session Laws 2005-428, s. 18, made this section effective January 1, 2006, and applicable to all primaries and elections held on or after that date.

§ 163-82.16. Change of name.

(a) Registrant's Duty to Report. — If the name of a registrant is changed in accordance with G.S. 48-1-104, G.S. 50-12, or Chapter 101 of the General Statutes, or if a married registrant assumes the last name of the registrant's spouse, the registrant shall not be required to re-register, but shall report the change of name to the county board not later than the last day for applying to register to vote for an election in G.S. 163-82.6. The registrant shall report the change on a form described in G.S. 163-82.3 or on a voter registration card described in G.S. 163-82.8 or in another written statement that is signed, contains the registrant's full names, old and new, and the registrant's current residence address.

(b) Verification of New Name by Mail. — When a county board of elections receives a notice of name change from a registrant in that county, the county board shall send a notice, by nonforwardable mail, to the registrant's residence address. The notice shall state that the registrant's records will be changed to reflect the new name if the registrant does not respond that the name change is incorrect. If the Postal Service returns the county board's notice to the registrant as undeliverable, the county board shall send to the registrant's residence address a confirmation notice as described in G.S. 163-82.14(d)(2).

If the registrant does not respond to the confirmation notice as described in G.S. 163-82.14(d)(2), then the county board shall proceed with the removal of the registrant from the list of voters in accordance with G.S. 163-82.14(d).

(c) Board's Duty to Make Change. — If the county board confirms the registrant's address in accordance with subsection (b) of this section and the registrant does not deny making the application for the name change, the county board shall as soon as practical change the record of the registrant's name to conform to that stated in the application.

(d) Unreported Name Change. — A registrant who has not reported a name change in accordance with subsection (a) of this section shall be permitted to vote if the registrant reports the name change to the chief judge at the voting place, or to the county board along with the voter's application for an absentee ballot. (1979, c. 480; 1981, c. 33, s. 3; 1989 (Reg. Sess., 1990), c. 991, s. 3; 1991 (Reg. Sess., 1992), c. 1032, s. 2; 1993 (Reg. Sess., 1994), c. 762, s. 2; 1995, c. 457, s. 9.)

§ 163-82.17. Change of party affiliation.

(a) Registrant's Duty to Report. — Any registrant who desires to have the record of his party affiliation or unaffiliated status changed on the registration list shall, no later than the last day for making application to register under G.S. 163-82.6 before the election, indicate the change on an application form as described in G.S. 163-82.3 or on a voter registration card described in G.S. 163-82.8. No registrant shall be permitted to change party affiliation or unaffiliated status for a primary, second primary, or special or general election after the deadline for registration applications for that election as set out in G.S. 163-82.6.

(b) Verification of Affiliation Change by Mail. — When a county board of elections receives a notice of change of party affiliation or unaffiliated status from a registrant in that county, the county board shall send a notice, by nonforwardable mail, to the registrant's residence address. The notice shall state that the registrant's records will be changed to reflect the change of status if the registrant does not respond by stating that he does not desire a change in status. The notice shall also inform the registrant of the time that the change of affiliation status will occur, and shall explain the provisions of subsection (d) of this section. If the Postal Service returns the county board's notice to the registrant as undeliverable, the county board shall send to the registrant's residence address a confirmation notice as described in G.S. 163-82.14(d)(2). If the registrant does not respond to the confirmation notice as described in G.S. 163-82.14(d)(2), then the county board shall proceed with the removal of the registrant from the list of voters in accordance with G.S. 163-82.14(d).

(c) Board's Duty to Make Change. — If the county board confirms the registrant's address in accordance with subsection (b) of this section and the registrant does not deny making the application to change affiliated or unaffiliated status, the county board of elections shall as soon as practical change the record of the registrant's party affiliation, or unaffiliated status, to conform to that stated in the application. Thereafter the voter shall be considered registered and qualified to vote in accordance with the change, except as provided in subsection (d) of this section.

(d) Deadline to Change Status Before Primary. — If a registrant applies to change party affiliation or unaffiliated status later than the last day for applying to register under G.S. 163-82.6 before a primary, the registrant shall not be entitled to vote in the primary of a party in which the registrant's status on that last day did not entitle the registrant to vote.

(e) Authority of County Board or Director to Make Correction. — If at any time the chairman or director of elections of the county board of elections is satisfied that an error has been made in designating the party affiliation of any voter on the registration records, then the chairman or director of elections of the county board of elections shall make the necessary correction after receiving from the voter a sworn statement as to the error and the correct status. (1939, c. 263, s. 6; 1949, c. 916, ss. 4, 8; 1953, c. 843; 1955, c. 800; c. 871, s. 3; 1957, c. 784, s. 5; 1963, c. 303, s. 1; 1967, c. 775, s. 1; 1973, c. 793, ss. 30, 31; c. 1223, s. 5; 1975, c. 234, s. 2; 1977, c. 130, s. 1; c. 626, s. 1; 1981, c. 33, s. 4; c. 219, s. 4; 1983, c. 576, s. 4; 1987, c. 408, ss. 1, 6; 1989, c. 635, s. 2; 1991 (Reg. Sess., 1992), c. 1032, s. 4; 1993 (Reg. Sess., 1994), c. 762, s. 2; 1995, c. 243, s. 1.)

Legal Periodicals. — For note, "North Carolina General Assembly Amends Election Laws to Allow Unaffiliated Voters to Vote in Party Primaries," see 66 N.C.L. Rev. 1208 (1988).

CASE NOTES

Editor's Note. — *The case cited below was decided under former G.S. 163-74 and prior law.*

Requiring oath to support future candidates violates the principle of freedom of conscience. Clark v. Meyland, 261 N.C. 140, 134 S.E.2d 168 (1964).

The legislature is without power to shackle a voter's conscience by requiring an oath requiring an elector to vote for future candidates as a price to pay for his right to participate in his party's primary. Clark v. Meyland, 261 N.C. 140, 134 S.E.2d 168 (1964).

And Denies Free Ballot. — An oath to support future candidates denies a free ballot, one that is cast according to the dictates of the voter's judgment. Clark v. Meyland, 261 N.C. 140, 134 S.E.2d 168 (1964).

And Participation in Primary Cannot Be Denied for Refusal to Take Unconstitutional Oath. — Membership in a party and a right to participate in its primary may not be denied an elector simply because he refuses to take an oath to vote in a manner which violates the constitutional provision that elections shall be free. Clark v. Meyland, 261 N.C. 140, 134 S.E.2d 168 (1964).

Any elector who offers sufficient proof of his intent, in good faith, to change his party affiliation, cannot be required to bind himself by an oath, the violation of which, if not sufficient to brand him as a felon, would certainly be sufficient to operate as a deterrent to his exercising a free choice among available candidates in the election, even by casting a write-in ballot. Clark v. Meyland, 261 N.C. 140, 134 S.E.2d 168 (1964).

Good Faith of Party Change Subject to Challenge. — When a member of either party desires to change his party affiliation, the good faith of the change is a proper subject of inquiry and challenge. Clark v. Meyland, 261 N.C. 140, 134 S.E.2d 168 (1964).

§ 163-82.18. Appeal from denial of registration.

(a) Right to Appeal. — Any applicant who receives notice of denial of registration pursuant to G.S. 163-82.7 may appeal the denial within five days after receipt of the notice of denial. The county board of elections shall promptly set a date for a public hearing. The notice of appeal shall be in writing and shall be signed by the appealing party, shall include the appealing party's name, date of birth, address, and reasons for the appeal.

(b) Hearing Before County Board of Elections. — The county board of elections shall set a date and time for a public hearing and shall notify the appealing party. Every person appealing to the county board of elections from denial of registration shall be entitled to a prompt and fair hearing on the question of the denied applicant's right and qualifications to register as a voter. All cases on appeal to a county board of elections shall be heard de novo.

Two members of the county board of elections shall constitute a quorum for the purpose of hearing appeals on questions of registration. The decision of a majority of the members of the board shall be the decision of the board. The board shall be authorized to subpoena witnesses and to compel their attendance and testimony under oath, and it is further authorized to subpoena papers and documents relevant to any matters pending before the board.

If at the hearing the board shall find that the person appealing from a denial of registration meets all requirements of law for registration as a voter in the county, the board shall enter an order directing that the appellant be registered and assign the appellant to the appropriate precinct. Not later than five days after an appeal is heard before the county board of elections, the board shall give written notice of its decision to the appealing party.

(c) Appeal to Superior Court. — Any person aggrieved by a final decision of a county board of elections denying registration may at any time within 10 days from the date on which he receives notice of the decision appeal to the superior court of the county in which the board is located. Upon such an appeal, the appealing party shall be the plaintiff and the county board of elections shall be the defendant, and the matter shall be heard de novo in the superior court in the manner in which other civil actions are tried and disposed of in that court.

If the decision of the court is that the order of the county board of elections shall be set aside, then the court shall enter its order so providing and adjudging that the plaintiff is entitled to be registered as a qualified voter in the precinct in which he originally made application to register, and in such case the plaintiff's name shall be entered in the registration book of that precinct. The court shall not order the registration of any person in a precinct in which he did not apply to register prior to the proceeding in court.

From the judgment of the superior court an appeal may be taken to the appellate division in the same manner as other appeals are taken from judgments of that court in civil actions. (1957, c. 287, dd. 2-4; 1967, c. 775, s. 1; 1969, c. 44, s. 82; 1981, c. 542, ss. 1, 2; 1993 (Reg. Sess., 1994), c. 762, s. 2.)

§ 163-82.19. Voter registration at drivers license offices; coordination on data interface.

(a) Voter Registration at Drivers License Offices. — The Division of Motor Vehicles shall, pursuant to the rules adopted by the State Board of Elections, modify its forms so that any eligible person who applies for original issuance, renewal or correction of a drivers license, or special identification card issued under G.S. 20-37.7 may, on a part of the form, complete an application to register to vote, or to update the voter's registration if the voter has changed his or her address or moved from one precinct to another or from one county to another, or to preregister to vote. The person taking the application shall ask if the applicant is a citizen of the United States. If the applicant states that the applicant is not a citizen of the United States, or declines to answer the question, the person taking the application shall inform the applicant that it is a felony for a person who is not a citizen of the United States to apply to register to vote. Any person who willfully and knowingly and with fraudulent intent gives false information on the application is guilty of a Class I felony. The application shall state in clear language the penalty for violation of this section. The necessary forms shall be prescribed by the State Board of Elections. The form must ask for the previous voter registration address of the voter, if any. If a previous address is listed, and it is not in the county of residence of the applicant, the appropriate county board of elections shall treat the application as an authorization to cancel the previous registration and also process it as such under the procedures of G.S. 163-82.9. If a previous address is listed and that address is in the county where the voter applies to register, the application shall be processed as if it had been submitted under G.S. 163-82.9.

Registration shall become effective as provided in G.S. 163-82.7. Applications to register to vote accepted at a drivers license office under this section until the deadline established in G.S. 163-82.6(c)(2) shall be treated as timely made for an election, and no person who completes an application at that drivers license office shall be denied the vote in that election for failure to apply earlier than that deadline.

All applications shall be forwarded by the Department of Transportation to the appropriate board of elections not later than five business days after the date of acceptance, according to rules which shall be promulgated by the State Board of Elections. Those rules shall provide for a paperless, instant, electronic transfer of applications to the appropriate board of elections. Applications for preregistration to vote shall be forwarded to the State Board of Elections.

(b) Coordination on Data Interface. — The Department of Transportation jointly with the State Board of Elections shall develop and operate a computerized interface to match information in the database of the statewide voter registration system with the drivers license information in the Division of Motor Vehicles to the extent required to enable the State Board of Elections and the Department of Transportation to verify the accuracy of the information provided on applications for voter registration, whether the applications were received at drivers license offices or elsewhere. The Department of Transportation and the State Board shall implement the provisions of this subsection so as to comply with section 303 of the Help America Vote Act of 2002. The Department of Transportation shall enter into an agreement with the Commissioner of Social Security so as to comply with section 303 of the Help America Vote Act of 2002. (1983, c. 854, s. 1; 1991 (Reg. Sess., 1992), c. 1044, s. 19(a); 1993, c. 74, s. 2; 1993 (Reg. Sess., 1994), c. 762, s. 2; 1998-149, s. 11.1; 2001-319, s. 7(a); 2003-226, s. 7(b); 2009-541, s. 13(a).)

Editor's Note. — Session Laws 2003-226, s. 1, provides: "The purpose of this act is to ensure that the State of North Carolina has a system for all North Carolina elections that complies with the requirements for federal elections set forth in the federal Help America Vote Act of 2002, Public Law 107-252, 116 Stat. 1666 (2002), codified at 42 U.S.C. §§ 15481-15485.

"The General Assembly finds that the education and training of election officials as required by G.S. 163-82.34 has met and continues to meet the mandate for the education and training of precinct officials and other election officials in section 254(a)(3) of the Help America Vote Act of 2002. The General Assembly further finds that the establishment, development, and continued operation of the statewide list maintenance program for voter registration set forth in G.S. 163-82.14 has met and continues to meet the mandates of section 303(a)(2) of the Help America Vote Act of 2002.

"In certain other areas of the election statutes and other laws, the General Assembly finds that the statutes must be amended to comply with the Help America Vote Act."

Effect of Amendments. — Session Laws 2009-541, s. 13(a), effective January 1, 2010, in subsection (a), added "or to preregister to vote" at the end of the first sentence of the first paragraph, added the last sentence at the end of the third paragraph, and made minor punctuation and gender neutral changes.

§ 163-82.20. Voter registration at other public agencies.

(a) Voter Registration Agencies. — Every office in this State which accepts:

(1) Applications for a program of public assistance under Article 2 of Chapter 108A of the General Statutes or under Article 13 of Chapter 130A of the General Statutes;

(2) Applications for State-funded State or local government programs primarily engaged in providing services to persons with disabilities, with such office designated by the State Board of Elections; or

(3) Claims for benefits under Chapter 96 of the General Statutes, the Employment Security Law,

is designated as a voter registration agency for purposes of this section.

(b) Duties of Voter Registration Agencies. — A voter registration agency described in subsection (a) of this section shall, unless the applicant declines, in writing, to register or preregister to vote:

(1) Distribute with each application for service or assistance, and with each recertification, renewal, or change of address relating to such service or assistance:

a. The voter registration application form described in G.S. 163-82.3(a) or (b); or

b. The voter registration agency's own form, if it is substantially equivalent to the form described in G.S. 163-82.3(a) or (b) and has been approved by the State Board of Elections, provided that the agency's own form may be a detachable part of the agency's paper application or may be a paperless computer process, as long as the applicant is required to sign an attestation as part of the application to register or preregister.

(2) Provide a form that contains the elements required by section 7(a)(6)(B) of the National Voter Registration Act; and

(3) Provide to each applicant who does not decline to register or preregister to vote the same degree of assistance with regard to the completion of the registration application as is provided by the office with regard to the completion of its own forms.

(c) Provided that voter registration agencies designated under subdivision (a)(3) of this section shall only be required to provide the services set out in this subsection to applicants for new claims, reopened claims, and changes of address under Chapter 96 of the General Statutes, the Employment Security Law.

(d) Home Registration for Disabled. — If a voter registration agency provides services to a person with disability at the person's home, the voter registration agency shall provide the services described in subsection (b) of this section at the person's home.

(e) Prohibitions. — Any person providing any service under subsection (b) of this section shall not:

(1) Seek to influence an applicant's political preference or party registration, except that this shall not be construed to prevent the notice provided by G.S. 163-82.4(c) to be given if the applicant refuses to declare his party affiliation;
(2) Display any such political preference or party allegiance;
(3) Make any statement to an applicant or take any action the purpose or effect of which is to discourage the applicant from registering or preregistering to vote; or
(4) Make any statement to an applicant or take any action the purpose or effect of which is to lead the applicant to believe that a decision to register or preregister or not to register or preregister has any bearing on the availability of services or benefits.

(f) Confidentiality of Declination to Register. — No information relating to a declination to register or preregister to vote in connection with an application made at a voter registration agency may be used for any purpose other than voter registration.

(g) Transmittal From Agency to Board of Elections. — Any voter registration or preregistration application completed at a voter registration agency shall be accepted by that agency in lieu of the applicant's mailing the application. Any such application so received shall be transmitted to the appropriate board of elections not later than five business days after acceptance, according to rules which shall be promulgated by the State Board of Elections.

(h) Twenty-Five-Day Deadline for an Election. — Applications to register accepted by a voter registration agency shall entitle a registrant to vote in any primary, general, or special election unless the registrant shall have made application later than the twenty-fifth calendar day immediately preceding such primary, general, or special election, provided that nothing shall prohibit voter registration agencies from continuing to accept applications during that period.

(i) Ineligible Applications Prohibited. — No person shall make application to register or preregister to vote under this section if that person is ineligible on account of age, citizenship, lack of residence for the period of time provided by law, or because of conviction of a felony. (1993 (Reg. Sess., 1994), c. 762, s. 2; 1995, c. 507, s. 25.10(c); 1995 (Reg. Sess., 1996), c. 608, s. 1; 2009-541, s. 14(a).)

Editor's Note. — Subsections (b1) and (c) through (h) were redesignated as subsections (c) through (i) at the direction of the Revisor of Statutes.

Effect of Amendments. — Session Laws 2009-541, s. 14(a), effective January 1, 2010, inserted "or preregister" following "to register" throughout the section; substituted "registering or preregistering" for "registering" in subdivision (e)(3); substituted "registration or preregistration application" for "registration application" in subsection (g); and deleted "to vote" following "person is ineligible" in subsection (i).

§ 163-82.20A. Voter registration upon restoration of citizenship.

The State Board of Elections, the Department of Correction, and the Administrative Office of the Courts shall jointly develop and implement educational programs and procedures for persons to apply to register to vote at the time they are restored to citizenship and all filings required have been completed under Chapter 13 of the General Statutes. Those procedures shall be designed to do both of the following:

(1) Inform the person that the restoration of rights removes the person's disqualification from voting, but that in order to vote the person must register to vote.
(2) Provide an opportunity to that person to register to vote.

At a minimum, the program shall include a written notice to the person whose citizenship has been restored, informing that person that the person may now register to vote, with a voter registration form enclosed with the notice. (2007-391, s. 26(a).)

Editor's Note. — Session Laws 2007-391, s. 26(b) made this section effective October 1, 2007.

§ 163-82.21. Voter registration at military recruitment offices.

The Executive Director, jointly with the Department of Defense, shall develop and implement procedures for persons to apply to register to vote at recruitment offices of the armed forces of the United States in compliance with section 7(c) of the National Voter Registration Act. (1993 (Reg. Sess., 1994), c. 762, s. 2; 2001-319, s. 11.)

§ 163-82.22. Voter registration at public libraries.

Every library covered by G.S. 153A-272 shall make available to the public the application forms described in G.S. 163-82.3, and shall keep a sufficient supply of the forms so that they are always available. Every library covered by G.S. 153A-272 shall designate at least one employee to assist voter registration applicants in completing the form during all times that the library is open. (1975, c. 234, s. 1; 1977, c. 626, s. 1; 1983, c. 588, ss. 2, 3; c. 707; 1991 (Reg. Sess., 1992), c. 973, ss. 1, 2; c. 1044, s. 19(b); 1993, c. 74, s. 2; 1993 (Reg. Sess., 1994), c. 762, s. 2.)

§ 163-82.23. Voter registration at public high schools.

Every public high school shall make available to its students and others who are eligible to register and preregister to vote the application forms described in G.S. 163-82.3, and shall keep a sufficient supply of the forms so that they are always available. A local board of education may, but is not required to, designate high school employees to assist in completing the forms. Only employees who volunteer for this duty may be designated by boards of education. (1975, c. 234, s. 1; 1977, c. 626, s. 1; 1983, c. 588, ss. 2, 3; c. 707; 1991 (Reg. Sess., 1992), c. 973, ss. 1, 2; c. 1044, s. 19(b); 1993, c. 74, s. 2; 1993 (Reg. Sess., 1994), c. 762, s. 2; 2009-541, s. 15(a).)

Effect of Amendments. — Session Laws 2009-541, s. 15(a), effective January 1, 2010, inserted "and preregister" in the first sentence of the section.

§ 163-82.24. Statewide training and certification for election officials.

(a) Training. — The State Board of Elections shall conduct training programs in election law and procedures. Every county elections director shall receive training conducted by the State Board at least as often as required in the following schedule:

(1) Once during each odd-numbered year before the municipal election held in the county;
(2) Once during each even-numbered year before the first partisan primary; and
(3) Once during each even-numbered year after the partisan primaries but before the general election.

Every member of a county board of elections shall receive training conducted by the State Board at least once during the six months after the member's initial appointment and at least once again during the first two years of the member's service. The State Board of Elections shall promulgate rules for the training of precinct officials, which shall be followed by the county boards of elections.

(b) Certification. — The State Board of Elections shall conduct a program for certification of election officials. The program shall include training in election law and procedures. Before issuing certification to an election official, the State Board shall administer an examination designed to determine the proficiency of the official in election law and procedures. The State Board shall set adequate standards for the passage of the examination. (1993 (Reg. Sess., 1994), c. 762, s. 2; 1995, c. 243, s. 1; 2001-319, s. 2(a).)

§ 163-82.25. Mandated voter registration drive.

The Governor shall proclaim as Citizens Awareness Month the month designated by the State Board of Elections annually. During that month, the State Board of Elections shall initiate a statewide voter registration drive and shall adopt rules under which county boards of elections shall conduct the drives. Each county board of elections shall participate in the statewide voter registration drives and conduct voter registration and preregistration drives at public high schools in accordance with local board of education policies, school system administrative procedures, and guidelines of the State Board of Elections. (1991 (Reg. Sess., 1992), c. 1044, s. 19(e); 1993 (Reg. Sess., 1994), c. 762, s. 2; 2009-541, s. 16(a).)

Effect of Amendments. — Session Laws 2009-541, s. 16(a), effective January 1, 2010, substituted "annually" for "during every even-numbered year" at the end of the first sentence; and substituted "and conduct voter registration and preregistration drives at public high schools in accordance with local board of education policies, school system administrative procedures, and guidelines of the State Board of Elections" for "in accordance with the rules adopted by the State Board" at the end of the section.

§ 163-82.26. Rule-making authority.

The State Board of Elections shall promulgate rules necessary to implement the provisions of this Article. (1993 (Reg. Sess., 1994), c. 762, s. 2.)

§ 163-82.27. Help America Vote Act of 2002.

As used in this Chapter, the term "Help America Vote Act of 2002" means the Help America Vote Act of 2002, Public Law 107-252, 116 Stat. 1666 (2002), codified at 42 U.S.C. §§ 15481-15485. Citations to titles and sections of the Help America Vote Act of 2002 are as they appear in the Public Law. The State Board shall have the authority to adopt rules and guidelines to implement the minimum requirements of the Help America Vote Act of 2002. (2003-226, s. 21.)

Editor's Note. — Session Laws 2003-226, s. 1, provides: "The purpose of this act is to ensure that the State of North Carolina has a system for all North Carolina elections that complies with the requirements for federal elections set forth in the federal Help America Vote Act of 2002, Public Law 107-252, 116 Stat. 1666 (2002), codified at 42 U.S.C. §§ 15481-15485.

"The General Assembly finds that the education and training of election officials as required by G.S. 163-82.34 has met and continues to meet the mandate for the education and training of precinct officials and other election officials in section 254(a)(3) of the Help America Vote Act of 2002. The General Assembly further finds that the establishment, development, and continued operation of the statewide list maintenance program for voter registration set forth in G.S. 163-82.14 has met and continues to meet the mandates of section 303(a)(2) of the Help America Vote Act of 2002.

"In certain other areas of the election statutes and other laws, the General Assembly finds that the statutes must be amended to comply with the Help America Vote Act."

§ 163-82.28. The HAVA Election Fund.

There is established a special fund to be known as the Election Fund. All funds received for implementation of the Help America Vote Act of 2002, Public Law 107-252, shall be deposited in that fund. The State Board of Elections shall use funds in the Election Fund only to implement HAVA. (2003-12, s. 1; 2005-276, s. 23A.2(a); 2005-323, s. 7; 2006-264, s. 76(d).)

Editor's Note. — The number of this section was designated by the revisor of statutes.

Session Laws 2003-284, s. 25.1(a), as amended by Session Laws 2004-124, s. 26.1, provides appropriations to this fund, while s. 25.1(b), as amended by Session Laws 2004-124, s. 26.1, explains the matching grant program and maintenance of effort requirements under Title II of the Help America Vote Act (P.L. 107-252).

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5 contains a severability clause.

§ 163-83: Reserved for future codification purposes.

ARTICLE 8.

Challenges.

§ 163-84. Time for challenge other than on day of primary or election.

The registration records of each county shall be open to inspection by any registered voter of the county, including any chief judge or judge of elections, during the normal business hours of the county board of elections on the days when the board's office is open. At those times the right of any person to register, remain registered, or vote shall be subject to objection and challenge.

(1901, c. 89, s. 19; Rev., s. 4339; C.S., s. 5972; 1929, c. 164, s. 36; 1953, c. 843; 1955, c. 800; c. 871, s. 7; 1959, c. 616, s. 2; 1963, c. 303, s. 1; 1967, c. 775, s. 1; 1973, c. 793, s. 33; 1993 (Reg. Sess., 1994), c. 762, s. 24.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 61, effective January 1, 1995, provides: "Any person who on December 31, 1994, was a registrar under G.S. 163-41 shall be a chief judge under G.S. 163-41."

Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 73, provides in part: "Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

CASE NOTES

Remedy for Irregular Registration. — Where it was alleged that the registration of voters in a primary municipal election was irregular and fraudulent, and the statute and charter of the city under which the election was to be held provided for challenge to voters so registered, mandamus to compel a proper registration would not be issued, as there was an adequate remedy at law by way of challenge provided by statute. Glenn v. Culbreth, 197 N.C. 675, 150 S.E. 332 (1929).

§ 163-85. Challenge procedure other than on day of primary or election.

(a) Right to Challenge; When Challenge May Be Made. — Any registered voter of the county may challenge the right of any person to register, remain registered or vote in such county. No such challenge may be made after the twenty-fifth day before each primary, general, or special election.

(b) Challenges Shall Be Made to the County Board of Elections. — Each challenge shall be made separately, in writing, under oath and on forms prescribed by the State Board of Elections, and shall specify the reasons why the challenged voter is not entitled to register, remain registered, or vote. When a challenge is made, the board of elections shall cause the word "challenged" to be written in pencil on the registration records of the voter challenged. The challenge shall be signed by the challenger and shall set forth the challenger's address.

(c) Grounds for Challenge. — Such challenge may be made only for one or more of the following reasons:

(1) That a person is not a resident of the State of North Carolina, or

(2) That a person is not a resident of the county in which the person is registered, provided that no such challenge may be made if the person removed his residency and the period of removal has been less than 30 days, or

(3) That a person is not a resident of the precinct in which the person is registered, provided that no such challenge may be made if the person removed his residency and the period of removal has been less than 30 days, or

(4) That a person is not 18 years of age, or if the challenge is made within 60 days before a primary, that the person will not be 18 years of age by the next general election, or

(5) That a person has been adjudged guilty of a felony and is ineligible to vote under G.S. 163-55(2), or

(6), (7) Repealed by Session Laws 1985, c. 563, ss. 11.1, 11.2.

(7a) That a person is dead,

(8) That a person is not a citizen of the United States, or

(9) With respect to municipal registration only, that a person is not a resident of the municipality in which the person is registered, [or]

(10) That the person is not who he or she represents himself or herself to be.

(d) Preliminary Hearing. — When a challenge is made, the county board of election shall schedule a preliminary hearing on the challenge, and shall take such testimony under oath and receive such other evidence proffered by the challenger as may be offered. The burden of proof shall be on the challenger, and if no testimony is presented, the board shall dismiss the challenge. If the challenger presents evidence and if the board finds that probable cause exists that the person challenged is not qualified to vote, then the board shall schedule a hearing on the challenge.

(e) Prima Facie Evidence That Voter No Longer Resides in Precinct. — The presentation of a letter mailed by returnable first-class mail to the voter at the address listed on the voter registration card and returned because the person does not live at the address shall constitute prima facie evidence that the person no longer resides in the precinct. (1901, c. 89, s. 19; Rev., s. 4339; C.S., s. 5972; 1953, c. 843; 1955, c. 800; 1963, c. 303, s. 1; 1967, c. 775, s. 1; 1973, c. 793, s. 34; 1979, c. 357, s. 1; 1985, c. 563, ss. 11-11.2, 11.5; c. 589, s. 60; 1993 (Reg. Sess., 1994), c. 762, s. 25; 2009-526, s. 1.2; 2009-541, s. 16.1(a); 2009-550, s. 11.)

Editor's Note. — Session Laws 2009-526, s. 1.2, amended G.S. 163-85(c)(10), as enacted by House Bill 908 of the 2009 General Assembly, contingent on that act becoming law. House Bill 908 was enacted as Session Laws 2009-541.

Session Laws 2009-550, s. 11, amended G.S. 163-85(c)(10), as enacted by House Bill 908 of the 2009 General Assembly, contingent on that act becoming law. House Bill 908 was enacted as Session Laws 2009-541.

Effect of Amendments. — Session Laws 2009-526, s. 1.2, effective August 26, 2009, in subdivision (c)(10), deleted "presenting himself to vote" following "person" and made gender neutral changes.

Session Laws 2009-541, s. 16.1(a), effective August 28, 2009, added subdivision (c)(10).

Session Laws 2009-550, s. 11, effective August 28, 2009, in subdivision (c)(10), deleted "presenting himself to vote" following "person" and made gender neutral changes.

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

CASE NOTES

An action for malicious prosecution would not lie where defendants challenged plaintiff's right to vote under subsection (a) of this section, as actions for malicious prosecution based on administrative proceedings have been limited to instances where there is a type of confinement or interference with the right to earn a livelihood. Hurow v. Miller, 45 N.C. App. 58, 262 S.E.2d 287 (1980).

Motion for Recusal. — County board of elections violated a voter's due process rights when the board failed to address a motion for recusal by the voter that was supported by affidavits establishing a reasonable basis to challenge the impartiality of a member of the board in a challenge to the voter's registration. Knight v. Higgs, 189 N.C. App. 696, 659 S.E.2d 742, 2008 N.C. App. LEXIS 702 (2008).

Applied in James v. Bartlett, 359 N.C. 260, 607 S.E.2d 638, 2005 N.C. LEXIS 146 (2005).

Cited in Lloyd v. Babb, 296 N.C. 416, 251 S.E.2d 843 (1979); Farnsworth v. Jones, 114 N.C. App. 182, 441 S.E.2d 597 (1994).

§ 163-86. Hearing on challenge.

(a) A challenge made under G.S. 163-85 shall be heard and decided before the date of the next primary or election, except that if the board finds that because of the number of challenges, it cannot hold all hearings before the date of the election, it may order the challenges to be heard and decided at the next time the challenged person appears and seeks to vote, as if the challenge had been filed under G.S. 163-87. Unless the hearing is ordered held under G.S. 163-87, it shall be heard and decided by the board of elections.

(b) At least 10 days prior to the hearing scheduled under G.S. 163-86(c), the board of elections shall mail by first-class mail, a written notice of the challenge to the challenged voter, to the address of the voter listed in the registration records of the county. The notice shall state succinctly the grounds asserted, and shall state the time and place of the hearing. If the hearing is to be held at the polls, the notice shall state that fact and shall list the date of the next scheduled election, the location of the voter's polling place, and the time the polls will be open. A copy of the notice shall be sent to the person making the challenge and to the chairman of each political party in the county.

(c) At the time and place set for the hearing on a challenge entered prior to the date of a primary or election, the county board of elections shall explain to the challenged registrant the qualifications for registration and voting in this State. The board chairman, or in his absence the board secretary, shall then administer the following oath to the challenged registrant:

"You swear (or affirm) that the statements and information you shall give in this hearing with respect to your identity and qualifications to be registered and to vote shall be the truth, the whole truth, and nothing but the truth, so help you, God."

After swearing the challenged registrant, the board shall examine him as to his qualifications to be registered and to vote. If the challenged registrant insists that he is qualified, the board shall tender to him the following oath or affirmation:

"You do solemnly swear (or affirm) that you are a citizen of the United States; that you are at least 18 years of age or will become 18 by the date of the next general election; that you have or will have resided in this State and in the precinct for which registered for 30 days by the date of the next primary or election; that you are not disqualified from voting by the Constitution or the laws of this State; that your name is ________, and that in such name you were duly registered as a voter of ________ precinct; and that you are the person you represent yourself to be, so help you, God."

If the challenged registrant refuses to take the tendered oath, or submit to the board the affidavit required by subsection (d), below, the challenge shall be sustained. If the challenged registrant takes the tendered oath, the board may, nevertheless, sustain the challenge if it finds the challenged registrant is not a legal voter.

The board, in conducting hearings on challenges, shall have authority to subpoena any witnesses it may deem appropriate, and administer the necessary oaths or affirmations to all witnesses brought before it to testify to the qualifications of the persons challenged.

(d) Appearance by Challenged Registrant. — The challenged registrant shall appear in person at the challenge hearing. If he is unable to appear in person, he may be represented by another person and must tender to the county board of elections an affidavit that he is a citizen of the United States, is at least 18 years of age or will become 18 by the date of the next general election, has or will have resided in this State and in the precinct for which registered for 30 days by the date of the next primary or election, is not disqualified from voting by the Constitution or laws of this State, is named ________ and was duly registered as a voter of ________ precinct in such name, and is the person represented to be by the affidavit. (1901, c. 89, s. 22; Rev., s. 4340; C.S., s. 5973; 1955, c. 871, s. 2; 1967, c. 775, s. 1; 1971, c. 1231, s. 1; 1973, c. 793, s. 35; 1979, c. 357, s. 2; 2008-150, s. 5(b).)

Effect of Amendments. — Session Laws 2008-150, s. 5(b), effective August 2, 2008, substituted "next primary or election" for "next general election" in the third paragraph of subsection (c) and in the last sentence of subsection (d).

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

CASE NOTES

Motion for Recusal. — County board of elections violated a voter's due process rights when the board failed to address a motion for recusal by the voter that was supported by affidavits establishing a reasonable basis to challenge the impartiality of a member of the board in a challenge to the voter's registration. Knight v. Higgs, 189 N.C. App. 696, 659 S.E.2d 742, 2008 N.C. App. LEXIS 702 (2008).

Cited in Lloyd v. Babb, 296 N.C. 416, 251 S.E.2d 843 (1979); Farnsworth v. Jones, 114 N.C. App. 182, 441 S.E.2d 597 (1994).

§ 163-87. Challenges allowed on day of primary or election.

On the day of a primary or election, at the time a registered voter offers to vote, any other registered voter of the precinct may exercise the right of challenge, and when he does so may enter the voting enclosure to make the challenge, but he shall retire therefrom as soon as the challenge is heard.

On the day of a primary or election, any other registered voter of the precinct may challenge a person for one or more of the following reasons:

(1) One or more of the reasons listed in G.S. 163-85(c).
(2) That the person has already voted in that primary or election.
(3) Repealed by Session Laws 2009-541, s. 16.1(b), effective August 28, 2009.
(4) If the challenge is made with respect to voting in a partisan primary, that the person is a registered voter of another political party.

The chief judge, judge, or assistant appointed under G.S. 163-41 or 163-42 may enter challenges under this section against voters in the precinct for which appointed regardless of the place of residence of the chief judge, judge, or assistant.

If a person is challenged under this subsection, and the challenge is sustained under G.S. 163-85(c)(3), the voter may still transfer his registration under G.S. 163-82.15(e) if eligible under that section, and the registration shall not be cancelled under G.S. 163-90.2(a) if the transfer is made. A person who has transferred his registration under G.S. 163-82.15(e) may be challenged at the precinct to which the registration is being transferred. (1915, c. 101, s. 11; 1917, c. 218; C.S., s. 6031; 1921, c. 181, s. 6; 1923, c. 111, s. 14; 1929, c. 164, s. 36; 1953, c. 843; 1955, c. 800; c. 871, s. 7; 1959, c. 616, s. 2; c. 1203, s. 7; 1963, c. 303, s. 1; 1967, c. 775, s. 1; 1985, c. 563, ss. 11.4, 14; 1987, c. 408, s. 7; 1993 (Reg. Sess., 1994), c. 762, s. 26; 1995 (Reg. Sess., 1996), c. 734, s. 4; 2006-262, s. 3(a); 2009-541, s. 16.1(b).)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 61, effective January 1, 1995, provides: "Any person who on December 31, 1994, was a registrar under G.S. 163-41 shall be a chief judge under G.S. 163-41."

Session Laws 2006-262, s. 5, provides that s. 3(a) of this act, which amended this section, is effective when it becomes law, except that any criminal penalty resulting from Session Laws 2006-262 becomes effective October 1, 2006. Prosecutions for offenses committed before October 1, 2006, are not abated or affected by Session Laws 2006-262, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

Effect of Amendments. — Session Laws 2009-541, s. 16.1(b), effective August 28, 2009, deleted subdivision (3) of the second paragraph of the section, which read: "That the person presenting himself to vote is not who he represents himself to be."

Legal Periodicals. — For comment on election contests in North Carolina, see 55 N.C.L. Rev. 1228 (1977).

For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

CASE NOTES

Voter Not Compelled to Continue to Support Candidates of Party in Whose Primary He Voted. — The right of a qualified elector to vote in party primaries is confined to the primary of the existing political party with which he affiliates at the time of the holding of the primary. But the voter is not deprived of complete liberty of conscience or conduct in the future, in the event he rightly or wrongly comes to the conclusion subsequent to the primary that it is no longer desirable for him to support the candidates of the party in whose primary he has voted. States' Rights Democratic Party v. State Bd. of Elections, 229 N.C. 179, 49 S.E.2d 379 (1948).

Applied in James v. Bartlett, 359 N.C. 260, 607 S.E.2d 638, 2005 N.C. LEXIS 146 (2005).

Cited in Lloyd v. Babb, 296 N.C. 416, 251 S.E.2d 843 (1979).

§ 163-88. Hearing on challenge made on day of primary or election.

A challenge entered on the day of a primary or election shall be heard and decided by the chief judge and judges of election of the precinct in which the challenged registrant is registered before the polls are closed on the day the challenge is made. When the challenge is heard the precinct officials conducting the hearing shall explain to the challenged registrant the qualifications for registration and voting in this State, and shall examine him as to his qualifications to be registered and to vote. If the challenged registrant insists that he is qualified, and if, by sworn testimony, he shall prove his identity with the person in whose name he offers to vote and his continued residence in the precinct since he was registered, one of the judges of election or the chief judge shall tender to him the following oath or affirmation, omitting the portions in brackets if the challenge is heard on the day of an election other than a primary:

"You do solemnly swear (or affirm) that you are a citizen of the United States; that you are at least 18 years of age [or will become 18 by the date of the next general election]; that you have [or will have] resided in this State and in the precinct for which registered for 30 days [by the date of the next general election]; that you are not disqualified from voting by the Constitution and laws of this State; that your name is ________, and that in such name you were duly registered as a voter of this precinct; that you are the person you represent yourself to be; [that you are affiliated with the ________ party]; and that you have not voted in this [primary] election at this or any other voting place. So help you, God."

If the challenged registrant refuses to take the tendered oath, the challenge shall be sustained, and the precinct officials conducting the hearing shall mark the registration records to reflect their decision, and they shall erase the challenged registrant's name from the pollbook if it has been entered therein. If the challenged registrant takes the tendered oath, the precinct officials conducting the hearing may, nevertheless, sustain the challenge unless they are satisfied that the challenged registrant is a legal voter. If they are satisfied that he is a legal voter, they shall overrule the challenge and permit him to vote. Whenever any person's vote is received after having taken the oath prescribed in this section, the chief judge or one of the judges of election shall write on the registration record and on the pollbook opposite the registrant's name the word "sworn."

Precinct election officials conducting hearings on challenges on the day of a primary or election shall have authority to administer the necessary oaths or affirmations to all witnesses brought before them to testify to the qualifications of the person challenged.

A letter or postal card mailed by returnable mail and returned by the United States Postal Service purportedly because the person no longer lives at that address or because a forwarding order has expired shall not be admissible evidence in a challenge heard under this section which was made under G.S. 163-87. (1901, c. 89, s. 22; Rev., s. 4340; C.S., s. 5973; 1955, c. 871, s. 2; 1967, c. 775, s. 1; 1971, c. 1231, s. 1; 1973, c. 1223, s. 6; 1985, c. 380, ss. 1, 1.1; 1993 (Reg. Sess., 1994), c. 762, s. 27.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 61, effective January 1, 1995, provides: "Any person who on December 31, 1994, was a registrar under G.S. 163-41 shall be a chief judge under G.S. 163-41."

Legal Periodicals. — For comment on election contests in North Carolina, see 55 N.C.L. Rev. 1228 (1977).

For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

CASE NOTES

Applied in James v. Bartlett, 359 N.C. 260, 607 S.E.2d 638, 2005 N.C. LEXIS 146 (2005).

§ 163-88.1. Request for challenged ballot.

(a) If the decision of the chief judge and judges pursuant to G.S. 163-88 is to sustain the challenge, the challenged voter may request a challenged ballot by submitting an application to the chief judge, such application shall include as part thereof an affidavit that such person possesses all the qualifications for voting and is entitled to vote at the election. The form of such affidavit shall be prescribed by the State Board of Elections and shall be available at the polls.

(b) Any person requesting a challenged ballot shall have the letter "C" entered at the appropriate place on the voter's permanent registration record. The voter's name shall be entered on a separate page in the pollbook entitled "Challenged Ballot," and serially numbered. The challenged ballot shall be the same type of ballot used for absentee voters, and the chief judge shall write across the top of the ballot "Challenged Ballot # ____," and shall insert the same serial number as entered in the pollbook. The chief judge shall deliver to such voter a challenged ballot together with an envelope marked "Challenged Ballot" and serially numbered. The challenged voter shall forthwith mark the ballot in the presence of the chief judge in such manner that the chief judge shall not know how the ballot is marked. He shall then fold the ballot in the presence of the chief judge so as to conceal the markings and deposit and seal it in the serially numbered envelope. He shall then deliver such envelope to the chief judge. The chief judge shall retain all such envelopes in an envelope provided by the county board of elections, which he shall seal immediately after the polls close, and deliver to the board chairman at the canvass.

(c) The chairman of the county board of elections shall preserve such ballots in the sealed envelopes for a period of six months after the election. However, in the case of a contested election, either party to such action may request the court to order that the sealed envelopes containing challenged ballots be delivered to the board of elections by the chairman. If so ordered, the board of elections shall then convene and consider each challenged ballot and rule as to which ballots shall be counted. In such consideration, the board may take such further evidence as it deems necessary, and shall have the power of subpoena. If any ballots are ordered to be counted, they shall be added to the vote totals. (1979, c. 357, s. 3; 1993 (Reg. Sess., 1994), c. 762, s. 28.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 61, effective January 1, 1995, provides: "Any person who on December 31, 1994, was a registrar under G.S. 163-41 shall be a chief judge under G.S. 163-41."

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

§ 163-89. Procedures for challenging absentee ballots.

(a) Time for Challenge. — The absentee ballot of any voter may be challenged on the day of any statewide primary or general election or county bond election beginning no earlier than noon and ending no later than 5:00 P.M., or by the chief judge at the time of closing of the polls as provided in G.S. 163-232 and G.S. 163-251(b). The absentee ballot of any voter received by the county board of elections pursuant to G.S. 163-231(b)(ii) or (iii) may be challenged no earlier than noon on the day following the election and no later than 5:00 p.m. on the next business day following the deadline for receipt of such absentee ballots.

(b) Who May Challenge. — Any registered voter of the same precinct as the absentee voter may challenge that voter's absentee ballot.

(c) Form and Nature of Challenge. — Each challenged absentee ballot shall be challenged separately. The burden of proof shall be on the challenger. Each challenge shall be made in writing and, if they are available, shall be made on forms prescribed by the State Board of Elections. Each challenge shall specify the reasons why the ballot does not comply with the provisions of this Article or why the absentee voter is not legally entitled to vote in the particular primary or election. The challenge shall be signed by the challenger.

(d) To Whom Challenge Addressed; to Whom Challenge Delivered. — Each challenge shall be addressed to the county board of elections. It may be filed with the board at its offices or with the chief judge of the precinct in which the challenger and absentee voter are registered. If it is delivered to the chief judge, the chief judge shall personally deliver the challenge to the chairman of the county board of elections on the day of the county canvass.

(e) Hearing Procedure. — All challenges filed under this section shall be heard by the county board of elections on the day set for the canvass of the returns. All members of the board shall attend the canvass and all members shall be present for the hearing of challenges to absentee ballots.

Before the board hears a challenge to an absentee ballot, the chairman shall mark the word "challenged" after the voter's name in the register of absentee ballot applications and ballots issued and in the pollbook of absentee voters.

The board then shall hear the challenger's reasons for the challenge, and it shall make its decision without opening the container-return envelope or removing the ballots from it.

The board shall have authority to administer the necessary oaths or affirmations to all witnesses brought before it to testify to the qualifications of the voter challenged or to the validity or invalidity of the ballot.

If the challenge is sustained, the chairman shall mark the word "sustained" after the word "challenged" following the voter's name in the register of absentee ballot applications and ballots issued and in the pollbook of absentee voters; the voter's ballots shall not be counted; and the container-return envelope shall not be opened but shall be marked "Challenge Sustained." All envelopes so marked shall be preserved intact by the chairman for a period of six months from canvass day or longer if any contest then is pending concerning the validity of any absentee ballot.

If the challenge is overruled, the absentee ballots shall be removed from the container-return envelopes and counted by the board of elections, and the board shall adjust the appropriate abstracts of returns to show that the ballots have been counted and tallied in the manner provided for unchallenged absentee ballots.

If the challenge was delivered to the board by the chief judge of the precinct and was sustained, the board shall reopen the appropriate ballot boxes, remove such ballots, determine how those ballots were voted, deduct such ballots from the returns, and adjust the appropriate abstracts of returns.

Any voter whose ballots have been challenged may, either personally or through an authorized representative, appear before the board at the hearing on the challenge and present evidence as to the validity of the ballot. (1939, c. 159, ss. 8, 9; 1945, c. 758, s. 8; 1953, c. 1114; 1963, c. 547, s. 8; 1965, c. 871; 1967, c. 775, s. 1; 1973, c. 536, s. 4; 1993 (Reg. Sess., 1994), c. 762, s. 29; 2009-537, s. 8(c).)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 61, effective January 1, 1995, provides: "Any person who on December 31, 1994, was a registrar under G.S. 163-41 shall be a chief judge under G.S. 163-41."

Effect of Amendments. — Session Laws 2009-537, s. 8(c), effective January 1, 2010, and applicable with respect to elections held on or after that date, added the second sentence in subsection (a).

Legal Periodicals. — For comment on election contests in North Carolina, see 55 N.C.L. Rev. 1228 (1977).

CASE NOTES

Cited in Hurow v. Miller, 45 N.C. App. 58, 262 S.E.2d 287 (1980).

§ 163-90. Challenge as felon; answer not to be used on prosecution.

If any registered voter is challenged as having been convicted of any crime which excludes him from the right of suffrage, he shall be required to answer any question in relation to the alleged conviction, but his answers to such questions shall not be used against him in any criminal prosecution. (1901, c. 89, s. 71; Rev., s. 3388; C.S., s. 5974; 1967, c. 775, s. 1.)

§ 163-90.1. Burden of proof.

(a) Challenges shall not be made indiscriminately and may only be made if the challenger knows, suspects or reasonably believes such a person not to be qualified and entitled to vote.

(b) No challenge shall be sustained unless the challenge is substantiated by affirmative proof. In the absence of such proof, the presumption shall be that the voter is properly registered or affiliated. (1979, c. 357, s. 4.)

§ 163-90.2. Action when challenge sustained, overruled, or dismissed.

(a) When any challenge is sustained for any cause listed under G.S. 163-85(c), the board shall cancel or correct the voter registration of the voter. The board shall maintain such record for at least six months and during the pendency of any appeal. The challenged ballot shall be counted for any ballot items for which the challenged voter is eligible to vote, as if it were a provisional official ballot under the provisions of G.S. 163-166.11(4).

(b) Repealed by Session Laws 2006-252, s. 3(b), effective August 27, 2006.

(c) When any challenge made under G.S. 163-85 is overruled or dismissed, the board shall erase the word "challenged" which appears on the person's registration records.

(d) A decision by a county board of elections on any challenge made under the provisions of this Article shall be appealable to the Superior Court of the county in which the offices of that board are located within 10 days. Only those persons against whom a challenge is sustained or persons who have made a challenge which is overruled shall have standing to file such appeal. (1979, c. 357, s. 4; 1987 (Reg. Sess., 1988), c. 1028, s. 11; 2006-262, s. 3(b).)

Editor's Note. — Session Laws 2006-262, s. 5, provides that s. 3(b) of this act, which amended this section, is effective when it becomes law, except that any criminal penalty resulting from Session Laws 2006-262 becomes effective October 1, 2006. Prosecutions for offenses committed before October 1, 2006, are not abated or affected by Session Laws 2006-262, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

CASE NOTES

Applied in Knight v. Higgs, 189 N.C. App. 696, 659 S.E.2d 742, 2008 N.C. App. LEXIS 702 (2008).

§ 163-90.3. Making false affidavit perjury.

Any person who shall knowingly make any false affidavit or shall knowingly swear or affirm falsely to any matter or thing required by the terms of this Article to be sworn or affirmed shall be guilty of a Class I felony. (1979, c. 357, s. 4; 1987, c. 565, s. 2.)

ARTICLE 8A.

HAVA Administrative Complaint Procedure.

§ 163-91. Complaint procedure.

(a) The State Board of Elections shall establish a complaint procedure as required by section 402 of Title IV of the Help America Vote Act of 2002 for the resolution of complaints alleging violations of Title III of that Act.

(b) With respect to the adoption of the complaint procedure under this section, the State Board of Elections is exempt from the requirements of Article 2A of Chapter 150B of the General Statutes. Prior to adoption or amendment of the complaint procedure under this section, the State Board of Elections shall complete all of the following:

(1) Publish the proposed plan in the North Carolina Register at least 30 days prior to the adoption of the final complaint procedure.

(2) Accept oral and written comments on the proposed complaint procedure.

(3) Hold at least one public hearing on the proposed complaint procedure.

(c) Hearings and final determinations of complaints filed under the procedure adopted pursuant to this section are not subject to Articles 3 and 4 of Chapter 150B of the General Statutes. (2003-226, s. 17(a).)

Editor's Note. — Session Laws 2003-226, s. 1, provides: "The purpose of this act is to ensure that the State of North Carolina has a system for all North Carolina elections that complies with the requirements for federal elections set forth in the federal Help America Vote Act of 2002, Public Law 107-252, 116 Stat. 1666 (2002), codified at 42 U.S.C. §§ 15481-15485.

"The General Assembly finds that the education and training of election officials as required by G.S. 163-82.34 has met and continues to meet the mandate for the education and training of precinct officials and other election officials in section 254(a)(3) of the Help America Vote Act of 2002. The General Assembly further finds that the establishment, development, and continued operation of the statewide list maintenance program for voter registration set forth in G.S. 163-82.14 has met and continues to meet the mandates of section 303(a)(2) of the Help America Vote Act of 2002.

"In certain other areas of the election statutes and other laws, the General Assembly finds that the statutes must be amended to comply with the Help America Vote Act."

§§ 163-92 through 163-95: Reserved for future codification purposes.

SUBCHAPTER IV. POLITICAL PARTIES.

ARTICLE 9.

Political Party Definition.

§ 163-96. "Political party" defined; creation of new party.

(a) Definition. — A political party within the meaning of the election laws of this State shall be either:

(1) Any group of voters which, at the last preceding general State election, polled for its candidate for Governor, or for presidential electors, at least two percent (2%) of the entire vote cast in the State for Governor or for presidential electors; or

(2) Any group of voters which shall have filed with the State Board of Elections petitions for the formulation of a new political party which are signed by registered and qualified voters in this State equal in number to two percent (2%) of the total number of voters who voted in the most recent general election for Governor. Also the petition must be signed by at least 200 registered voters from each of four congressional districts in North Carolina. To be effective, the petitioners must file their petitions with the State Board of Elections before 12:00 noon on the first day of June preceding the day on which is to be held the first general State election in which the new political party desires to participate. The State Board of Elections shall forthwith determine the sufficiency of petitions filed with it and shall immediately communicate its determination to the State chairman of the proposed new political party.

(b) Petitions for New Political Party. — Petitions for the creation of a new political party shall contain on the heading of each page of the petition in bold print or all in capital letters the words: "THE UNDERSIGNED REGISTERED VOTERS IN ________ COUNTY HEREBY PETITION FOR THE FORMATION OF A NEW POLITICAL PARTY TO BE NAMED ________ AND WHOSE STATE CHAIRMAN IS ____________, RESIDING AT __________ AND WHO CAN BE REACHED BY TELEPHONE AT ________."
All printing required to appear on the heading of the petition shall be in type no smaller than 10 point or in all capital letters, double spaced typewriter size. In addition to the form of the petition, the organizers and petition circulators shall inform the signers of the general purpose and intent of the new party.

The petitions must specify the name selected for the proposed political party. The State Board of Elections shall reject petitions for the formation of a new party if the name chosen contains any word that appears in the name of any existing political party recognized in this State or if, in the Board's opinion, the name is so similar to that of an existing political party recognized in this State as to confuse or mislead the voters at an election.

The petitions must state the name and address of the State chairman of the proposed new political party.

(b1) Each petition shall be presented to the chairman of the board of elections of the county in which the signatures were obtained, and it shall be the chairman's duty:

(1) To examine the signatures on the petition and place a check mark on the petition by the name of each signer who is qualified and registered to vote in his county.

(2) To attach to the petition his signed certificate
   a. Stating that the signatures on the petition have been checked against the registration records and
   b. Indicating the number found qualified and registered to vote in his county.

(3) To return each petition, together with the certificate required by the preceding subdivision, to the person who presented it to him for checking.

The group of petitioners shall submit the petitions to the chairman of the county board of elections in the county in which the signatures were obtained no later than 5:00 P.M. on the fifteenth day preceding the date the petitions are due to be filed with the State Board of Elections as provided in subsection (a)(2) of this section. Provided the petitions are timely submitted, the chairman of the county board of elections shall proceed to examine and verify the signatures under the provisions of this subsection. Verification shall be completed within two weeks from the date such petitions are presented.

(c) Repealed by Session Laws 1983, c. 576, s. 3. (1901, c. 89, s. 85; Rev., s. 4292; 1915, c. 101, s. 31; 1917, c. 218; C.S., ss. 5913, 6052; 1933, c. 165, ss. 1, 17; 1949, c. 671, ss. 1, 2; 1967, c. 775, s. 1; 1975, c. 179; 1979, c. 411, s. 3; 1981, c. 219, ss. 1-3; 1983, c. 576, ss. 1-3; 1997-456, s. 27; 1999-424, s. 5(a); 2004-127, s. 14; 2006-234, s. 1.)

Editor's Note. — Subsection (b) of this section was renumbered as subsections (b) and (b1) pursuant to Session Law 1997-456, s. 27 which authorized the Revisor of Statutes to renumber or reletter sections and parts of sections having a number or letter designation that is incompatible with the General Assembly's computer database.

This section was amended by Session Laws 1999-424, s. 5(a), in the coded bill drafting format provided by G.S. 120-20.1. The prefatory language of s. 5(a) only referenced subsection (b) of this section, but amendments were also made to subsection (b1). This section is set out in the form above, incorporating the amendments to subsections (b) and (b1), at the direction of the Revisor of Statutes.

Legal Periodicals. — For note on definition of political parties, see 11 N.C.L. Rev. 148 (1933).

For review and comment on former G.S. 163-1, relating to the formation of new political parties, see 11 N.C.L. Rev. 226 (1933).

As to the 1949 amendment, which rewrote former G.S. 163-1, see 27 N.C.L. Rev. 455 (1949).

CASE NOTES

Ballot Access Rules Constitutional. — The ballot access rules in this section do not constitutionally burden rights guaranteed by the First and Fourteenth Amendments. McLaughlin v. North Carolina Bd. of Elections, 65 F.3d 1215 (4th Cir. 1995).

Mandatory Ballot Petition Language Constitutional. — The State's mandatory ballot petition language in subsection (b) is not unconstitutional merely because it could conceivably mislead some individuals and could have been crafted more adroitly, because either the factfinder must be persuaded that protected expressive, political, and associational rights have in fact been invaded, or the court must be able to conclude as a matter of law that such is the inevitable consequence. McLaughlin v. North Carolina Bd. of Elections, 65 F.3d 1215 (4th Cir. 1995).

Discrimination Against Independent Candidates Unconstitutional. — North Carolina grossly discriminated against those who chose to pursue their candidacies as independents rather than by forming a new political party in requiring a group of voters seeking a place on the ballot as a new party to submit petitions signed by only 10,000 voters, less than one sixteenth the number required of an independent candidate, and furthermore, in requiring a candidate desiring to run in the North Carolina Presidential Preference Primary to submit only 10,000 signatures; since the State asserted no compelling interest for such disparate treatment, that portion of G.S. 163-122 which required an independent candidate for president to file written petitions signed by qualified voters equal in number to 10 percent of those who voted for Governor in the last gubernatorial election was an unconstitutional infringement upon the rights of such candidate and his supporters to associate for the advancement of political beliefs, to cast their votes effectively, and to enjoy equal protection under law. Greaves v. State Bd. of Elections, 508 F.

Supp. 78 (E.D.N.C. 1980), decided prior to 1981 amendment to § 163-122.

Signature Verification Fee and Notarization Requirement Unconstitutional. — The dual combination of the signature verification fee and the notarization requirement clearly, unduly burdens minor party resources and violates equal protection. The State should be enjoined from enforcing the fourth paragraph of this section and the further requirement that the county board of elections "shall require a fee of five cents (5¢) for each signature appearing" on the petitions. McLaughlin v. North Carolina Bd. of Elections, 850 F. Supp. 373 (M.D.N.C. 1994), aff'd, 65 F.3d 1215 (4th Cir. 1995).

Constitutionality of "Intend to Organize" Language. — The "intend to organize" language of subsection (b) does not impose an unconstitutional restriction on voter-signers in signing petitions. McLaughlin v. North Carolina Bd. of Elections, 850 F. Supp. 373 (M.D.N.C. 1994), aff'd, 65 F.3d 1215 (4th Cir. 1995).

Injunction against Requirement That Petition Signatories Become Party Members. — The State Board of Elections was enjoined from enforcing portions of subsection (b) of this section against a new political party which required its petitions for 1982 ballot positions to contain a clause to the effect that any signatories to the petition would automatically become members of the new party despite other affiliations. The Board was enjoined as the party's likelihood of success in challenging the subsection's legality under U.S. Const., Amends. I and XIV was likely and the balance of the hardships was on the party given the near date of the election. North Carolina Socialist Workers Party v. North Carolina State Bd. of Elections, 538 F. Supp. 864 (E.D.N.C. 1982).

The primary laws have no application to new political parties created by petition. States' Rights Democratic Party v. State Bd. of Elections, 229 N.C. 179, 49 S.E.2d 379 (1948).

This section and §§ 163-98, 163-122 and 163-151(2) are not available to candidate denied access to primary election ballot under G.S. 163-107. Brown v. North Carolina State Bd. of Elections, 394 F. Supp. 359 (W.D.N.C. 1975).

Effect of Section on Third Political Parties. — By directing that a political party cannot run a candidate for election to any office in the state unless it garners the petition support of 2% of the electorate or the votes of 10%, this section and G.S. 163-97 have combined so far to ensure that any small party must expend great effort to obtain statewide and local ballot access before each gubernatorial and presidential election only to lose that access in toto immediately thereafter. McLaughlin v. North Carolina Bd. of Elections, 65 F.3d 1215 (4th Cir. 1995).

Any qualified voter has the legal right to sign a petition for the creation of a new political party, irrespective of whether such voter has participated in the primary election of an existing political party during the year in which the petition is signed, and regulations of the State Board of Elections are invalid if they undertake to establish and enforce the rule that a qualified voter is ineligible to join in a petition for the creation of a new political party during a year in which he has voted in the primary election of an existing political party. States' Rights Democratic Party v. State Bd. of Elections, 229 N.C. 179, 49 S.E.2d 379 (1948).

Duty of State Board of Elections. — Upon the filing of a petition for the creation of a new political party, it is the duty of the State Board of Elections, in the first instance, to determine whether the petition is in accordance with the statutory requirements. States' Rights Democratic Party v. State Bd. of Elections, 229 N.C. 179, 49 S.E.2d 379 (1948).

Notice and Hearing Required before Rejection of Petition. — Manifestly the statutes creating the State Board of Elections and defining its duties contemplate that the Board shall give petitioners for the creation of a new political party notice and an opportunity to be heard in support of their petition before rejecting it or adjudging it insufficient. Indeed, notice and hearing in such case are necessary to meet the constitutional requirement of due process of law. States' Rights Democratic Party v. State Bd. of Elections, 229 N.C. 179, 49 S.E.2d 379 (1948).

Cited in Republican Party v. Hunt, 841 F. Supp. 722 (E.D.N.C.); New Alliance Party v. North Carolina State Bd. of Elections, 697 F. Supp. 904 (E.D.N.C. 1988).

§ 163-97. Termination of status as political party.

When any political party fails to meet the test set forth in G.S. 163-96(a)(1), it shall cease to be a political party within the meaning of the primary and general election laws and all other provisions of this Chapter. (1901, c. 89, s. 85; Rev., s. 4292; C.S., s. 5913; 1933, c. 165, s. 1; 1949, c. 671, s. 1; 1967, c. 775, s. 1; 2006-234, s. 2.)

CASE NOTES

Constitutionality of Two-Tier System. — A two-tier system differentiating between ballot access and ballot retention for major parties and minor parties is a reasonable and legitimate one for the state to impose, and is not unconstitutional. McLaughlin v. North Carolina Bd. of Elections, 850 F. Supp. 373 (M.D.N.C. 1994), aff'd, 65 F.3d 1215 (4th Cir. 1995).

Effect of Section on Third Political Parties. — By directing that a political party cannot run a candidate for election to any office in the state unless it garners the petition support of 2% of the electorate or the votes of 10%, section 163-96 and this section have combined so far to ensure that any small party must expend great effort to obtain statewide and local ballot access before each gubernatorial and presidential election only to lose that access in toto immediately thereafter. McLaughlin v. North Carolina Bd. of Elections, 65 F.3d 1215 (4th Cir. 1995).

§ 163-97.1. Voters affiliated with expired political party.

The State Board of Elections shall be authorized to promulgate appropriate procedures to order the county boards of elections to change the registration affiliation of all voters who are recorded on the voter registration books as being affiliated with a political party which has lost its legal status as provided in G.S. 163-97. The State Board of Elections shall not implement the authority contained in this section earlier than 90 days following the certification of the election in which the political party failed to continue its legal status as provided in G.S. 163-97. All voters affiliated with such expired political party shall be changed to "unaffiliated designation" by the State Board's order and all such registrants shall be entitled to declare a political party affiliation as provided in G.S. 163-82.17. (1975, c. 789; 1977, c. 408, s. 1; 2004-127, s. 10.)

CASE NOTES

Constitutionality. — There is nothing unconstitutional in the state purging the designation of an "expired political party" from its records pursuant to this section. McLaughlin v. North Carolina Bd. of Elections, 850 F. Supp. 373 (M.D.N.C. 1994), aff'd, 65 F.3d 1215 (4th Cir. 1995).

State's Administrative Interests Outweigh Burden on Affected Parties. — The State's interests in administrative simplicity that are advanced by the forced voter disaffiliation provision of this section outweigh the small burden that provision imposes upon affected parties' associational interests. McLaughlin v. North Carolina Bd. of Elections, 65 F.3d 1215 (4th Cir. 1995).

§ 163-98. General election participation by new political party.

In the first general election following the date on which a new political party qualifies under the provisions of G.S. 163-96, it shall be entitled to have the names of its candidates for national, State, congressional, and local offices printed on the official ballots upon paying a filing fee equal to that provided for candidates for the office in G.S. 163-107 or upon complying with the alternative available to candidates for the office in G.S. 163-107.1.

For the first general election following the date on which it qualifies under G.S. 163-96, a new political party shall select its candidates by party convention. Following adjournment of the nominating convention, but not later than the first day of July prior to the general election, the president of the convention shall certify to the State Board of Elections the names of persons chosen in the convention as the new party's candidates in the ensuing general election. Any candidate nominated by a new party shall be affiliated with the party at the time of certification to the State Board of Elections. The requirement of affiliation with the party will be met if the candidate submits at or before the time of certification as a candidate an application to change party affiliation to that party. The State Board of Elections shall print names thus certified on the appropriate ballots as the nominees of the new party. The State Board of Elections shall send to each county board of elections the list of any new party candidates so that the county board can add those names to the appropriate ballot. (1901, c. 89, s. 85; Rev., s. 4292; C.S., s. 5913; 1933, c. 165, s. 1; 1949, c. 671, s. 1; 1967, c. 775, s. 1; 1979, c. 411, s. 4; 2002-159, s. 55(b); 2006-234, s. 3; 2008-150, s. 10.1(a).)

Effect of Amendments. — Session Laws 2008-150, s. 10.1(a), effective January 1, 2009, and applicable to elections held on or after that date, inserted the third and fourth sentences in the second paragraph.

CASE NOTES

This section and §§ 163-96, 163-122 and 163-151(2) are not available to candidate denied access to primary election ballot under G.S. 163-107. Brown v. North Carolina State Bd. of Elections, 394 F. Supp. 359 (W.D.N.C. 1975).

Exclusion of Candidates' Names from Local Ballots Held Unconstitutional. — This section, insofar as it prohibits the names of candidates for offices other than state, congressional and national from being printed on official ballots, violates the Constitution of the United States. New Alliance Party v. North Carolina State Bd. of Elections, 697 F. Supp. 904 (E.D.N.C. 1988).

No legitimate state or local concern is promoted by prohibiting the placement on ballots of the names of candidates for county and local offices while at the same time allowing the placement on the ballot of the names of candidates for state offices. New Alliance Party v. North Carolina State Bd. of Elections, 697 F. Supp. 904 (E.D.N.C. 1988).

Cited in Greaves v. State Bd. of Elections, 508 F. Supp. 78 (E.D.N.C. 1980).

§ 163-99. Use of schools and other public buildings for political meetings.

The governing authority having control over schools or other public buildings which have facilities for group meetings, or where polling places are located, is hereby authorized and directed to permit the use of such buildings without charge, except custodial and utility fees, by political parties, as defined in G.S. 163-96, for the express purpose of annual or biennial precinct meetings and county and district conventions. Provided, that the use of such buildings by political parties shall not be permitted at times when school is in session or which would interfere with normal school activities or functions normally carried on in such school buildings, and such use shall be subject to reasonable rules and regulations of the school boards and other governing authorities. (1975, c. 465; 1983, c. 519, ss. 1, 2.)

§§ 163-100 through 163-103: Reserved for future codification purposes.

SUBCHAPTER V. NOMINATION OF CANDIDATES.

Article 10.

Primary Elections.

§ 163-104. Primaries governed by general election laws; authority of State Board of Elections to modify time schedule.

Unless otherwise provided in this Chapter, primary elections shall be conducted as far as practicable in accordance with the general election laws of this State. All provisions of this Chapter and of other laws governing elections, not inconsistent with this Article and other provisions of law dealing specifically with primaries, shall apply as fully to primary elections and to the acts and things done thereunder as to general elections. Nevertheless, for purposes of primary elections the State Board of Elections may, by general rule, modify the general election law time schedule with regard to ascertaining, declaring, and reporting results.

All acts made criminal if committed in connection with a general election shall likewise be criminal, with the same punishment, when committed in a primary election held under the provisions of this Chapter. (1915, c. 101, s. 3; 1917, c. 218; C.S., s. 6020; 1967, c. 775, s. 1.)

Local Modification to Former §§ 163-117 to 163-147. — Session Laws 1945, c. 894, repealed former Article 19, relating to primaries, insofar as its provisions apply to the nomination of Democratic candidates for the General Assembly and county offices in Mitchell County. Session Laws 1945, c. 894, was repealed by Session Laws 1979, c. 210, which provides that this Article is applicable in Mitchell County.

Session Laws 1957, c. 826, as amended by Session Laws 1959, c. 621, s. 2, provided that the former Article should not apply to nominations of Democratic candidates for county offices and members of the House of Representatives in Cherokee County, but such candidates should be nominated by convention of the Democratic Party.

Session Laws 1961, c. 484, provided that the former Article should not apply to nominations of Republican candidates for county offices and members of the General Assembly in Cherokee County, but such candidates should be nominated by conventions of the Republican Party.

Session Laws 1953, c. 1069, as amended by Session Laws 1959, c. 238, made the former Article applicable to Watauga County.

Session Laws 1955, c. 439, to the extent provided, made the former Article applicable to Yancey County.

Session Laws 1955, c. 442, made the former Article applicable to the Counties of Avery, Madison, Mitchell and Yancey for the purpose of nominating Democratic candidates for the state senates.

CASE NOTES

As to constitutionality of former article, see McLean v. Durham County Bd. of Elections, 222 N.C. 6, 21 S.E.2d 842 (1942).

For construction of former article, see Phillips v. Slaughter, 209 N.C. 543, 183 S.E. 897 (1936); McLean v. Durham County Bd. of Elections, 222 N.C. 6, 21 S.E.2d 842 (1942).

The manifest purposes of the primary system set up by our laws is to secure to the members of an existing political party freedom of choice of candidates, and to confine the right of qualified electors to vote in party primaries to the primary of the existing political party of which they are members at the time of the holding of such primary. States' Rights Democratic Party v. State Bd. of Elections, 229 N.C. 179, 49 S.E.2d 379 (1948).

Primary and Regular Elections Distinguished. — There is a well-defined distinction between a primary election and a regular election. A primary election is a means provided by law whereby members of a political party select by ballot candidates or nominees for office, whereas a regular election is a means whereby officers are elected and public offices are filled according to established rules of law. In short, a primary election is merely a mode of choosing candidates of political parties, whereas a regular election is the final choice of the entire electorate. Rider v. Lenoir County, 236 N.C. 620, 73 S.E.2d 913 (1953); Ponder v. Joslin, 262 N.C. 496, 138 S.E.2d 143 (1964).

The primary laws have no application to new political parties created by petition. States' Rights Democratic Party v. State Bd. of Elections, 229 N.C. 179, 49 S.E.2d 379 (1948).

Cited in Republican Party v. Martin, 980 F.2d 943 (4th Cir. 1992); Republican Party v. Hunt, 841 F. Supp. 722 (E.D.N.C. 1994).

§ 163-105. Payment of expense of conducting primary elections.

The expense of printing and distributing the poll and registration books, blanks, and ballots for those offices required by G.S. 163-109(b) to be furnished by the State, and the per diem and expenses of the State Board of Elections while engaged in the discharge of primary election duties imposed by law upon that Board, shall be paid by the State.

The expenses of printing and distributing the ballots for those offices required by G.S. 163-109(c) to be furnished by counties, and the per diem (or salary) and expenses of the county board of elections and the chief judges and judges of election, while engaged in the discharge of primary election duties imposed by law upon them, shall be paid by the counties. (1915, c. 101, s. 7; 1917, c. 218; C.S., s. 6026; 1927, c. 260, s. 21; 1933, c. 165, s. 14; 1967, c. 775, s. 1; 1985, c. 563, s. 1; 1993 (Reg. Sess., 1994), c. 762, s. 30.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 61, effective January 1, 1995, provides: "Any person who on December 31, 1994, was a registrar under G.S. 163-41 shall be a chief judge under G.S. 163-41."

Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 73 provides in part: "Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

G.S 163-109, referred to above, has been repealed.

§ 163-106. Notices of candidacy; pledge; with whom filed; date for filing; withdrawal.

(a) Notice and Pledge. — No one shall be voted for in a primary election without having filed a notice of candidacy with the appropriate board of elections, State or county, as required by this section. To this end every candidate for selection as the nominee of a political party shall file with and place in the possession of the board of elections specified in subsection (c) of this section, a notice and pledge in the following form:

Date ____________

I hereby file notice as a candidate for nomination as ____________ in the ____________ party primary election to be held on ____________, ____________ I affiliate with the ____________ party, (and I certify that I am now registered on the registration records of the precinct in which I reside as an affiliate of the ____________ party.)

I pledge that if I am defeated in the primary, I will not run for the same office as a write-in candidate in the next general election.

Signed ____________

(Name of Candidate)

Witness:

____

____

(Title of witness)

Each candidate shall sign the notice of candidacy in the presence of the chairman or secretary of the board of elections, State or county, with which the candidate files. In the alternative, a candidate may have the candidate's signature on the notice of candidacy acknowledged and certified to by an officer authorized to take acknowledgments and administer oaths, in which case the candidate may mail or deliver by commercial courier service the candidate's notice of candidacy to the appropriate board of elections.

In signing the notice of candidacy the candidate shall use only that candidate's legal name and may use any nickname by which he is commonly known. A candidate may also, in lieu of that candidate's legal first name and legal middle initial or middle name (if any) sign a nickname, provided that the candidate appends to the notice of candidacy an affidavit that the candidate has been commonly known by that nickname for at least five years prior to the date of making the affidavit. The candidate shall also include with the affidavit the way that candidate's name (as permitted by law) should be listed on the ballot if another candidate with the same last name files a notice of candidacy for that office.

A notice of candidacy signed by an agent or any person other than the candidate shall be invalid.

Prior to the date on which candidates may commence filing, the State Board of Elections shall print and furnish, at State expense, to each county board of elections a sufficient number of the notice of candidacy forms prescribed by this subsection for use by candidates required to file with county boards of elections.

(a1) Disclosure of Felony Conviction. — At the same time the candidate files notice of candidacy under this section, the candidate shall file with the same office a statement answering the following question: "Have you ever been convicted of a felony?" The State Board of Elections shall adapt the notice of candidacy form to include the statement required by this subsection. The form shall make clear that a felony conviction need not be disclosed if the conviction was dismissed as a result of reversal on appeal or resulted in a pardon of innocence or expungement. The form shall require a candidate who answers "yes" to the question to provide the name of the offense, the date of conviction, the date of the restoration of citizenship rights, and the county and state of conviction. The form shall require the candidate to swear or affirm that the statements on the form are true, correct, and complete to the best of the candidate's knowledge or belief. The form shall be available as a public record in the office of the board of elections where the candidate files notice of candidacy and shall contain an explanation that a prior felony conviction does not preclude holding elective office if the candidate's rights of citizenship have been restored. This subsection shall also apply to individuals who become candidates for election by the people under G.S. 163-114, 163-122, 163-123, 163-98, 115C-37, 130A-50, Article 24 of Chapter 163 of the General Statutes, or any other statute or local act. Those individuals shall complete the question at the time the documents are filed initiating their candidacy. The State Board of Elections shall adapt those documents to include the statement required by this subsection. If an individual does not complete the statement required by this subsection, the board of elections accepting the filing shall notify the individual of the omission, and the individual shall have 48 hours after notice to complete the statement. If the individual does not complete the statement at the time of filing or within 48 hours after the notice, the individual's filing is not complete, the individual's name shall not appear on the ballot as a candidate, and votes for the individual shall not be counted. It is a Class I felony to complete the form knowing that information as to felony conviction or restoration of citizenship is untrue. This subsection shall not apply to candidates required by G.S. 138A-22(d) to file Statements of Economic Interest.

(b) Eligibility to File. — No person shall be permitted to file as a candidate in a primary if, at the time he offers to file notice of candidacy, he is registered on the appropriate registration book or record as an affiliate of a political party other than that in whose primary he is attempting to file. No person who has changed his political party affiliation or who has changed from unaffiliated status to party affiliation as permitted in G.S. 163-82.17, shall be permitted to file as a candidate in the primary of the party to which he changed unless he has been affiliated with the political party in which he seeks to be a candidate for at least 90 days prior to the filing date for the office for which he desires to file his notice of candidacy.

A person registered as "unaffiliated" shall be ineligible to file as a candidate in a party primary election.

(c) Time for Filing Notice of Candidacy. — Candidates seeking party primary nominations for the following offices shall file their notice of candidacy with the State Board of Elections no earlier than 12:00 noon on the second Monday in February and no later than 12:00 noon on the last business day in February preceding the primary:

Governor
Lieutenant Governor
All State executive officers
United States Senators
Members of the House of Representatives of the United States
District attorneys

Candidates seeking party primary nominations for the following offices shall file their notice of candidacy with the county board of elections no earlier than 12:00 noon on the second Monday in February and no later than 12:00 noon on the last business day in February preceding the primary:

State Senators
Members of the State House of Representatives
All county offices.

(d) Notice of Candidacy for Certain Offices to Indicate Vacancy. — In any primary in which there are two vacancies for United States Senator from North Carolina, each candidate shall, at the time of filing notice of candidacy, file with the State Board of Elections a written statement designating the vacancy to which he seeks nomination. Votes cast for a candidate shall be effective only for his nomination to the vacancy for which he has given notice of candidacy as provided in this subsection.

(e) Withdrawal of Notice of Candidacy. — Any person who has filed notice of candidacy for an office shall have the right to withdraw it at any time prior to the date on which the right to file for that office expires under the terms of subsection (c) of this section. If a candidate does not withdraw before the filing deadline, except as provided in G.S. 163-112, his name shall be printed on the primary ballot, any votes for him shall be counted, and he shall not be refunded his filing fee.

(f) Candidates required to file their notice of candidacy with the State Board of Elections under subsection (c) of this section shall file along with their notice a certificate signed by the chairman of the board of elections or the director of elections of the county in which they are registered to vote, stating that the person is registered to vote in that county, stating the party with which the person is affiliated, and that the person has not changed his affiliation from another party or from unaffiliated within three months prior to the filing deadline under subsection (c) of this section. In issuing such certificate, the chairman or director shall check the registration records of the county to verify such information. During the period commencing 36 hours immediately preceding the filing deadline the State Board of Elections shall accept, on a conditional basis, the notice of candidacy of a candidate who has failed to secure the verification ordered herein subject to receipt of verification no later than three days following the filing deadline. The State Board of Elections shall prescribe the form for such certificate, and distribute it to each county board of elections no later than the last Monday in December of each odd-numbered year.

(g) When any candidate files a notice of candidacy with a board of elections under subsection (c) of this section or under G.S. 163-291(2), the board of elections shall, immediately upon receipt of the notice of candidacy, inspect the registration records of the county, and cancel the notice of candidacy of any person who does not meet the constitutional or statutory qualifications for the office, including residency.

The board shall give notice of cancellation to any candidate whose notice of candidacy has been cancelled under this subsection by mail or by having the notice served on him by the sheriff, and to any other candidate filing for the same office. A candidate who has been adversely affected by a cancellation or another candidate for the same office affected by a substantiation under this subsection may request a hearing on the cancellation. If the candidate requests a hearing, the hearing shall be conducted in accordance with Article 11B of Chapter 163 of the General Statutes.

(h) No person may file a notice of candidacy for more than one office described in subsection (c) of this section for any one election. If a person has filed a notice of candidacy with a board of elections under this section for one office, then a notice of candidacy may not later be filed for any other office under this section when the election is on the same date unless the notice of candidacy for the first office is withdrawn under subsection (e) of this section; provided that this subsection shall not apply unless the deadline for filing notices of candidacy for both offices is the same. Notwithstanding this subsection, a person may file a notice of candidacy for a full term as United States Senator, and also file a notice of candidacy for the remainder of the unexpired term of that same seat in an election held under G.S. 163-12, and may file a notice of candidacy for a full term as a member of the United States House of Representatives, and also file a notice of candidacy for the remainder of the unexpired term in an election held under G.S. 163-13.

(i) Repealed by Session Laws 2001-403, s. 3, effective January 1, 2002. (1915, c. 101, ss. 6, 15; 1917, c. 218; C.S., ss. 6022, 6035; 1921, c. 217; 1923, c. 111, s. 13; C.S., s. 6055(a); 1927, c. 260, s. 19; 1929, c. 26, s. 1; 1933, c. 165, s. 12; 1937, c. 364; 1947, c. 505, s. 7; 1949, c. 672, s. 4; c. 932; 1951, c. 1009, s. 3; 1955, c. 755; c. 871, s. 1; 1959, c. 1203, s. 4; 1965, c. 262; 1967, c. 775, s. 1; c. 1063, s. 2; 1969, c. 44, s. 83; c. 1190, s. 56; 1971, cc. 189, 675, 798; 1973, c. 47, s. 2; c. 793, s. 36; c. 862; 1975, c. 844, s. 2; 1977, c. 265, ss. 4, 5; c. 408, s. 2; c. 661, ss. 2, 3; 1979, c. 24; c. 411, s. 5; 1981, c. 32, ss. 1, 2; 1983, c. 330, s. 1; 1985, c. 472, s. 2; c. 558, s. 1; c. 759, s. 6; 1985 (Reg. Sess., 1986), c. 957, s. 1; 1987, c. 509, s. 13; c. 738, s. 124; 1987 (Reg. Sess., 1988), c. 1028, s. 1; 1993 (Reg. Sess., 1994), c. 762, s. 31; 1995, c. 243, s. 1; 1996, 2nd Ex. Sess., c. 9, s. 8; 1999-456, s. 59; 2001-403, s. 3; 2001-466, s. 5.1(a); 2002-158, ss. 8, 9; 2002-159, s. 55(a); 2006-155, s. 2; 2007-369, s. 1; 2009-47, s. 1.)

Local Modification. — Pasquotank: 1995 (Reg. Sess., 1996), c. 612, s. 1; Halifax County Board of Elections: 1983 (Reg. Sess., 1984), c. 984.

Editor's Note. — Session Laws 1991, Ex. Sess., c. 1, which was submitted to the Attorney General of the United States pursuant to Section 5 of the Voting Rights Act of 1965, as amended (42 U.S.C. 1973c), received preclearance from the United States Department of Justice on January 3, 1992.

Session Laws 1996, Second Extra Session, c. 9, s. 23, provides: "Part 1 of this act becomes effective only if Parts 1 and 2 of this act are both effective under section 5 of the Voting Rights Act of 1965." Preclearance was received from the U.S. Department of Justice by letter dated October 1, 1996.

Session Laws 2002-158, s. 15, contains a severability clause.

Session Laws 2002-158, s. 15.1, states that nothing in this act obligates the General Assembly to appropriate funds to implement the provisions of the act now or in the future.

Effect of Amendments. — Session Laws 2007-369, s. 1, effective January 1, 2008, added subsection (a1).

Session Laws 2009-47, s. 1, effective January 1, 2010, and applicable with respect to primaries and elections held on or after that date, substituted "the same office" for "any office" in the form in subsection (a).

Legal Periodicals. — For survey of 1977 administrative law affecting state government, see 56 N.C.L. Rev. 867 (1978).

CASE NOTES

The trial court properly refused to declare this section and § 163-323 unconstitutional although, taken together, they created a "loophole" which allowed a candidate to run for a superior court seat and another office on the same election day, regardless of the filing periods; the provisions did not create a benefit to lawyers while denying non-lawyers the equal protection of the law, did not remove the election process from the hands of the voters, and did not allow dual officeholding in violation of Art. VI, § 9 of the North Carolina Constitution, although they did allow dual candidacy. Comer v. Ammons, 135 N.C. App. 531, 522 S.E.2d 77, 1999 N.C. App. LEXIS 1179 (1999).

As to unconstitutionality of selectively adopted and applied numbered seat law of former G.S. 163-117, which in conjunction with this section made a candidate for the House or Senate decide whom he was going to run against by creating separate offices out of seats in a multi-member district and making votes effective only for the seat for which he filed, see Dunston v. Scott, 336 F. Supp. 206 (E.D.N.C. 1972).

1987 Amendment Held Constitutional. — The provisions in Session Laws 1987, c. 509, which amended this section, did not violate the North Carolina Constitution. State ex rel. Martin v. Preston, 325 N.C. 438, 385 S.E.2d 473 (1989).

Failure to Preclear Acts. — Where superior court judges were elected pursuant to Session Laws 1965, c. 262, Session Laws 1967, c. 997, Session Laws 1977, cc. 1119, 1130 and 1238, and Session Laws 1983, c. 1109, and such legislative acts had not been precleared by the Attorney General as required by section 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c, the federal district court would enjoin such elections retroactively in those counties subject to section 5 of the Voting Rights Act; the fact that an election law deals with the election of members of the judiciary does not remove it from the ambit of section 5 of the Voting Rights Act. Haith v. Martin, 618 F. Supp. 410 (E.D.N.C. 1985), aff'd, 477 U.S. 901, 106 S. Ct. 3268, 91 L. Ed. 2d 559 (1986).

Where there are two vacancies for the office of Associate Justice of the Supreme Court to be filled at the general election, a notice of candidacy for the nomination of a party which does not specify to which of the vacancies the candidate is asking the nomination is fatally defective. Ingle v. State Bd. of Elections, 226 N.C. 454, 38 S.E.2d 566 (1946).

Obligation Imposed upon Candidate by Former Law. — Former G.S. 163-119 attempted to place upon a candidate seeking nomination to public office in the primary election of an existing political party an obligation to adhere to such existing political party for at least a limited time in the future. States' Rights Democratic Party v. State Bd. of Elections, 229 N.C. 179, 49 S.E.2d 379 (1948).

Action Against County Board Improper. — Action challenging refusal to place candidate on primary election ballot, brought against a county board of elections and its individual members, would be dismissed on the ground that the defendants were not proper parties to such action, because the state statute requires that candidates for Congress file with the State Board of Elections, and the county board has no authority to accept or reject such applications. Brown v. North Carolina State Bd. of Elections, 394 F. Supp. 359 (W.D.N.C. 1975).

Action against three county boards of elections challenging method of electing North Carolina superior court judges would be dismissed, since the county boards have no authority to act in a manner inconsistent with the statute governing election of superior court judges. They merely act in a ministerial capacity and can only carry out duties as detailed by statute and the State Board. Republican Party v. Martin, 682 F. Supp. 834 (M.D.N.C. 1988).

Timeliness of Motion to Enjoin Elections. — Plaintiffs initiated motion to enjoin judicial elections prior to the inception of the electoral process, providing the court the opportunity to effectively remedy any defect prior to significant and potentially detrimental reliance on the present electoral scheme by defendants and potential candidates. Republican Party v. Hunt, 841 F. Supp. 722 (E.D.N.C.), aff'd sub nom. Republican Party v. North Carolina State Bd. of Elections, 27 F.3d 563 (4th Cir. 1994).

Harm to Political Party Justified Preliminary by Injunction. — Plaintiffs, political party, made a sufficient showing that they had been and would continue to be irreparably harmed by the present superior court electoral process, and because corresponding harm to defendants upon the granting of this provisional relief was minor, plaintiff's motion for preliminary injunction modifying superior court elections was granted. Republican Party v. Hunt, 841 F. Supp. 722 (E.D.N.C.), aff'd sub nom. Republican Party v. North Carolina State Bd. of Elections, 27 F.3d 563 (4th Cir. 1994).

Cited in Republican Party v. Martin, 980 F.2d 943 (4th Cir. 1992).

§ 163-107. Filing fees required of candidates in primary; refunds.

(a) Fee Schedule. — At the time of filing a notice of candidacy, each candidate shall pay to the board of elections with which he files under the provisions of G.S. 163-106 a filing fee for the office he seeks in the amount specified in the following tabulation:

Office Sought	Amount of Filing Fee
Governor	One percent (1%) of the annual salary of the office sought
Lieutenant Governor	One percent (1%) of the annual salary of the office sought
All State executive offices	One percent (1%) of the annual salary of the office sought
All District Attorneys of the General Court of Justice	One percent (1%) of the annual salary of the office sought
United States Senator	One percent (1%) of the annual salary of the office sought
Members of the United States House of Representatives	One percent (1%) of the annual salary of the office sought
State Senator	One percent (1%) of the annual salary of the office sought
Member of the State House of Representatives	One percent (1%) of the annual salary of the office sought
All county offices not compensated by fees	One percent (1%) of the annual salary of the office sought
All county offices compensated partly by salary and partly by fees	One percent (1%) of the first annual salary to be received (exclusive of fees)

The salary of any office that is the basis for calculating the filing fee is the starting salary for the office, rather than the salary received by the incumbent, if different. If no starting salary can be determined for the office, then the salary used for calculation is the salary of the incumbent, as of January 1 of the election year.

(b) Refund of Fees. — If any person who has filed a notice of candidacy and paid the filing fee prescribed in subsection (a) of this section, withdraws his notice of candidacy within the period prescribed in G.S. 163-106(e), he shall be entitled to have the fee he paid refunded. If the fee was paid to the State Board of Elections, the chairman of that board shall cause a warrant to be drawn on the Treasurer of the State for the refund payment. If the fee was paid to a county board of elections, the chairman of the Board shall certify to the county finance officer that the refund should be made, and the county finance officer shall make the refund in accordance with the provisions of the Local Government Budget and Fiscal Control Act. If any person who has filed a notice of candidacy and paid the filing fee prescribed in subsection (a) of this section dies prior to the date of the primary election provided by G.S. 163-1, the personal representative of the estate shall be entitled to have the fee refunded if application is made to the board of elections to which the fee was paid no later than one year after the date of death, and refund shall be made in the same manner as in withdrawal of notice of candidacy.

If any person files a notice of candidacy and pays a filing fee to a board of elections other than that with which he is required to file under the provisions of G.S. 163-106(e), he shall be entitled to have the fee refunded in the manner prescribed in this subsection if he requests the refund before the date on which the right to file for that office expires under the provisions of G.S. 163-106(e). (1915, c. 101, s. 4; 1917, c. 218; 1919, cc. 50, 139; C.S., ss. 6023, 6024; 1927, c. 260, s. 20; 1933, c. 165, s. 12; 1939, c. 264, s. 2; 1959, c. 1203, s. 5; 1967, c. 775, s. 1; 1969, c. 44, s. 84; 1973, c. 47, s. 2; c. 793, s. 37; 1977, c. 265, s. 6; 1983, c. 913, s. 56; 1995, c. 464, s. 1; 1996, 2nd Ex. Sess., c. 9, s. 9; 2001-403, s. 4; 2002-158, s. 10; 2005-428, s. 8.)

Local Modification to Former § 163-120. — Mecklenburg: 1937, c. 382; Sampson: 1941, c. 111.

Cross References. — For section providing for filing of a petition in lieu of payment of filing fee, see G.S. 163-107.1.

Editor's Note. — Session Laws 1995, c. 464, which amended this section, in s. 2 provides for the refund of the filing fee of a candidate who died before the primary in 1994 if application is made before January 1, 1996.

Session Laws 1996, Second Extra Session, c. 9, s. 23, provides: "Part 1 of this act becomes effective only if Parts 1 and 2 of this act are both effective under section 5 of the Voting Rights Act of 1965." Preclearance was received from the U.S. Department of Justice by letter dated October 1, 1996.

Session Laws 2002-158, s. 15, contains a severability clause.

Session Laws 2002-158, s. 15.1, states that nothing in this act obligates the General Assembly to appropriate funds to implement the provisions of the act now or in the future.

Legal Periodicals. — For comment on the deductibility of campaign expenses, see 43 N.C.L. Rev. 1004 (1965).

CASE NOTES

Constitutionality. — Since there were no alternative means of access to the primary ballot in North Carolina, this section was held constitutionally invalid. Brown v. North Carolina State Bd. of Elections, 394 F. Supp. 359 (W.D.N.C. 1975), (decided under this chapter as it stood before the enactment of § 163-107.1).

By requiring candidates to shoulder the costs of conducting primary elections through filing fees and by providing no reasonable alternative means of access to the ballot, the State erected a system that utilized the criterion of ability to pay as a condition to being on the ballot, thus excluding some candidates otherwise qualified and denying an undetermined number of voters the opportunity to vote for candidates of their choice. Brown v. North Carolina State Bd. of Elections, 394 F. Supp. 359 (W.D.N.C. 1975), (decided under this Chapter as it stood before the enactment of § 163-107.1).

In the absence of reasonable alternative means of ballot access, a state may not, consistent with constitutional standards, require from an indigent candidate filing fees he cannot pay. Brown v. North Carolina State Bd. of Elections, 394 F. Supp. 359 (W.D.N.C. 1975), (decided under this Chapter as it stood before the enactment of § 163-107.1).

Sections 163-96, 163-98, 163-122 and 163-151(2) are not available to candidate denied access to primary election ballot under this section. Brown v. North Carolina State Bd. of Elections, 394 F. Supp. 359 (W.D.N.C. 1975).

Filing Fee Is Not a Tax. — The filing fee is in no sense a tax within the meaning of N.C. Const., Art. II, § 23, or a local law as condemned by N.C. Const., Art. II, § 24. McLean v. Durham County Bd. of Elections, 222 N.C. 6, 21 S.E.2d 842 (1942).

Applied in Durham Land Owners Ass'n v. County of Durham, 177 N.C. App. 629, 630 S.E.2d 200, 2006 N.C. App. LEXIS 1187 (2006).

§ 163-107.1. Petition in lieu of payment of filing fee.

(a) Any qualified voter who seeks nomination in the party primary of the political party with which he affiliates may, in lieu of payment of any filing fee required for the office he seeks, file a written petition requesting him to be a candidate for a specified office with the appropriate board of elections, State, county or municipal.

(b) If the candidate is seeking the office of United States Senator, Governor, Lieutenant Governor, or any State executive officer, the petition must be signed by 10,000 registered voters who are members of the political party in whose primary the candidate desires to run, except that in the case of a political party as defined by G.S. 163-96(a)(2) which will be making nominations by primary election, the petition must be signed by ten percent (10%) of the registered voters of the State who are affiliated with the same political party in whose primary the candidate desires to run, or in the alternative, the petition shall be signed by no less than 10,000 registered voters regardless of the voter's political party affiliation, whichever requirement is greater. The petition must be filed with the State Board of Elections not later than 12:00 noon on Monday preceding the filing deadline before the primary in which he seeks to run. The names on the petition shall be verified by the board of elections of the county where the signer is registered, and the petition must be presented to the county board of elections at least 15 days before the petition is due to be filed with the State Board of Elections. When a proper petition has been filed, the candidate's name shall be printed on the primary ballot.

(c) County, Municipal and District Primaries. — If the candidate is seeking one of the offices set forth in G.S. 163-106(c) but which is not listed in subsection (b) of this section, or a municipal or any other office requiring a partisan primary which is not set forth in G.S. 163-106(c) or (d), he shall file a written petition with the appropriate board of elections no later than 12:00 noon on Monday preceding the filing deadline before the primary. The petition shall be signed by ten percent (10%) of the registered voters of the election area in which the office will be voted for, who are affiliated with the same political party in whose primary the candidate desires to run, or in the alternative, the petition shall be signed by no less than 200 registered voters regardless of said voter's political party affiliation, whichever requirement is greater. The board of elections shall verify the names on the petition, and if the petition is found to be sufficient, the candidate's name shall be printed on the appropriate primary ballot. Petitions for candidates for member of the U.S. House of Representatives, District Attorney, and members of the State House of Representatives from multi-county districts or members of the State Senate from multi-county districts must be presented to the county board of elections for verification at least 15 days before the petition is due to be filed with the State Board of Elections, and such petition must be filed with the State Board of Elections no later than 12:00 noon on Monday preceding the filing deadline. The State Board of Elections may adopt rules to implement this section and to provide standard petition forms.

(d) Nonpartisan Primaries and Elections. — Any qualified voter who seeks to be a candidate in any nonpartisan primary or election may, in lieu of payment of the filing fee required, file a written petition signed by ten percent (10%) of the registered voters in the election area in which the office will be voted for with the appropriate board of elections. Any qualified voter may sign the petition. The petition shall state the candidate's name, address and the office which he is seeking. The petition must be filed with the appropriate board of elections no later than 60 days prior to the filing deadline for the primary or election, and if found to be sufficient, the candidate's name shall be printed on the ballot. (1975, c. 853; 1977, c. 386; 1985, c. 563, s. 13; 1996, 2nd Ex. Sess., c. 9, s. 12; 2001-403, s. 7; 2002-158, s. 11.)

Local Modification. — Anson County Board of Commissioners: 1991 (Reg. Sess., 1992), c. 781, s. 10 (but shall only be enforced as provided by Section 5 of the Voting Rights Act of 1965).

Editor's Note. — Session Laws 1991, Ex.

Sess., c. 1, which was submitted to the Attorney General of the United States pursuant to Section 5 of the Voting Rights Act of 1965, as amended (42 U.S.C. 1973c), received preclearance from the United States Department of Justice on January 3, 1992.

Session Laws 1994, Extra Session, c. 1, s. 4(a) provides that the provisions of G.S. 163-107.1 do not apply to any offices covered by c. 1 (positions as superior court judge, district court judge, and district attorney in certain Districts) in the 1994 primary.

Session Laws 1996, Second Extra Session, c. 9, s. 23, provides: "Part 1 of this act becomes effective only if Parts 1 and 2 of this act are both effective under section 5 of the Voting Rights Act of 1965." Preclearance was received from the U.S. Department of Justice by letter dated October 1, 1996.

Session Laws 2002-158, s. 15, contains a severability clause.

Session Laws 2002-158, s. 15.1, states that nothing in this act obligates the General Assembly to appropriate funds to implement the provisions of the act now or in the future.

§ 163-108. Certification of notices of candidacy.

(a) Within three days after the time for filing notices of candidacy with the State Board of Elections under the provisions of G.S. 163-106(c) has expired, the chairman or secretary of that Board shall certify to the Secretary of State the name, address, and party affiliation of each person who has filed with the State Board of Elections, indicating in each instance the office sought.

(b) No later than 10 days after the time for filing notices of candidacy under the provisions of G.S. 163-106(c) has expired, the chairman of the State Board of Elections shall certify to the chairman of the county board of elections in each county in the appropriate district the names of candidates for nomination to the following offices who have filed the required notice and pledge and paid the required filing fee to the State Board of Elections, so that their names may be printed on the official county ballots: Superior court judge, district court judge, and district attorney.

(c) In representative districts composed of more than one county and in multi-county senatorial districts the chairman or secretary of the county board of elections in each county shall, within three days after the time for filing notices of candidacy under the provisions of G.S. 163-106(c) has expired, certify to the State Board of Elections (i) the names of all candidates who have filed notice of candidacy in his county for member of the State Senate, or, if such is the fact, that no candidates have filed in his county for that office, and (ii) the names of all candidates who have filed notice of candidacy in his county for the office of member of the State House of Representatives or, if such is the fact, that no candidates have filed in his county for that office. The chairman of the county board of elections shall forward a copy of this report to the chairman of the board of elections of each of the other counties in the representative or senatorial district. Within 10 days after the time for filing notices of candidacy for those offices has expired the chairman or secretary of the State Board of Elections shall certify to the chairman of the county board of elections in each county of each multi-county representative or senatorial district the names of all candidates for the House of Representatives and Senate which must be printed on the county ballots.

(d) Within two days after he receives each of the letters of certification from the chairman of the State Board of Elections required by subsections (b) and (c) of this section, each county elections board chairman shall acknowledge receipt by letter addressed to the chairman of the State Board of Elections. (1915, c. 101, s. 8; 1917, c. 218; C.S., s. 6028; 1927, c. 260, s. 22; 1966, Ex. Sess., c. 5, s. 8; 1967, c. 775, s. 1; 1973, c. 793, s. 38; 1979, c. 797, s. 5; 1983, c. 331, s. 1.)

CASE NOTES

Cited in Holshouser v. Scott, 335 F. Supp. 928 (M.D.N.C. 1971).

§ 163-108.1. Nomination of members of House of Representatives.

Chapter 826, Session Laws of 1957; Chapter 484, Session Laws of 1961; Chapter 621, Session Laws of 1959; Chapter 894, Session Laws of 1945; Chapter 442, Session Laws of 1955; Chapter 103, Public-Local Laws of 1941; Chapter 439, Session Laws of 1955; Chapter 238, Session Laws of 1959; and all other special and local acts providing for the nomination of candidates for the State House of Representatives by convention in any county, are modified and amended as follows: In the several representative districts of the State containing two or more counties, each political party shall nominate candidates for membership in the State House of Representatives according to the provisions of the statewide primary law, Article 19 [Article 10], Chapter 163 of the General Statutes of North Carolina, or by district convention of the party when so provided by law. In a county assigned to a multi-county representative district, no political party shall nominate candidates for the State House of Representatives by party convention for the single county. (1966, Ex. Sess., c. 5, s. 16.)

Editor's Note. — The statewide primary law, referred to in this section, is now found in Article 10 of this Chapter.

§ 163-109: Repealed by Session Laws 2002-159, s. 55.(j), effective January 1, 2003, and applicable to all primaries and elections held on or after that date.

§ 163-110. Candidates declared nominees without primary.

If a nominee for a single office is to be selected and only one candidate of a political party files for that office, or if nominees for two or more offices (constituting a group) are to be selected, and only the number of candidates equal to the number of the positions to be filled file for a political party for said offices, then the appropriate board of elections shall, upon the expiration of the filing period for said office, declare such persons as the nominees or nominee of that party, and the names shall not be printed on the primary ballot, but shall be printed on the general election ballot as candidate for that political party for that office. For the following offices, this declaration shall be made by the county board of elections with which the aspirant filed notice of candidacy: All county offices, State Senators in single-county senatorial districts, and members of the State House of Representatives in single-county representative districts. For all other offices, this declaration shall be made by the State Board of Elections. (1915, c. 101, ss. 13, 19; 1917, c. 218; C.S., ss. 6033, 6039; 1966, Ex. Sess., c. 5, ss. 9, 11; 1967, c. 775, s. 1; 1973, c. 793, s. 42; 1975, c. 19, s. 68; 1981, c. 220, ss. 1, 2.)

§ 163-111. Determination of primary results; second primaries.

(a) Nomination Determined by Substantial Plurality; Definition of Substantial Plurality. — Except as otherwise provided in this section, nominations in primary elections shall be determined by a substantial plurality of the votes cast. A substantial plurality within the meaning of this section shall be determined as follows:

(1) If a nominee for a single office is to be selected, and there is more than one person seeking nomination, the substantial plurality shall be ascertained by multiplying the total vote cast for all aspirants by forty percent (40%). Any excess of the sum so ascertained shall be a substantial plurality, and the aspirant who obtains a substantial plurality shall be declared the nominee. If two candidates receive a substantial plurality, the candidate receiving the highest vote shall be declared the nominee.

(2) If nominees for two or more offices (constituting a group) are to be selected, and there are more persons seeking nomination than there are offices, the substantial plurality shall be ascertained by dividing the total vote cast for all aspirants by the number of positions to be filled, and by multiplying the result by forty percent (40%). Any excess of the sum so ascertained shall be a substantial plurality, and the aspirants who obtain a substantial plurality shall be declared the nominees. If more candidates obtain a substantial plurality than there are positions to be filled, those having the highest vote (equal to the number of positions to be filled) shall be declared the nominees.

(b) Right to Demand Second Primary. — If an insufficient number of aspirants receive a substantial plurality of the votes cast for a given office or group of offices in a primary, a second primary, subject to the conditions specified in this section, shall be held:

(1) If a nominee for a single office is to be selected and no aspirant receives a substantial plurality of the votes cast, the aspirant receiving the highest number of votes shall be declared nominated by the appropriate board of elections unless the aspirant receiving the second highest number of votes shall request a second primary in accordance with the provisions of subsection (c) of this section. In the second primary only the two aspirants who received the highest and next highest number of votes shall be voted for.

(2) If nominees for two or more offices (constituting a group) are to be selected and aspirants for some or all of the positions within the group do not receive a substantial plurality of the votes, those candidates equal in number to the positions remaining to be filled and having the highest number of votes shall be declared the nominees unless some one or all of the aspirants equal in number to the positions remaining to be filled and having the second highest number of votes shall request a second primary in accordance with the provisions of subsection (c) of this section. In the second primary to select nominees for the positions in the group remaining to be filled, the names of all those candidates receiving the highest number of votes and all those receiving the second highest number of votes and demanding a second primary shall be printed on the ballot.

(c) Procedure for Requesting Second Primary. —

(1) A candidate who is apparently entitled to demand a second primary, according to the unofficial results, for one of the offices listed below, and desiring to do so, shall file a request for a second primary in writing with the Executive Director of the State Board of Elections no later than 12:00 noon on the ninth day (including Saturdays and Sundays) following the date on which the primary was conducted, and such request shall be subject to the certification of the official results by the State Board of Elections. If the vote certification by the State Board of Elections determines that a candidate who was not originally thought to be eligible to call for a second primary is in fact eligible to call for a second primary, the Executive Director of the State Board of Elections shall immediately notify such candidate and permit him to

exercise any options available to him within a 48-hour period following the notification:

Governor,
Lieutenant Governor,
All State executive officers,
District Attorneys of the General Court of Justice,
United States Senators,
Members of the United States House of Representatives,
State Senators in multi-county senatorial districts, and
Members of the State House of Representatives in multi-county representative districts.

(2) A candidate who is apparently entitled to demand a second primary, according to the unofficial results, for one of the offices listed below and desiring to do so, shall file a request for a second primary in writing with the chairman or director of the county board of elections no later than 12:00 noon on the ninth day (including Saturdays and Sundays) following the date on which the primary was conducted, and such request shall be subject to the certification of the official results by the county board of elections:

State Senators in single-county senatorial districts,
Members of the State House of Representatives in single-county representative districts, and
All county officers.

(3) Immediately upon receipt of a request for a second primary the appropriate board of elections, State or county, shall notify all candidates entitled to participate in the second primary, by telephone followed by written notice, that a second primary has been requested and of the date of the second primary.

(d) Tie Votes; How Determined. —

(1) In the event of a tie for the highest number of votes in a first primary between two candidates for party nomination for a single county, or single-county legislative district office, the board of elections of the county in which the two candidates were voted for shall conduct a recount and declare the results. If the recount shows a tie vote, a second primary shall be held on the date prescribed in subsection (e) of this section between the two candidates having an equal vote, unless one of the aspirants, within three days after the result of the recount has been officially declared, files a written notice of withdrawal with the board of elections with which he filed notice of candidacy. Should that be done, the remaining aspirant shall be declared the nominee. In the event of a tie for the highest number of votes in a first primary among more than two candidates for party nomination for one of the offices mentioned in this subdivision, no recount shall be held, but all of the tied candidates shall be entered in a second primary.

(2) In the event of a tie for the highest number of votes in a first primary between two candidates for a State office, for United States Senator, or for any district office (including State Senator in a multi-county senatorial district and member of the State House of Representatives in a multi-county representative district), no recount shall be held solely by reason of the tie, but the two candidates having an equal vote shall be entered in a second primary to be held on the date prescribed in subsection (e) of this section, unless one of the two candidates files a written notice of withdrawal with the State Board of Elections within three days after the result of the first primary has been officially declared and published. Should that be done, the remaining

aspirant shall be declared the nominee. In the event of a tie for the highest number of votes in a first primary among more than two candidates for party nomination for one of the offices mentioned in this subdivision, no recount shall be held, but all of the tied candidates shall be entered in a second primary.

(3) In the event one candidate receives the highest number of votes cast in a first primary, but short of a substantial plurality, and two or more of the other candidates receive the second highest number of votes cast in an equal number, the proper board of elections shall declare the candidate having the highest vote to be the party nominee, unless all but one of the tied candidates give written notice of withdrawal to the proper board of elections within three days after the result of the first primary has been officially declared. If all but one of the tied candidates withdraw within the prescribed three-day period, and the remaining candidate demands a second primary in accordance with the provisions of subsection (c) of this section, a second primary shall be held between the candidate who received the highest vote and the remaining candidate who received the second highest vote.

(e) Date of Second Primary; Procedures. — If a second primary is required under the provisions of this section, the appropriate board of elections, State or county, shall order that it be held seven weeks after the first primary.

There shall be no registration of voters between the dates of the first and second primaries. Persons whose qualifications to register and vote mature after the day of the first primary and before the day of the second primary may register on the day of the second primary and, when thus registered, shall be entitled to vote in the second primary. The second primary is a continuation of the first primary and any voter who files a proper and timely written affirmation of change of address within the county under the provisions of G.S. 163-82.15, in the first primary may vote in the second primary without having to refile that written affirmation if he is otherwise qualified to vote in the second primary. Subject to this provision for registration, the second primary shall be held under the laws, rules, and regulations provided for the first primary.

(f) No Third Primary Permitted. — In no case shall there be a third primary. The candidates receiving the highest number of votes in the second primary shall be nominated. If in a second primary there is a tie for the highest number of votes between two candidates, the proper party executive committee shall select the party nominee for the office in accordance with the provisions of G.S. 163-114. (1915, c. 101, s. 24; 1917, c. 179, s. 2; c. 218; C.S., s. 6045; 1927, c. 260, s. 23; 1931, c. 254, s. 17; 1959, c. 1055; 1961, c. 383; 1966, Ex. Sess., c. 5, s. 13; 1967, c. 775, s. 1; 1969, c. 44, s. 85; 1973, c. 47, s. 2; c. 793, ss. 43, 44; 1975, c. 844, s. 3; 1977, c. 265, s. 9; 1981, c. 645, ss. 1, 2; 1989, c. 549; 1995, c. 243, s. 1; 1996, 2nd Ex. Sess., c. 9, s. 10; 1999-424, s. 7(e); 2001-319, s. 11; 2001-403, s. 5; 2002-158, s. 12; 2003-278, s. 10(d); 2006-192, s. 2.)

Local Modification. — Lenoir: 1989, c. 291, s. 7(a); Montgomery: 2004-59, s. 11 (effective January 1, 2006); Pamlico: 1987 (Reg. Sess., 1988), c. 939, s. 5; Richmond: 1989, c. 88, s. 1.1; city of Albemarle: 1987 (Reg. Sess., 1988), c. 881, s. 5; Vance County Board of Education: 1987 (Reg. Sess., 1988), c. 974, ss. 3, 4.

Editor's Note. — Session Laws 1996, Second Extra Session, c. 9, s. 23, provides: "Part 1 of this act becomes effective only if Parts 1 and 2 of this act are both effective under section 5 of the Voting Rights Act of 1965." Preclearance was received from the U.S. Department of Justice by letter dated October 1, 1996.

Session Laws 2002-158, s. 15, contains a severability clause.

Session Laws 2002-158, s. 15.1, states that nothing in this act obligates the General Assembly to appropriate funds to implement the provisions of the act now or in the future.

Effect of Amendments. — Session Laws 2006-192, s. 2, effective January 1, 2007, and applicable to all primaries and elections conducted on or after January 1, 2007, in subsection (e), substituted "seven" for "four" in the first paragraph, and, in the second paragraph, substituted "written affirmation" for "affidavit", substituted "change of address within the county" for "transfer of precinct,", substituted "in" for "before", and substituted "that written affirmation" for "the affidavit of transfer".

Legal Periodicals. — For note, "The Primary Runoff: Racism's Reprieve?," see 65 N.C.L. Rev. 359 (1987).

CASE NOTES

Effect of Failure to Make Timely Request for Second Primary. — Under G.S. 24 of the State Primary Law, c. 101, Laws of 1915, providing, among other things, that the successful candidate for certain offices should receive a majority of the votes cast, when construed in connection with the proviso of the same section that the one receiving the next highest vote, under a majority, should file a request in writing with the appropriate board of elections for a second primary, entitled the one receiving the highest number of votes to be the candidate of the party to the office, upon the failure of the one receiving the next highest vote to comply with the provision within the time stated. Johnston v. Board of Elections, 172 N.C. 162, 90 S.E. 143 (1916).

Enforcement of Board's Duty by Mandamus. — Where a candidate for membership in the General Assembly who received the next highest vote in a legalized primary, but less than a majority of the votes cast, failed to give written notice to the board of elections for a second primary within the time prescribed, and after duly declaring the result of the election the board ordered the second primary, the board's ministerial duty of recognizing the one receiving the highest vote as the candidate and putting his name on the ticket as such would be enforced by mandamus. Johnston v. Board of Elections, 172 N.C. 162, 90 S.E. 143 (1916).

Showing Required of Plaintiff Seeking Mandamus. — The plaintiff in proceedings for mandamus to compel county board of elections to declare him the successful candidate of his party in a primary election or to declare that he was entitled to a second primary involving himself and another candidate for the same office must show the denial of a present, clear legal right by the failure of such board to have done so. Umstead v. Board of Elections, 192 N.C. 139, 134 S.E. 409 (1926).

In order for a candidate for the party nomination for the legislature to obtain a writ of mandamus against the county board of elections to compel the ordering of a second primary, he must show that his opponents, who received the larger number of votes did not receive a majority of the votes cast for said nomination, and he must have timely filed with the county board of elections a written request that the second primary be called by it. Umstead v. Board of Elections, 192 N.C. 139, 134 S.E. 409 (1926).

Cited in McGhee v. Granville County, 860 F.2d 110 (4th Cir. 1988).

§ 163-112. Death of candidate before primary; vacancy in single office.

(a) Death of One of Two Candidates within 30 Days after the Filing Period Closes. — If at the time the filing period closes, only two persons have filed notice of candidacy for nomination by a political party to a single office, and one of the candidates dies within 30 days after the filing period closes, then the proper board of elections shall, upon notice of the death, reopen the filing period for that party contest, for an additional three days. Should no candidate file during the three days, the board of elections shall certify the remaining candidate as the nominee of his party as provided in G.S. 163-110.

(b) Death of One of More Than Two Candidates within 30 Days after the Filing Period Closes. — If at the close of the filing period more than two candidates have filed for a single-seat office, and within 30 days after the filing period closes the board of elections receives notice of a candidate's death, the board shall immediately open the filing period for that party contest, for three additional days in order for candidates to file for that office. The name of the deceased candidate shall not be printed on the ballot.

In the event a candidate's death occurs more than 30 days after the closing of the original filing period, the names of the remaining candidates shall be printed on the ballot. If the ballots have been printed at the time death occurs, the ballots shall not be reprinted and any votes cast for a deceased candidate shall not be counted or considered for any purpose. In the event the death of a candidate or candidates leaves only one candidate, then such candidate shall be certified as the party's nominee for that office.

(c) Vacancy in Group Offices within 30 Days after the Filing Period Closes. — If at the time the filing period closes more persons have filed notice of candidacy for nomination by a political party to an office constituting a group than there are positions to be filled, and a candidate or candidates die within 30 days after the filing period closes, and there remains only the number of candidates equal to or fewer than the number of positions to be filled, the appropriate board of elections shall reopen the filing period for that party contest, for three days for that office. Should no persons file during the three-day period, then those candidates already filed shall be certified as the party nominees for that office.

(d) Vacancy in Group Offices More Than 30 Days after the Filing Period Closes. — In the event a candidate or candidates death occurs more than 30 days after the original filing period closes for an office constituting a group, then regardless of the number of candidates filed for nomination, the board of elections shall be governed as follows:

(1) If the ballots have not been printed at the time the board of elections receives notice of the death, the deceased candidate's name shall not be printed on the ballot.

(2) If the ballots have been printed at the time the board of elections receives notice of the death, the ballots shall not be reprinted but votes cast for the deceased candidate shall not be counted for any purpose.

(3) In the event the death of a candidate or candidates results in the number of candidates being equal to or less than the number of positions to be filled for that office, then the remaining candidates shall be certified as the party nominees for that office and no primary shall be held for that office.

(4) If death or disqualification of candidates results in the number of candidates being less than the number of positions to be filled for that office, then the appropriate party executive committee shall, in accordance with G.S. 163-114, make nominations of persons equal to the number of positions to be filled and no primary shall be held and those names shall be printed on the general election ballot. (1959, c. 1054; 1967, c. 775, s. 1; 1981, c. 434; 1991, Ex. Sess., c. 1; 1993, c. 553, s. 60; 2001-466, s. 1(f); 2003-278, s. 4; 2003-434, Ex. Sess., s. 5(e); 2004-127, s. 13.)

Local Modification. — Anson County Board of Commissioners: 1991 (Reg. Sess., 1992), c. 781, s. 6 (but shall only be enforced as provided by Section 5 of the Voting Rights Act of 1965).

Editor's Note. — Session Laws 1991, Ex. Sess., c. 1, which was submitted to the Attorney General of the United States pursuant to Section 5 of the Voting Rights Act of 1965, as amended (42 U.S.C. 1973c), received preclearance from the United States Department of Justice on January 3, 1992.

§ 163-113. Nominee's right to withdraw as candidate.

A person who has been declared the nominee of a political party for a specified office under the provisions of G.S. 163-182.15 or G.S. 163-110, shall not be permitted to resign as a candidate unless, at least 30 days before the general election, he submits to the board of elections which certified his nomination a written request that he be permitted to withdraw. (1929, c. 164, s. 8; 1967, c. 775, s. 1; 2001-398, s. 6.)

§ 163-114. Filling vacancies among party nominees occurring after nomination and before election.

If any person nominated as a candidate of a political party for one of the offices listed below (either in a primary or convention or by virtue of having no opposition in a primary) dies, resigns, or for any reason becomes ineligible or disqualified before the date of the ensuing general election, the vacancy shall be filled by appointment according to the following instructions:

Position	
President Vice President	Vacancy is to be filled by appointment of national executive committee of political party in which vacancy occurs
Presidential elector or alternate elector Any elective State office United States Senator	Vacancy is to be filled by appointment of State executive committee of political party in which vacancy occurs
A district office, including: Member of the United States House of Representatives District Attorney State Senator in a multi-county senatorial district Member of State House of Representatives in a multi-county representative district	Appropriate district executive committee of political party in which vacancy occurs
State Senator in a single-county senatorial district Member of State House of Representatives in a single-county representative district Any elective county office	County executive committee of political party in which vacancy occurs, provided, in the case of the State Senator or State Representative in a single-county district where not all the county is located in that district, then in voting, only those members of the county executive committee who reside within the district shall vote

The party executive making a nomination in accordance with the provisions of this section shall certify the name of its nominee to the chairman of the board of elections, State or county, that has jurisdiction over the ballot item under G.S. 163-182.4. If at the time a nomination is made under this section the general election ballots have already been printed, the provisions of G.S.163-165.3(c) shall apply. If a vacancy occurs in a nomination of a political party and that vacancy arises from a cause other than death and the vacancy in nomination occurs more than 120 days before the general election, the vacancy in nomination may be filled under this section only if the appropriate executive committee certifies the name of the nominee in accordance with this paragraph at least 75 days before the general election.

In a county not all of which is located in one congressional district, in choosing the congressional district executive committee member or members from that area of the county, only the county convention delegates or county executive committee members who reside within the area of the county which is within the congressional district may vote.

In a county which is partly in a multi-county senatorial district or which is partly in a multi-county House of Representatives district, in choosing that county's member or members of the senatorial district executive committee or House of Representatives district executive committee for the multi-county district, only the county convention delegates or county executive committee members who reside within the area of the county which is within that multi-county district may vote.

An individual whose name appeared on the ballot in a primary election preliminary to the general election shall not be eligible to be nominated to fill a vacancy in the nomination of another party for the same office in the same year. (1929, c. 164, s. 19; 1967, c. 775, s. 1; 1973, c. 793, s. 45; 1981 (Reg. Sess., 1982), c. 1265, ss. 4, 5; 1987, c. 509, s. 10; c. 526; c. 738, s. 124; 1987 (Reg. Sess., 1988), c. 1037, s. 126.1; 1991, c. 727, s. 8; 1996, 2nd Ex. Sess., c. 9, s. 13; 2001-353, s. 1; 2001-403, s. 8; 2001-460, s. 4; 2003-142, s. 1; 2006-234, s. 6.)

Editor's Note. — Session Laws 1996, Second Extra Session, c. 9, s. 23, provides: "Part 1 of this act becomes effective only if Parts 1 and 2 of this act are both effective under section 5 of the Voting Rights Act of 1965." Preclearance was received from the U.S. Department of Justice by letter dated October 1, 1996.

§ 163-115. Special provisions for obtaining nominations when vacancies occur in certain offices.

(a) If a vacancy occurs in the office of the clerk of superior court, otherwise than by expiration of the term, or if the people fail to elect, the vacancy shall be filled as provided in Sec. 9(3) of Article IV of the North Carolina Constitution. If the vacancy occurs after the time for filing notice of candidacy in the primary has expired in a year when a regular election is not being held to elect a clerk of the superior court by expiration of term, then the county executive committee of each political party shall nominate a candidate whose name shall appear on the general election ballot. The candidate elected in the general election shall serve the unexpired portion of the term of the person causing the vacancy.

(b) In the event a special election is called to fill a vacancy in the State's delegation in the United States House of Representatives, the provisions of G.S. 163-13 shall apply.

(c) If a vacancy occurs in an elective State or district office (other than member of the United States House of Representatives) during the period opening 10 days before the filing period for the office ends and closing 30 days before the ensuing general election, a nomination shall be made by the proper executive committee of each political party as provided in G.S. 163-114, and the names of the nominees shall be printed on the general election ballots.

(d) If a vacancy occurs on a county board of commissioners and G.S. 153A-27 or G.S. 153A-27.1 requires that a person shall be elected to the seat vacated for the remainder of the unexpired term, and the vacancy occurs:

(1) Beginning on the tenth day before the filing period ends under G.S. 163-106(c), a nomination shall be made by the county executive

committee of each political party and the names of the nominees shall be printed on the general election ballots.

(2) Prior to the tenth day before the filing period ends under G.S. 163-106(c), nominations shall be made by primary election as provided by this Article.

(e) If a vacancy occurs in the office of United States Senator, and the vacancy occurs:

(1) Beginning on the tenth day before the filing period ends under G.S. 163-106(c), a nomination shall be made by the State executive committee of each political party and the names of the nominees shall be printed on the general election ballots.

(2) Prior to the tenth day before the filing period ends under G.S. 163-106(c), nominations shall be made by primary election as provided by this Article. (1915, c. 101, s. 33; 1917, c. 179, s. 3; c. 218; C.S., s. 6053; 1923, c. 111, s. 16; 1955, c. 574; 1957, c. 1242; 1966, Ex. Sess., c. 5, s. 14; 1967, c. 775, s. 1; 1973, c. 793, s. 46; 1985, c. 563, ss. 7, 7.1; c. 759, s. 1; 1997-456, s. 27.)

Editor's Note. — The undesignated paragraphs of this section were renumbered as subsections (a) through (e) pursuant to Session Laws 1997-456, s. 27 which authorized the Revisor of Statutes to renumber or reletter sections and parts of sections having a number or letter designation that is incompatible with the General Assembly's computer database.

§§ 163-116 through 163-118: Repealed by Session Laws 1973, c. 793, ss. 47-49.

§ 163-119. Voting by unaffiliated voter in party primary.

If a political party has, by action of its State Executive Committee reported to the State Board of Elections by resolution delivered no later than the first day of December preceding a primary, provided that unaffiliated voters may vote in the primary of that party, an unaffiliated voter may vote in the primary of that party by announcing that intention under G.S. 163-166.7(a). For a party to withdraw its permission, it must do so by action of its State Executive Committee, similarly reported to the State Board of Elections no later than the first day of December preceding the primary where the withdrawal is to become effective. (1993 (Reg. Sess., 1994), c. 762, s. 7; 2002-159, s. 21(a).)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 7 was codified as this section at the direction of the Revisor of Statutes.

§§ 163-120, 163-121: Reserved for future codification purposes.

Article 11.

Nomination by Petition.

§ 163-122. Unaffiliated candidates nominated by petition.

(a) Procedure for Having Name Printed on Ballot as Unaffiliated Candidate. — Any qualified voter who seeks to have his name printed on the general election ballot as an unaffiliated candidate shall:

(1) If the office is a statewide office, file written petitions with the State Board of Elections supporting his candidacy for a specified office. These petitions must be filed with the State Board of Elections on or

before 12:00 noon on the last Friday in June preceding the general election and must be signed by qualified voters of the State equal in number to two percent (2%) of the total number of voters who voted in the most recent general election for Governor. Also, the petition must be signed by at least 200 registered voters from each of four congressional districts in North Carolina. No later than 5:00 p.m. on the fifteenth day preceding the date the petitions are due to be filed with the State Board of Elections, each petition shall be presented to the chairman of the board of elections of the county in which the signatures were obtained. Provided the petitions are timely submitted, the chairman shall examine the names on the petition and place a check mark on the petition by the name of each signer who is qualified and registered to vote in his county and shall attach to the petition his signed certificate. Said certificates shall state that the signatures on the petition have been checked against the registration records and shall indicate the number of signers to be qualified and registered to vote in his county. The chairman shall return each petition, together with the certificate required in this section, to the person who presented it to him for checking. Verification by the chairman of the county board of elections shall be completed within two weeks from the date such petitions are presented.

(2) If the office is a district office under the jurisdiction of the State Board of Elections under G.S. 163-182.4(b), file written petitions with the State Board of Elections supporting that voter's candidacy for a specified office. These petitions must be filed with the State Board of Elections on or before 12:00 noon on the last Friday in June preceding the general election and must be signed by qualified voters of the district equal in number to four percent (4%) of the total number of registered voters in the district as reflected by the voter registration records of the State Board of Elections as of January 1 of the year in which the general election is to be held. Each petition shall be presented to the chairman of the board of elections of the county in which the signatures were obtained. The chairman shall examine the names on the petition and the procedure for certification and deadline for submission to the county board shall be the same as specified in (1) above.

(3) If the office is a county office or a single county legislative district, file written petitions with the chairman or director of the county board of elections supporting his candidacy for a specified county office. These petitions must be filed with the county board of elections on or before 12:00 noon on the last Friday in June preceding the general election and must be signed by qualified voters of the county equal in number to four percent (4%) of the total number of registered voters in the county as reflected by the voter registration records of the State Board of Elections as of January 1 of the year in which the general election is to be held, except if the office is for a district consisting of less than the entire county and only the voters in that district vote for that office, the petitions must be signed by qualified voters of the district equal in number to four percent (4%) of the total number of voters in the district according to the voter registration records of the State Board of Elections as of January 1 of the year in which the general election is to be held. Each petition shall be presented to the chairman or director of the county board of elections. The chairman shall examine, or cause to be examined, the names on the petition and the procedure for certification shall be the same as specified in (1) above.

(4) If the office is a partisan municipal office, file written petitions with the chairman or director of the county board of elections in the county

wherein the municipality is located supporting his candidacy for a specified municipal office. These petitions must be filed with the county board of elections on or before the time and date specified in G.S. 163-296 and must be signed by the number of qualified voters specified in G.S. 163-296. The procedure for certification shall be the same as specified in (1) above.

Upon compliance with the provisions of (1), (2), (3), or (4) of this subsection, the board of elections with which the petitions have been timely filed shall cause the unaffiliated candidate's name to be printed on the general election ballots in accordance with Article 14A of this Chapter.

An individual whose name appeared on the ballot in a primary election preliminary to the general election shall not be eligible to have his name placed on the general election ballot as an unaffiliated candidate for the same office in that year.

(b) Form of Petition. — Petitions requesting an unaffiliated candidate to be placed on the general election ballot shall contain on the heading of each page of the petition in bold print or in all capital letters the words: "THE UNDERSIGNED REGISTERED VOTERS IN ________________ COUNTY HEREBY PETITION ON BEHALF OF ________________ AS AN UNAFFILIATED CANDIDATE FOR THE OFFICE OF ________________ IN THE NEXT GENERAL ELECTION. THE UNDERSIGNED HEREBY PETITION THAT SUBJECT CANDIDATE BE PLACED ON THE APPROPRIATE BALLOT UPON COMPLIANCE WITH THE PROVISIONS CONTAINED IN G.S. 163-122."

(c) This section does not apply to elections under Article 25 of this Chapter.

(d) When any person files a petition with a board of elections under this section, the board of elections shall, immediately upon receipt of the petition, inspect the registration records of the county and cancel the petition of any person who does not meet the constitutional or statutory qualifications for the office, including residency.

The board shall give notice of cancellation to any person whose petition has been cancelled under this subsection by mail or by having the notice served on that person by the sheriff and to any other candidate filing for the same office. A person whose petition has been cancelled or another candidate for the same office affected by a substantiation under this subsection may request a hearing on the issue of constitutional or statutory qualifications for the office. If the person requests a hearing, the hearing shall be conducted in accordance with Article 11B of Chapter 163 of the General Statutes.

(e) Any candidate seeking to have that candidate's name printed on the general election ballot under this section shall pay a filing fee equal to that provided for candidates for the office in G.S. 163-107 or comply with the alternative available to candidates for the office in G.S. 163-107.1. (1929, c. 164, s. 6; 1931, c. 223; 1935, c. 236; 1967, c. 775, s. 1; 1973, c. 793, s. 50; 1977, c. 408, s. 3; 1979, c. 23, ss. 1, 3; c. 534, s. 2; 1981, c. 637; 1991, c. 297, s. 1; 1995, c. 243, s. 1; 1996, 2nd Ex. Sess., c. 9, s. 14; 1999-424, s. 5(b); 2002-159, s. 21(b); 2004-127, s. 8(a); 2006-155, s. 3; 2006-234, ss. 4, 5; 2007-391, s. 8(a); 2007-484, s. 21; 2008-187, s. 33(a).)

Local Modification. — Avery: 1997-99; Anson County Board of Commissioners: 1991 (Reg. Sess., 1992), c. 781, s. 6 (but shall only be enforced as provided by Section 5 of the Voting Rights Act of 1965).

Editor's Note. — Session Laws 1996, Second Extra Session, c. 9, s. 23, provides: "Part 1 of this act becomes effective only if Parts 1 and 2 of this act are both effective under section 5 of the Voting Rights Act of 1965." Preclearance was received from the U.S. Department of Justice by letter dated October 1, 1996.

Subsection (e) was enacted as subsection (d) by Session Laws 2006-234, s. 5. It has been redesignated at the direction of the Revisor of Statutes.

Session Laws 2006-155, s. 7, is a severability clause.

Session Laws 2007-391, s. 1(c), was amended by Session Laws 2008-198, s. 33(a), to eliminate any confusion as to effective dates of the 2007 act. Session Laws 2007-391, s. 8(a), which substituted "Article 14A of this Chapter" for "G.S. 163-140" at the end of the next to last paragraph of subsection (a), is effective August 19, 2007.

CASE NOTES

Subdivision (a)(3) of this section, unconstitutionally infringed upon the rights of the plaintiff to associate for the advancement of his political beliefs and to cast his votes effectively. Obie v. North Carolina State Bd. of Elections, 762 F. Supp. 119 (E.D.N.C. 1991).

Ten Percent Requirement for Independent Candidates Held Unconstitutional. — North Carolina grossly discriminated against those who chose to pursue their candidacies as independents rather than by forming a new political party in requiring a group of voters seeking a place on the ballot as a new party to submit petitions signed by only 10,000 voters, less than one sixteenth the number required of an independent candidate, and furthermore, in requiring a candidate desiring to run in the North Carolina Presidential Preference Primary to submit only 10,000 signatures; since the State asserted no compelling interest for such disparate treatment, that portion of subsection (1) of this section which required an independent candidate for president to file written petitions signed by qualified voters equal in number to 10 percent of those who voted for Governor in the last gubernatorial election was an unconstitutional infringement upon the rights of such candidate and his supporters to associate for the advancement of political beliefs, to cast their votes effectively, and to enjoy equal protection under law. Greaves v. State Bd. of Elections, 508 F. Supp. 78 (E.D.N.C. 1980), decided prior to 1981 amendment.

Justiciability of Candidate's Challenges to Filing Deadline and Petition Requirements. — Challenge to the filing deadline under G.S. 163-122 as applied, based on the extension of the deadline due to the postponement of a statewide primary, was denied as non-justiciable because a candidate and his supporters did not suffer an actual injury and there was no live controversy; however, a challenge to the statute's petition strictures was justiciable as meeting the "capable of repetition, yet evading review" exception to mootness, but the evidence on the record was not sufficient to examine the question on summary judgment. Delaney v. Bartlett, — F. Supp. 2d —, 2003 U.S. Dist. LEXIS 24059 (M.D.N.C. Dec. 24, 2003).

Filing Deadline Held Unconstitutional. — The former filing deadline contained in this section, requiring an independent candidate's petition to be submitted by the last Friday in April before the general election, did not serve a compelling state interest and was an unconstitutional restriction on the rights of independent candidates and their supporters to associate for the advancement of political beliefs, to cast their votes effectively, and to enjoy equal protection under law, since such deadline did not protect the integrity of the ballot and resulted in disparate treatment of independent and party candidates. Greaves v. State Bd. of Elections, 508 F. Supp. 78 (E.D.N.C. 1980), decided prior to 1981 amendment.

Because this section totally prohibits the "sore loser" from running as an independent, former early filing deadline for independent candidates (the last Friday in April before the general election) could not be said to be "necessary" to the accomplishment of the same goal. Greaves v. State Bd. of Elections, 508 F. Supp. 78 (E.D.N.C. 1980), decided prior to 1981 amendment.

An independent candidate for President had standing to challenge the filing deadline established by this section, where he chose to submit his petition in timely fashion and face rejection for failure to gather required number of signatures, because it curtailed his ability to collect the number of signatures required to place his name on the ballot. Greaves v. State Bd. of Elections, 508 F. Supp. 78 (E.D.N.C. 1980), decided prior to 1981 amendment.

This section and §§ 163-96, 163-98 and 163-151(2) are not available to candidate denied access to primary election ballot under § 163-107. Brown v. North Carolina State Bd. of Elections, 394 F. Supp. 359 (W.D.N.C. 1975).

Cited in North Carolina Socialist Workers Party v. North Carolina State Bd. of Elections, 538 F. Supp. 864 (E.D.N.C. 1982).

§ 163-123. Declaration of intent and petitions for write-in candidates in partisan elections.

(a) Procedure for Qualifying as a Write-In Candidate. — Any qualified voter who seeks to have write-in votes for him counted in a general election shall file a declaration of intent in accordance with subsection (b) of this section and petition(s) in accordance with subsection (c) of this section.

(b) Declaration of Intent. — The applicant for write-in candidacy shall file his declaration of intent at the same time and with the same board of elections as his petition, as set out in subsection (c) of this section. The declaration shall contain:

(1) Applicant's name,
(2) Applicant's residential address,
(3) Declaration of applicant's intent to be a write-in candidate,
(4) Title of the office sought,
(5) Date of the election,
(6) Date of the declaration,
(7) Applicant's signature.

(c) Petitions for Write-in Candidacy. — An applicant for write-in candidacy shall:

(1) If the office is a statewide office, file written petitions with the State Board of Elections supporting his candidacy for a specified office. These petitions shall be filed on or before noon on the 90th day before the general election. They shall be signed by 500 qualified voters of the State. No later than 5:00 p.m. on the fifteenth day preceding the date the petitions are due to be filed with the State Board of Elections, each petition shall be presented to the board of elections of the county in which the signatures were obtained. A petition presented to a county board of elections shall contain only names of voters registered in that county. Provided the petitions are timely submitted, the chairman of the county board of elections shall examine the names on the petition and place a check mark by the name of each signer who is qualified and registered to vote in his county. The chairman of the county board shall attach to the petition his signed certificate. On his certificate the chairman shall state that the signatures on the petition have been checked against the registration records and shall indicate the number of signers who are qualified and registered to vote in his county and eligible to vote for that office. The chairman shall return each petition, together with the certificate required in this section, to the person who presented it to him for checking. The chairman of the county board shall complete the verification within two weeks from the date the petition is presented.

(2) If the office is a district office under the jurisdiction of the State Board of Elections under G.S. 163-182.4(b), file written petitions with the State Board of Elections supporting that applicant's candidacy for a specified office. These petitions must be filed with the State Board of Elections on or before noon on the 90th day before the general election and must be signed by 250 qualified voters. Before being filed with the State Board of Elections, each petition shall be presented to the board of elections of the county in which the signatures were obtained. A petition presented to a county board of elections shall contain only names of voters registered in that county who are eligible to vote for that office. The chairman of the county board shall examine the names on the petition and the procedure for certification shall be the same as specified in subdivision (1).

(3) If the office is a county office, or is a school administrative unit office elected on a partisan basis, or is a legislative district consisting of a single county or a portion of a county, file written petitions with the county board of elections supporting his candidacy for a specified office. A petition presented to a county board of elections shall contain only names of voters registered in that county. These petitions must

be filed on or before noon on the 90th day before the general election and must be signed by 100 qualified voters who are eligible to vote for the office, unless fewer than 5,000 persons are eligible to vote for the office as shown by the most recent records of the appropriate board of elections. If fewer than 5,000 persons are eligible to vote for the office, an applicant's petition must be signed by not less than one percent (1%) of those registered voters. Before being filed with the county board of elections, each petition shall be presented to the county board of elections for examination. The chairman of the county board of elections shall examine the names on the petition and the procedure for certification shall be the same as specified in subdivision (1).

(d) Form of Petition. — Petitions requesting the qualification of a write-in candidate in a general election shall contain on the heading of each page of the petition in bold print or in capital letters the words: "THE UNDERSIGNED REGISTERED VOTERS IN ______________ COUNTY HEREBY PETITION ON BEHALF OF ______________________________ AS A WRITE-IN CANDIDATE IN THE NEXT GENERAL ELECTION. THE UNDERSIGNED HEREBY PETITION THAT SUBJECT CANDIDATE BE PLACED ON THE LIST OF QUALIFIED WRITE-IN CANDIDATES WHOSE VOTES ARE TO BE COUNTED AND RECORDED IN ACCORDANCE WITH G.S. 163-123."

(e) Defeated Primary Candidate. — No person whose name appeared on the ballot in a primary election preliminary to the general election shall be eligible to have votes counted for him as a write-in candidate for the same office in that year.

(f) Counting and Recording of Votes. — If a qualified voter has complied with the provisions of subsections (a), (b), and (c) and is not excluded by subsection (e), the board of elections with which petition has been filed shall count votes for him according to the procedures set out in G.S. 163-182.1, and the appropriate board of elections shall record those votes on the official abstract. Write-in votes for names other than those of qualified write-in candidates shall not be counted for any purpose and shall not be recorded on the abstract.

(f1) When any person files a petition with a board of elections under this section, the board of elections shall, immediately upon receipt of the petition, inspect the registration records of the county and cancel the petition of any person who does not meet the constitutional or statutory qualifications for the office, including residency.

The board shall give notice of cancellation to any person whose petition has been cancelled under this subsection by mail or by having the notice served on that person by the sheriff. A person whose petition has been cancelled or another candidate for the same office affected by a substantiation under this subsection may request a hearing on the issue of constitutional or statutory qualifications for the office. If the person requests a hearing, the hearing shall be conducted in accordance with Article 11B of Chapter 163 of the General Statutes.

(g) Municipal and Nonpartisan Elections Excluded. — This section does not apply to municipal elections conducted under Subchapter IX of Chapter 163 of the General Statutes, and does not apply to nonpartisan elections except for elections under Article 25 of this Chapter. (1987, c. 393, ss. 1; 2; 1989, c. 92, s. 1; 1999-424, s. 5(c); 2001-319, s. 9(a); 2001-398, s. 7; 2001-403, s. 12; 2002-158, s. 13; 2004-127, s. 7; 2006-155, s. 4; 2007-391, s. 8(b); 2008-187, s. 33(a).)

Editor's Note. — Session Laws 2002-158, s. 15, contains a severability clause.

Session Laws 2002-158, s. 15.1, states that nothing in this act obligates the General Assembly to appropriate funds to implement the provisions of the act now or in the future.

This section was amended by Session Laws 2002-158, s. 13, in the coded bill drafting format provided by G.S. 120-20.1. The words "and district court judge" were part of subsection (g) as it existed prior to the 2002 amendment and were not addressed by Session Laws 2002-158, but were subsequently deleted by Session Laws 2004-127, s. 7.

Session Laws 2007-391, s. 1(c), was amended by Session Laws 2008-198, s. 33(a), to eliminate any confusion as to effective dates of the 2007 act. Session Laws 2007-391, s. 8(b), which substituted "under the jurisdiction of the State Board of Elections under G.S. 163-182.4(b)" for "comprising all or part of two or more counties" and "that applicant's" for "his" in the first sentence, is effective August 19, 2007.

§ 163-124: Reserved for future codification purposes.

Article 11A.

Resign-to-Run.

§§ 163-125 through 163-127: Repealed by Session Laws 1995, c. 379, s. 18.

Editor's Note. — Former G.S. 163-126, 163-127 had been reserved for future codification purposes.

Article 11B.

Challenge to a Candidacy.

§ 163-127.1. Definitions.

As used in this Article, the following terms mean:

(1) Board. — State Board of Elections.

(2) Candidate. — A person having filed a notice of candidacy under the appropriate statute for any elective office in this State.

(3) Challenger. — Any qualified voter registered in the same district as the office for which the candidate has filed or petitioned.

(4) Office. — The elected office for which the candidate has filed or petitioned. (2006-155, s. 1; 2006-259, s. 48(a).)

Editor's Note. — Session Laws 2006-155, s. 7, is a severability clause.

Session Laws 2006-155, s. 8, made this Article effective January 1, 2007, and applicable to actions filed on or after January 1, 2007.

§ 163-127.2. When and how a challenge to a candidate may be made.

(a) When. — A challenge to a candidate may be filed under this Article with the board of elections receiving the notice of the candidacy or petition no later than 10 business days after the close of the filing period for notice of candidacy or petition.

(b) How. — The challenge must be made in a verified affidavit by a challenger, based on reasonable suspicion or belief of the facts stated. Grounds for filing a challenge are that the candidate does not meet the constitutional or statutory qualifications for the office, including residency.

(c) If Defect Discovered After Deadline, Protest Available. — If a challenger discovers one or more grounds for challenging a candidate after the deadline in subsection (a) of this section, the grounds may be the basis for a protest under G.S. 163-182.9. (2006-155, s. 1.)

§ 163-127.3. Panel to conduct the hearing on a challenge.

Upon filing of a challenge, a panel shall hear the challenge, as follows:

(1) Single county. — If the district for the office subject to the challenge covers territory in all or part of only one county, the panel shall be the county board of elections of that county.

(2) Multicounty but less than entire State. — If the district for the office subject to the challenge contains territory in more than one county but is less than the entire State, the Board shall appoint a panel within two business days after the challenge is filed. The panel shall consist of at least one member of the county board of elections in each county in the district of the office. The panel shall have an odd number of members, no fewer than three and no more than five. In appointing members to the panel, the Board shall appoint members from each county in proportion to the relative total number of registered voters of the counties in the district for the office. If the district for the office subject to the challenge covers more than five counties, the panel shall consist of five members with at least one member from the county receiving the notice of candidacy or petition and at least one member from the county of residency of the challenger. The Board shall, to the extent possible, appoint members affiliated with different political parties in proportion to the representation of those parties on the county boards of elections in the district for the office. The Board shall designate a chair for the panel. A meeting of the Board to appoint a panel under this subdivision shall be treated as an emergency meeting for purposes of G.S. 143-318.12.

(3) Entire State. — If the district for the office subject to the challenge consists of the entire State, the panel shall be the Board. (2006-155, s. 1.)

Editor's Note. — This section, as enacted, contained a subsection (a) but no subsection (b). The subsection (a) designation has been removed at the direction of the Revisor of Statutes.

§ 163-127.4. Conduct of hearing by panel.

(a) The panel conducting a hearing under this Article shall do all of the following:

(1) Within five business days after the challenge is filed, designate and announce the time of the hearing and the facility where the hearing will be held. The hearing shall be held at a location in the district reasonably convenient to the public, and shall preferably be held in the county receiving the notice of the candidacy or petition. If the district for the office covers only part of a county, the hearing shall be at a location in the county convenient to residents of the district, but need not be in the district.

(2) Allow for depositions prior to the hearing, if requested by the challenger or candidate before the time of the hearing is designated and announced.

(3) Issue subpoenas for witnesses or documents, or both, upon request of the parties or upon its own motion.

(4) Render a written decision within 20 business days after the challenge is filed and serve that written decision on the parties.

(b) Notice of Hearing. — The panel shall give notice of the hearing to the challenger, to the candidate, other candidates filing or petitioning to be elected to the same office, to the county chair of each political party in every county in the district for the office, and to those persons who have requested to be notified. Each person given notice shall also be given a copy of the challenge or a summary of its allegations.

Failure to comply with the notice requirements in this subsection shall not delay the holding of a hearing nor invalidate the results if the individuals required by this section to be notified have been notified.

(c) Conduct of Hearing. — The hearing under this Article shall be conducted as follows:

(1) The panel may allow evidence to be presented at the hearing in the form of affidavits supporting documents, or it may examine witnesses. The chair or any two members of the panel may subpoena witnesses or documents. The parties shall be allowed to issue subpoenas for witnesses or documents, or both, including a subpoena of the candidate. Each witness must be placed under oath before testifying. The Board shall provide the wording of the oath to the panel.

(2) The panel may receive evidence at the hearing from any person with information concerning the subject of the challenge, and such presentation of evidence shall be subject to Chapter 8C of the General Statutes. The challenger shall be permitted to present evidence at the hearing, but the challenger shall not be required to testify unless subpoenaed by a party. The panel may allow evidence to be presented by a person who is present.

(3) The hearing shall be recorded by a reporter or by mechanical means, and the full record of the hearing shall be preserved by the panel until directed otherwise by the Board.

(d) Findings of Fact and Conclusions of Law by Panel. — The panel shall make a written decision on each challenge by separately stating findings of facts, conclusions of law, and an order.

(e) Rules by Board. — The Board shall adopt rules providing for adequate notice to parties, scheduling of hearings, and the timing of deliberations and issuance of decisions. (2006-155, s. 1.)

§ 163-127.5. Burden of proof.

(a) The burden of proof shall be upon the candidate, who must show by a preponderance of the evidence of the record as a whole that he or she is qualified to be a candidate for the office.

(b) If the challenge is based upon a question of residency, the candidate must show all of the following:

(1) An actual abandonment of the first domicile, coupled with an intent not to return to the first domicile.

(2) The acquisition of a new domicile by actual residence at another place.

(3) The intent of making the newer domicile a permanent domicile. (2006-155, s. 1.)

§ 163-127.6. Appeals.

(a) Appeals from Single or Multicounty Panel. — The decision of a panel created under G.S. 163-127.3(1) or G.S. 163-127.3(2) may be appealed as of right to the Board by any of the following:

(1) The challenger.

(2) A candidate adversely affected by the panel's decision.

Appeal must be taken within two business days after the panel serves the written decision on the parties. The written appeal must be delivered or deposited in the mail to the Board by the end of the second business day after the written decision was filed by the panel. The Board shall prescribe forms for filing appeals from a panel's decision in a challenge. The Board shall base its appellate decision on the whole record of the hearing conducted by the panel and render its opinion on an expedited basis. From the final order or decision by the Board under this subsection, appeal as of right lies directly to the Court of Appeals. Appeal shall be filed no later than two business days after the Board files its final order or decision in its office.

(b) Appeals from Statewide Panel. — The decision of a panel created under G.S. 163-127.3(3) may be appealed as of right to the Court of Appeals by any of the following:

(1) The challenger.
(2) A candidate adversely affected by the panel's decision.

Appeal must be taken within two business days after the panel files the written decision. The written appeal must be delivered or deposited in the mail to the Court of Appeals by the end of the second business day after the written decision was filed by the panel. (2006-155, s. 1.)

Editor's Note. — The references throughout this section to G.S. 163-127.3(a)(1), (a)(2), and (a)(3) have been changed to G.S. 163-127.3(1), (2), and (3), respectively, at the direction of the Revisor of Statutes.

Session Laws 2006-155, s. 6, provides: "The North Carolina Supreme Court is respectfully requested to adopt rules necessary to implement the provisions as to appeal in G.S. 163-127.6."

SUBCHAPTER VI. CONDUCT OF PRIMARIES AND ELECTIONS.

Article 12.

Precincts and Voting Places.

§ 163-128. Election precincts and voting places established or altered.

(a) Each county shall be divided into a convenient number of precincts for the purpose of voting. Upon a resolution adopted by the county board of elections and approved by the Executive Director of the State Board of Elections voters from a given precinct may be temporarily transferred, for the purpose of voting, to an adjacent precinct. Any such transfers shall be for the period of time equal only to the term of office of the county board of elections making such transfer. When such a resolution has been adopted by the county board of elections to assign voters from more than one precinct to the same precinct, then the county board of elections shall maintain separate registration and voting records, consistent with the procedure prescribed by the State Board of Elections, so as to properly identify the precinct in which such voters reside. The polling place for a precinct shall be located within the precinct or on a lot or tract adjoining the precinct.

Except as provided by Article 12A of this Chapter, the county board of elections shall have power from time to time, by resolution, to establish, alter, discontinue, or create such new election precincts or voting places as it may deem expedient. Upon adoption of a resolution establishing, altering, discontinuing, or creating a precinct or voting place, the board shall give 45 days' notice thereof prior to the next primary or election. Notice shall be given by advertisement in a newspaper having general circulation in the county, by posting a copy of the resolution at the courthouse door and at the office of the county board of elections, and by mailing a copy of the resolution to the chairman of every political party in the county. Notice may additionally be made on a radio or television station or both, but such notice shall be in addition to the newspaper and other required notice. No later than 30 days prior to the primary or election, the county board of elections shall mail a notice of precinct change to each registered voter who as a result of the change will be assigned to a different voting place.

(b) Each county board of elections shall prepare a map of the county on which the precinct boundaries are drawn or described, shall revise the map when boundaries are changed, and shall keep a copy of the current map on file and posted for public inspection at the office of the Board of Elections, and shall file a copy with the State Board of Elections. (Rev., s. 4313; 1913, c. 53; C.S., s. 5934; 1921, c. 180; 1933, c. 165, s. 3; 1967, c. 775, s. 1; 1969, c. 570; 1973, c. 793, ss. 51-53; 1975, c. 798, s. 2; 1979, c. 785; 1981, c. 515, s. 1; 1985, c. 757, s. 205(b); 1989, c. 93, s. 4; c. 440, s. 1; 1993 (Reg. Sess., 1994), c. 762, s. 33; 1995, c. 423, s. 1; 2001-353, s. 2; 2006-264, s. 20.)

Local Modification. — Avery: 1997-99; 1997-217; Cabarrus: 1983, c. 225; Caswell: 1989, c. 284, s. 1; Catawba: 1981, c. 850; Cleveland: 1981, c. 411; Davidson: 1989, c. 70; Granville: 1989, c. 282, s. 1; Hertford: 1981, c. 204; Mecklenburg: 1981, c. 433; Montgomery: 1991 (Reg. Sess., 1992), c. 866; Moore: 1987, c. 549, s. 6.8; Pitt: 1987, c. 411; Randolph: 1985 (Reg. Sess., 1986), c. 827; Sampson: 1989, c. 474, s. 1; Stanly: 1981, c. 433; Stokes: 1983, c. 225; city of Rocky Mount: 1969, c. 1051; Mitchell County Board of Elections: 1997-183, s. 1.

CASE NOTES

Applied in James v. Bartlett, 359 N.C. 260, 607 S.E.2d 638, 2005 N.C. LEXIS 146 (2005).

§ 163-129. Structure at voting place; marking off limits of voting place.

At the voting place in each precinct established under the provisions of G.S. 163-128, the county board of elections shall provide or procure by lease or otherwise a suitable structure or part of a structure in which registration and voting may be conducted. To this end, the county board of elections shall be entitled to demand and use any school or other State, county, or municipal building, or a part thereof, or any other building, or a part thereof, which is supported or maintained, in whole or in part by or through tax revenues provided, however, that this section shall not be construed to permit any board of elections to demand and use any tax exempt church property for such purposes without the express consent of the individual church involved, for the purpose of conducting registration and voting for any primary or election, and it may require that the requisitioned premises, or a part thereof, be vacated for these purposes.

If a county board of elections requires that a tax-supported building be used as a voting place, that county board of elections may require that those in control of that building provide parking that is adequate for voters at the precinct, as determined by the county board of elections.

The county board of elections shall inspect each precinct voting place to ascertain how it should be arranged for voting purposes, and shall direct the chief judge and judges of any precinct to define the voting place by roping off the area or otherwise enclosing it or by marking its boundaries. The boundaries of the voting place shall at any point lie no more than 100 feet from each ballot box or voting machine. The space so roped off or enclosed or marked for the voting place may contain area both inside and outside the structure in which registration and voting are to take place. (1929, c. 164, s. 17; 1967, c. 775, s. 1; 1973, c. 793, s. 54; 1983, c. 411, s. 3; 1993 (Reg. Sess., 1994), c. 762, s. 34; 1999-426, s. 5(a).)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 61, effective January 1, 1995, provides: "Any person who on December 31, 1994, was a registrar under G.S. 163-41 shall be a chief judge under G.S. 163-41."

OPINIONS OF ATTORNEY GENERAL

Use of Public Facility for Voting. — A county board of elections has the authority to demand and use a part of a public facility or a facility supported in part through tax revenues for voting on primary or election days, even over the objection of those otherwise in control of the public facility; however, in exercising this authority, it is incumbent on the board of elections to act for the benefit of the public. See opinion of Attorney General to Angie Crews, Director of Elections, Surry County Board of Elections, 2000 N.C. AG LEXIS 29 (4/14/2000).

§ 163-130. Satellite voting places.

A county board of elections may, upon approval of a request submitted in writing to the State Board of Elections, establish a plan whereby elderly or disabled voters in a precinct may vote at designated sites within the precinct other than the regular voting place for that precinct. The State Board of Elections shall approve a county board's proposed plan if:

(1) All the satellite voting places to be used are listed in the county's written request;

(2) The plan will in the State Board's judgment overcome a barrier to voting by the elderly or disabled;

(3) Adequate security against fraud is provided for; and

(4) The plan does not unfairly favor or disfavor voters with regard to race or party affiliation. (1991 (Reg. Sess., 1992), c. 1032, s. 10.)

§ 163-130.1. Out-of-precinct voting places.

A county board of elections, by unanimous vote of all its members, may establish a voting place for a precinct that is located outside that precinct. The county board's proposal is subject to approval by the Executive Director of the State Board of Elections. The county board shall submit its proposal in writing to the Executive Director. Approval by the Executive Director of the county's proposed plan shall be conditioned upon the county board of elections' demonstrating that:

(1) No facilities adequate to serve as a voting place are located in the precinct;

(2) Adequate notification and publicity are provided to notify voters in the precinct of the new polling location;

(3) The plan does not unfairly favor or disfavor voters with regard to race or party affiliation;

(4) The new voting place meets all requirements for voting places including accessibility for elderly and disabled voters; and

(5) The proposal provides adequately for security against fraud.

Any approval granted by the Executive Director for a voting place outside the precinct is effective only for one primary and election and must be reevaluated by the county board of elections and the Executive Director annually to determine whether it is still the only available alternative for that precinct. (1999-426, s. 3(a); 2001-319, ss. 3(a), 11.)

Editor's Note. — This section was designated as G.S. 163-130.1 at the direction of the Revisor of Statutes, the section having been designated as G.S. 163-130A in Session Laws 1999-426, s. 3(a).

Session Laws 2001-319, s. 3(a), amended Session Laws 1999-426, s. 3(b), which had provided that this section would be effective August 5, 1999, and would expire on January 1, 2002, by deleting the sunset provision.

CASE NOTES

Cited in James v. Bartlett, 359 N.C. 260, 607 S.E.2d 638, 2005 N.C. LEXIS 146 (2005).

§ 163-130.2. Temporary use of two voting places for certain precincts.

A county board of elections, by unanimous vote of all its members, may propose to designate two voting places to be used temporarily for the same precinct. The temporary designation of a voting place shall continue only for the term of office of the county board of elections making the designation. For any precinct that is temporarily given two voting places, the county board shall assign every voter to one or the other of those voting places.

The county board's proposal is subject to approval by the Executive Director of the State Board of Elections. The county board shall submit its proposal in writing to the Executive Director. The Executive Director shall approve that proposal only if it finds all of the following:

(1) That the precinct has more registered voters than can adequately be accommodated by any single potential voting place available for the precinct.
(2) That no boundary line that complies with Article 12A of this Chapter can be identified that adequately divides the precinct.
(3) That the county board can account for, by street address number, the location of every registered voter in the precinct and fix that voter's residence with certainty on a map.
(4) That no more than three other precincts in the same county will have two voting places.
(5) That both voting places for the precinct would have adequate facilities for the elderly and disabled.
(6) That the proposal provides adequately for security against fraud.
(7) That the proposal does not unfairly favor or disfavor voters with regard to race or party affiliation.

The county board shall designate a full set of precinct officials, in the manner set forth in Article 5 of this Chapter, for each voting place designated for the precinct. (1999-426, s. 4(a); 2001-319, ss. 4(a), 4(b), 11.)

Editor's Note. — This section was designated as G.S. 163-130.2 at the direction of the Revisor of Statutes, the section having been designated as G.S. 163-130B in Session Laws 1999-426, s. 4(a).

Session Laws 2001-319, s. 4(b), amended Session Laws 1999-426, s. 4(b), which made this section effective January 2, 2000, and provided for its expiration on January 2, 2002, by deleting the sunset provision.

§ 163-131. Accessible polling places.

(a) The State Board of Elections shall promulgate rules to assure that any disabled or elderly voter assigned to an inaccessible polling place, upon advance request of such voter, will be assigned to an accessible polling place. Such rules should allow the request to be made in advance of the day of the election.

(b) Words in this section have the meanings prescribed by P.L. 98-435, except that the term "disabled" in this section has the same meaning as "handicapped" in P.L. 98-435. (1999-424, s. 3(b).)

Editor's Note. — P.L.98-435, referred to in subsection (b), can be found at 42 U.S.C. § 1973ee et seq., the Voting Accessibility for the Elderly and Handicapped Act.

§ 163-132: Reserved for future codification purposes.

ARTICLE 12A.

Precinct Boundaries.

§ 163-132.1. Participation in 2000 Census Redistricting Data Program of the United States Bureau of the Census.

(a) Purpose. — The State of North Carolina shall participate in the 2000 Census Redistricting Data Program, conducted pursuant to P.L. 94-171, of the United States Bureau of the Census, including Phase I (Block Boundary Suggestion Program) and Phase II (concerning the designation of precincts on 2000 Census maps or databases), so that the State will receive 2000 Census data by voting precinct and be able to revise districts at all levels without splitting precincts and in compliance with the United States and North Carolina Constitutions and the Voting Rights Act of 1965, as amended.

(b) Phase I (Block Boundary Suggestion Program). — The State shall participate in the Block Boundary Suggestion Program of the United States Bureau of the Census so that the maps the Census Bureau will use in the 2000 Census will contain adequate features to permit reporting of Census data by precinct for use in the 2001 redistricting efforts. The Legislative Services Office shall send preliminary maps produced by the Census Bureau in preparation for the 2000 Census, as soon as practical after the maps are available, to the county boards of elections to determine which of their precincts have boundaries that are not coterminous with a physical feature, a current township boundary, or a current municipal boundary, as shown on those preliminary 2000 Census maps. The Legislative Services Office shall:

(1) Assist county boards of elections in identifying the precincts with boundaries not shown on the preliminary Census maps and in identifying physical features the county boards may wish to have available for future precinct boundaries;

(2) Place those boundaries and features on maps deemed appropriate by the State Board;

(3) Request the U.S. Census Bureau to hold for census block identification in the 2000 U.S. Census all physical features the county boards have identified as current or potential precinct boundaries; and

(4) Request the U.S. Census Bureau to hold for census block identification in the 2000 U.S. Census all other physical features already on 1990 Census maps.

(c) Phase II. — The State shall participate in Phase II of the 2000 Census Redistricting Data Program so that, to the extent practical, the precinct boundaries of all North Carolina counties will appear on the 2000 Census maps or database. The State's effort shall be conducted as follows:

(1) By January 1, 1998, or as soon thereafter as they become available, the Legislative Services Office shall provide the county boards of elections with access, on paper or electronically, to the Census Bureau's maps for Phase II of the Census Redistricting Data Program.

(2) After receiving the maps, the county boards of elections shall designate their precinct lines along the lines the Census Bureau indicates on the maps it will hold as block boundaries for the 2000 Census. Where necessary, the county boards of elections shall alter precincts, including any precincts approved under the provisions of G.S. 163-132.1A, 163-132.2, or 163-132.3 or designated by local act, to conform

to lines the Census Bureau indicates it will hold as Census block boundaries as shown on the official block maps to be used for the 2000 Census and to consist only of contiguous territory. The county boards of elections, at a time deemed necessary by the Executive Director of the State Board of Elections, shall file with the Legislative Services Office the maps on which they have designated their precincts pursuant to this subsection.

(3) After examining the maps, the Legislative Services Office shall submit to the Executive Director of the State Board of Elections its opinion as to whether the county board of elections has complied with the provisions of this subsection, with notations as to where those boundaries do not comply with these standards.

(4) If the Executive Director determines that the county board of elections has complied, he shall approve the precinct boundaries as filed and those precincts shall be the official precincts.

(5) If the Executive Director determines that the county board of elections has not complied, he shall not approve those precinct boundaries but shall alter the precinct boundaries so that each precinct consists solely of contiguous territory and that each precinct's boundaries are coterminous with 2000 Census block boundaries nearest to the precinct boundaries shown by the county boards on the maps. These altered precincts shall then be the official precincts.

(6) Upon the adoption of a resolution by a county board of elections and instead of altering precinct lines as required by G.S. 163-132.1(c)(5), the Executive Director may combine for Census reporting purposes only two or more adjacent precincts of the county into a Combined Reporting Unit, if the Executive Director finds that:

a. The boundaries of the Combined Reporting Unit conform with the Census block boundaries as shown on the official block maps to be used in the 2000 Census;

b. The Combined Reporting Unit consists only of contiguous territory;

c. The precincts of which the Combined Reporting Unit consists were bounded as of January 1, 1996, by ridgelines, as certified on official county maps by the county manager of the relevant county, or if there is no county manager the chair of the board of commissioners, and the boundaries failed to comply with subdivision (2) of this subsection only because those ridgelines were unrecognized as Census block boundaries in the 2000 official Census maps;

d. The Combined Reporting Unit does not contain a majority of the territory of more than one township; and

e. To alter those precinct boundaries would result in significant voter dislocation.

If the Executive Director recognizes a Combined Reporting Unit for specific precincts, the official boundaries of those individual precincts forming the Combined Reporting Unit shall be those which the Legislative Services Office submitted to the Executive Director under subdivision (3) of this subsection.

(7) The Executive Director shall file the completed maps with the Census Bureau and request that the Census Bureau provide summaries of 2000 Census data by precinct and Combined Reporting Units.

(d) Freezing of Precincts. —

(1) Notwithstanding the provisions of G.S. 163-132.3, after the Executive Director approves the precincts in accordance with subsection (c) of this section and before January 2, 2002, no county board of elections may establish, alter, discontinue, or create any precinct except by

division of one precinct into two or more precincts using lines that the Census Bureau has indicated it will use as 2000 Census block boundaries for that division. Provided that, whenever an annexation ordinance adopted under Parts 1, 2, or 3 of Article 4A of Chapter 160A of the General Statutes, or a local act of the General Assembly annexing property to a municipality, becomes effective during the period beginning with the date of the annexation as reported through the U.S. Census Bureau's 1998 Boundary and Annexation Survey or a subsequent edition of that survey and ending January 2, 2002, and any part of the boundary of the area being annexed which is actually contiguous to the city is also a precinct boundary for elections administered by the county board of elections then the county board of elections may exercise one of the following options:

a. Direct by resolution that the annexed area is automatically moved into the "city precinct", provided that if the annexed area is adjacent to more than one city precinct, the board of elections shall place the area in any one or more of the adjacent city precincts.

b. Adopt a resolution moving the precinct boundary to a line that the Census Bureau has indicated it will use as a 2000 block boundary.

(2) The Executive Director of the State Board of Elections may permit during the freeze a correction to a county's precincts as they were approved pursuant to subsection (c) of this section where one of the following sets of conditions is present:

a. A precinct was designated pursuant to subsection (c) inaccurately, and the United States Bureau of the Census agrees to include the corrected precinct on its database for the 2000 Census.

b. The boundary of a precinct designated pursuant to subsection (c) of this section was subsequently removed by the United States Bureau of the Census as an acceptable feature for a precinct line based upon a determination by the Bureau that the feature did not exist as shown, and the county board of elections agrees by resolution to an alternative boundary for the precinct on a feature the Bureau does find acceptable.

(3) The county board of elections may move a precinct line from a township line to another line the Census Bureau has indicated will be a 2000 block boundary if a Boundary and Annexation Survey issued during the freeze shows that the township line has moved to a location the county board of elections considers unsuitable. This subdivision does not apply if local legislation enacted by the General Assembly governs the relationship between a county's township lines and precinct lines.

(4) The county board of elections shall submit any proposed change made during the freeze under this subsection to the Legislative Services Office, which shall review the proposal and write a letter advising the Executive Director of its opinion as to the legal compliance of the proposal. If the proposal complies with the law, the Executive Director shall approve the proposal. No newly created or altered precinct boundary is effective until approved by the Executive Director as being in compliance with the provisions of this subsection.

(d1) Right to Postpone Effective Date Until January 1, 2000. — A county board of elections may postpone the effective date of the precincts designated in Phase II until January 1, 2000.

(d2) Special Permission to Postpone Effective Date Until January 1, 2001. — The Executive Director may permit a county board of elections to postpone the effective date of precinct lines designated under Phase II until January 1, 2001, upon written application by the county board of elections, if the Executive Director finds both of the following:

(1) That the Phase II-designated lines would create a split precinct in 2000 for county commissioner, board of education, judicial, State legislative, or congressional district elections and that a split could be avoided by using the pre-Phase II precinct.

(2) That the county can provide reasonably reliable voter registration data for April and October of 2000 by the Phase II-designated precincts.

In granting an exception under this subsection, the Executive Director shall allow an exception only for the precincts that would result in splits and for any adjacent precincts for which pre-Phase II precincts must be used to avoid geographic overlap or discontinuity. Every county board of elections granted an exception under this subsection shall provide to the State Board of Elections voter registration data for April and October of 2000 by the Phase II-designated precincts.

(e) Municipal and Township Boundaries. — Notwithstanding the provisions of subsections (c) and (d) of this section, the county boards of elections may designate precinct boundaries on municipal or township boundaries that are not designated on the 2000 official Census block maps, according to directives promulgated by the Executive Director of the State Board of Elections and adopted to insure that all precincts shall be included on the 2000 Census database.

(f) Additional Rules. — In addition to the directives promulgated by the Executive Director of the State Board of Elections under G.S. 163-132.4, the Legislative Services Commission may promulgate rules to implement this section. (1985, c. 757, s. 205(a); 1987 (Reg. Sess., 1988), c. 1074, s. 2; 1993 (Reg. Sess., 1994), c. 762, s. 69; 1995, c. 423, s. 2; 1999-227, s. 1; 2000-140, s. 81; 2001-319, s. 11; 2005-428, s. 16; 2006-264, s. 75.5(a).)

Editor's Note. — This section, which was enacted by Session Laws 1985, c. 757, s. 205(a) and repealed by Session Laws 1987 (Reg. Sess., 1988), c. 1074, s. 2, was reenacted and rewritten by Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 69, effective upon ratification and applicable to all primaries and elections occurring on or after the date of ratification. Session Laws 1993 (Reg. Sess., 1994), c. 762 was ratified July 16, 1994.

Session Laws 2005-428, s. 16, effective September 22, 2005, and applicable to all primaries and elections held on or after that date, in the section heading, substituted “2010” for “2000”; in subsection (a), deleted “including Phase I (Block Boundary Suggestion Program) and Phase II (concerning the designation of precincts on 2000 Census maps or databases)” following “Bureau of the Census” and twice substituted “2010” for “2000”; and repealed subsections (b) through (e). Session Laws 2006-264, s. 75.5(a), repealed Session Laws 2005-428, s. 16, effective August 27, 2006. The section, as set out above, appears as it did prior to the 2005 amendments.

§ 163-132.1A: Repealed by Session Laws 1999-227, s. 1, effective June 25, 1999.

§ 163-132.1B. Participation in 2010 Census Redistricting Data Program of the United States Bureau of the Census.

(a) Purpose. — The State of North Carolina shall participate in the 2010 Census Redistricting Data Program, conducted pursuant to P.L. 94-171, of the United States Bureau of the Census, so that the State will receive 2010 Census data by voting precinct and be able to revise districts at all levels without splitting precincts and in compliance with the United States and North Carolina Constitutions and the Voting Rights Act of 1965, as amended.

(a1) Reporting of Voting Tabulation Districts. — The Executive Director of the State Board of Elections shall report to the Bureau of the Census as this State's voting tabulation districts the voting precincts as of January 1, 2008. In reporting the precincts, the Executive Director may make to the precincts the minimum of adjustments necessary to assure accurate election administration and the consistent reporting of election results from the precincts as they existed on January 1, 2008. Before making that report, the Executive Director shall consult with the Legislative Services Office concerning the accuracy of the voting precincts to be reported. The Legislative Services Office shall submit to the Executive Director its opinion as to whether the description of the precincts to be reported to the Bureau of the Census is accurate. The Executive Director shall submit the report to the Bureau of the Census in time to comply with the deadlines of that Bureau for the 2010 Census Redistricting Data Program. The Executive Director, with the assistance of the county boards of elections, shall participate in the Census Bureau's verification program and notify the Census Bureau of any errors in the entry of the voting tabulation districts in time for the Census Bureau to correct those errors.

(a2) Reporting From Unchanged Voting Tabulation Districts. — After January 1, 2008, every county board of elections shall report all election returns by voting tabulation districts as required by G.S. 163-132.5G. For purposes of this section and G.S. 163-132.5G, "voting tabulation districts" shall be the precincts as of January 1, 2008, as modified by the Executive Director of the State Board of Elections in reports to the Census Bureau in accordance with subsection (a1) of this section. No county board of elections may alter the voting tabulation districts. The county board of elections may change the boundaries of the county's precincts so that those precincts differ from the county's voting tabulation districts, but only to the extent permitted by G.S. 163-132.3.

(b) Additional Rules. — In addition to directives promulgated by the Executive Director of the State Board of Elections under G.S. 163-132.4, the Legislative Services Commission may promulgate rules to implement this section. (2006-264, s. 75.5(b); 2007-391, s. 6(a); 2008-187, s. 33(b); 2009-541, s. 17.)

Editor's Note. — Session Laws 2006-264, s. 103, made this section effective August 27, 2006.

Session Laws 2007-391, s. 6(g), effective August 19, 2007, provides: "This section becomes effective only if any funds necessary to implement it are appropriated." Funds were appropriated in Session Laws 2007-323, s. 25.1(a)(1).

Session Laws 2007-391, s. 6(f), as amended by Session Laws 2008-187, s. 33(b), provides: "Subsections 6(b) through 6(e) of this section become effective January 1, 2008. The remainder of the section is effective when this act becomes law [August 19, 2007]."

This section was amended by Session Laws 2007-391, s. 6(a), which added subsections (a1) and (a2), effective August 19, 2007.

Effect of Amendments. — Session Laws 2009-541, s. 17, effective August 28, 2009, added the present second and last sentences in subsection (a1); and, in subsection (a2), added "as modified by the Executive Director of the State Board of Elections in reports to the Census Bureau in accordance with subsection (a1) of this section" at the end of the second sentence, and deleted "reported to the Census Bureau by the Executive Director of the State Board of Elections" at the end of the third sentence.

§ 163-132.2: Repealed by Session Laws 1999-227, s. 1, effective June 25, 1999.

§ 163-132.3. Alterations to approved precinct boundaries.

(a) No county board of elections may change any precinct boundary unless the Executive Director of the State Board of Elections determines that the county board has a current capability of complying with G.S. 163-132.1B(a2) by reporting all election returns by voting tabulation district as required by G.S. 163-132.5G. If the Executive Director so determines, the county board may make any changes to precinct boundaries, provided that all proposed new precincts shall consist solely of contiguous territory. The State Board of Elections may set uniform standards for precinct boundaries, which the county boards of elections shall follow. The county board of elections shall report every change in precinct boundary to the Executive Director in a format required by the Executive Director.

The county boards of elections shall report precinct boundary changes to the Executive Director in the manner the Executive Director directs. No newly created or altered precinct boundary is effective until approved by the Executive Director of the State Board as being in compliance with this section.

(b) The Executive Director of the State Board of Elections shall examine the maps of the proposed new or altered precincts and any required written descriptions. If the Executive Director of the State Board determines that all precinct boundaries are in compliance with this section, the Executive Director of the State Board shall approve the maps and written descriptions as filed and these precincts shall be the official precincts.

(c) If the Executive Director of the State Board determines that the proposed precinct boundaries are not in compliance with subsection (a) of this section, the Executive Director shall not approve those precinct boundaries. The Executive Director shall notify the county board of elections of his disapproval specifying the reasons. The county board of elections may then resubmit new precinct maps and written descriptions to cure the reasons for their disapproval.

(d) Repealed by Session Laws 2004-127, s. 1(a), effective August 15, 2004, and applicable to precincts established or changed on or after that date.

(e) Repealed by Session Laws 2007-391, s. 6(b), effective January 1, 2008. (1985, c. 757, s. 205(a); 1987 (Reg. Sess., 1988), c. 1074, s. 2; 1991 (Reg. Sess., 1992), c. 927, s. 1; 1993, c. 352, s. 3; 1993 (Reg. Sess., 1994), c. 762, s. 71; 1995, c. 423, ss. 2, 3; 1999-227, ss. 1, 2; 2001-319, ss. 10.1, 11; 2001-487, s. 96; 2002-159, s. 56; 2003-434, 1st Ex. Sess., s. 13; 2004-127, s. 1(a); 2007-391, s. 6(b); 2008-187, s. 33(b).)

Local Modification. — Avery: 1997-217; Mitchell County Board of Elections: 1997-183, s. 1.

Editor's Note. — Session Laws 1991 (Reg. Sess., 1992), c. 927, which amended this section in s. 5 provides: "Notwithstanding the provisions of G.S. 163-132.3, as amended by Section 1 of this act, the validity of the boundaries of a precinct of a county subject to G.S. 163-132.1A which consists of noncontiguous territory as of January 1, 1992, shall not be affected by the provisions of G.S. 163-132.3; provided, however, that any change to the boundaries of that precinct after that date shall be subject to G.S. 163-132.3, as amended by this act. Notwithstanding the preceding sentence, not later than January 1, 1997, the relevant count board of elections shall change any nonconforming precinct to eliminate noncontiguous territory in a precinct.

Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 73 provides in part: "Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Session Laws 1999-227, s. 2 provides that notwithstanding Session Laws 1995, c. 423, ss. 2 and 3, the version of G.S. 163-132.3 contained in Session Laws 1999-227, s. 1 is effective upon Session Laws 1999-227 becoming law and does not expire. To the extent it is inconsistent with the provisions of Session Laws 1999-227, Session Laws 1995, c. 423, s. 3 is repealed. (Session Laws 1995, c. 423, s. 3 would have made changes to this section effective January 2, 2000; most of these changes were also made by Session Laws 1999-227, s. 1.)

Session Laws 2003-434, 1st Ex. Sess., s. 15 is a severability clause.

Subsections (a), (d), and (e), as amended by Session Laws 2004-127, s. 1(a), effective August 15, 2004, are applicable to precincts established or changed on or after that date.

Session Laws 2007-391, s. 6(f), as amended by Session Laws 2008-187, s. 33(b), provides in part: "Subsections 6(b) through 6(e) of this section become effective January 1, 2008."

Session Laws 2007-391, s. 6(g) provides: "This section becomes effective only if any funds necessary to implement it are appropriated." Funds were appropriated in Session Laws 2007-323, s. 25.1(a)(1).

Effect of Amendments. — Session Laws 2007-391, s. 6(b), effective January 1, 2008, rewrote subsections (a) and (b); and repealed former subsection (e).

§ 163-132.3A. Alterations to precinct names.

No county board of elections shall assign to any precinct a name that has been used after January 1, 1999, for a precinct comprising different territory. That requirement does not apply to a precinct change made under G.S. 163-132.3(a)(3). The county board of elections shall submit to the Executive Director of the State Board of Elections for approval every proposed change to a precinct name, and the Executive Director shall approve a name change only if it complies with this section. (2004-127, s. 1(b).)

Editor's Note. — Session Laws 2004-127, s. 1(c), made this section effective August 15, 2004, and applicable to precincts established or changed on or after that date.

§ 163-132.4. Directives.

The Executive Director of the State Board of Elections may promulgate directives concerning its duties and those of the county boards of elections under this Article. (1985, c. 757, s. 205(a); 1987 (Reg. Sess., 1988), c. 1074, s. 2; 2001-319, s. 11.)

§ 163-132.5. Cooperation of State and local agencies.

The Office of State Budget and Management, the Department of Transportation and county and municipal planning departments shall cooperate and assist the Legislative Services Office, the Executive Director of the State Board of Elections and the county boards of elections in the implementation of this Article. (1985, c. 757, s. 205(a); 1987, c. 715, s. 4; 1987 (Reg. Sess., 1988), c. 1074, s. 2; 1989, c. 440, s. 3, c. 770, s. 75.3; 2000-140, ss. 93.1(c); 2001-319, s. 11; 2001-424, s. 12.2(b).)

§ 163-132.5A: Repealed by Session Laws 1991 (Regular Session, 1992), c. 927, s. 1.

§ 163-132.5B. Exemption from Administrative Procedure Act.

The State Board of Elections is exempt from the provisions of Chapter 150B of the General Statutes while acting under the authority of this Article. Appeals from a final decision of the Executive Director of the State Board of Elections under this Article shall be taken to the State Board of Elections within 30 days of that decision. The State Board shall approve, disapprove or modify the Executive Director's decision within 30 days of receipt of notice of appeal. Failure of the State Board to act within 30 days of receipt of notice of appeal shall constitute a final decision approving that of the Executive Director. Appeals from a final decision of the State Board under this Article shall be taken to the Superior Court of Wake County. (1987, c. 715, s. 4; 1987 (Reg. Sess., 1988), c. 1074, s. 2; 2001-319, s. 11.)

Editor's Note. — Session Laws 2001-319, s. 11, provides: "The Revisor of Statutes shall change the term 'Executive Secretary-Director' and the term 'State Executive Secretary-Director' to 'Executive Director' wherever it appears in the General Statutes in reference to the State Board of Elections Executive Secretary-Director." In this section, the term "Executive Secretary" and the term "Executive Secretary's" have also been changed to "Executive Director" at the direction of the Revisor of Statutes.

§ 163-132.5C. Local acts and township lines.

(a) Notwithstanding the provisions of any local act, a county board of elections need not have the approval of any other county board or commission to make precinct boundary changes required by this Article.

(b) Precinct boundaries established, retained or changed under this Article, or changed to follow a district line where a precinct has been divided in a districting plan, may cross township lines. (1987, c. 715, s. 4; 1989, c. 440, s. 5; 1991 (Reg. Sess., 1992), c. 927, s. 1; 1995, c. 423, s. 2.)

Local Modification. — Avery: 1997-217; Mitchell County Board of Elections: 1997-183, s. 1.

§ 163-132.5D. Retention of precinct maps.

The Executive Director of the State Board of Elections shall retain the maps and written descriptions which he approves pursuant to G.S. 163-132.3. (1991 (Reg. Sess., 1992), c. 927, s. 1; 2001-319, s. 11.)

§ 163-132.5E: Repealed by Session Laws 1999-227, s. 1, effective June 25, 1999.

§ 163-132.5F. U.S. Census data by voting tabulation district.

The State shall request the U.S. Bureau of the Census for each decennial census to provide summaries of census data by voting tabulation district and shall participate in any U.S. Bureau of the Census' program to effectuate this provision. (1991 (Reg. Sess., 1992), c. 927, s. 1; 2007-391, s. 6(e); 2008-187, s. 33(b).)

Editor's Note. — Session Laws 2007-391, s. 6(f), as amended by Session Laws 2008-187, s. 33(b), provides in part: "Subsections 6(b) through 6(e) of this section become effective January 1, 2008."

Session Laws 2007-391, s. 6(g) provides: "This section becomes effective only if any funds necessary to implement it are appropriated." Funds were appropriated in Session Laws 2007-323, s. 25.1(a)(1).

Effect of Amendments. — Session Laws 2007-391, s. 6(e), effective January 1, 2008, substituted "voting tabulation district" for "precinct" in the section catchline and in the section.

§ 163-132.5G. Voting data maintained by voting tabulation district.

Each county board of elections shall maintain voting data by voting tabulation district as provided in G.S. 163-132.1B so that voting tabulation district returns for each item on the ballot shall include the votes cast by all residents of the voting tabulation district who voted, regardless of where they voted. The county board shall not be required to report returns by voting tabulation district for voters who voted other than at their precinct voting place on election day until 60 days after the election. In reporting returns, the county board shall not compromise the secrecy of an individual's ballot. The 60-day deadline for reporting returns by voting tabulation district does not relieve the county board of the duty to report all returns as soon as practicable after the election according to other categories specified by the State Board of Elections. The State Board of Elections shall adopt rules for the enforcement of this section. (2001-466, s. 2; 2003-183, s. 1; 2005-323, s. 1(e); 2007-391, s. 6(c); 2008-187, s. 33(b).)

Editor's Note. — Session Laws 2005-256, s. 1, as amended by Session Laws 2005-305, s. 4.1, provides: "With the approval of the State Board of Elections, the Orange County Board of Elections may conduct a pilot program in Chapel Hill Township for any or all primaries or elections occurring prior to January 1, 2007, where the requirements of this section prevail over any other requirement concerning voting at one-stop sites or on election day. The pilot program shall consist of continuing one-stop voting as provided in G.S. 163-227.2 on election day as the method of voting. Voting places, whether during the one-stop period or on election day, shall be known as voting centers. The pilot program consists of the following elements:

"(1) Any voter properly registered in Chapel Hill Township may vote at any voting center during the one-stop period established in G.S. 163-227.2 or on election day.

"(2) On election day, the only places open to vote in Chapel Hill Township are those designated as voting centers.

"(3) All voting centers shall have a Web-based or online connection to the voter registration system so that voter registration information and voting history can be checked in a timely manner to ensure against any voter voting more than once.

"(4) Notwithstanding G.S. 163-227.2(e1), the State Board of Elections shall determine which ballots must be made retrievable and identifiable to the county board of elections in order to ensure that the vote count by eligible voters is accurate. If any vote need not be identifiable, it shall not be made so, notwithstanding G.S. 163-227.2(e1).

"(5) The Plan of Implementation may provide a different system for voter sign-in than the regular one-stop process which requires completion of an absentee ballot application, but the process must be auditable. As required by G.S. 163-166.7, the voter, before voting, shall sign that voter's name on the pollbook, other voting record, or voter authorization document. As provided by G.S. 163-166.7, if the voter is unable to sign, a voting center official shall enter the person's name on the same document before the voter votes. A voter at a voting center shall be entitled to the same assistance as a voter at a voting place on election day under G.S. 163-166.8.

"(6) A larger number of voting centers may be open on election day than during the earlier part of the one-stop period.

"(7) Election returns shall be reported by regular precinct as well as by voting center. Notwithstanding G.S. 163-132.5G, for primary elections in 2006, those returns by regular precinct shall be reported by May 1, 2007, and for the 2006 general election those returns by regular precinct shall be reported by March 1, 2007. G.S. 163-132.5G shall not apply to elections held in 2005 under this act.

"(8) Notwithstanding G.S. 163-227.2(g), the State Board of Elections may allow the county board of elections during the regular one-stop voting period to designate voting centers in commercial buildings that are not public buildings.

"(9) Notwithstanding G.S. 163-227.2(g), on election day any building may be designated as a voting center, but the office of the county board of elections does not have to be designated as a voting center.

"(10) Notwithstanding G.S. 163-227.2(g), officials appointed pursuant to G.S. 163-41, 163-42, and 163-42.1 may be assigned to staff the voting centers. The Plan of Implementation shall provide for appointment of election officials at voting centers so that political parties have a similar opportunity to recommend officials as if there were precinct polling places.

"(11) The Plan of Implementation may for administrative purposes treat the entire township as one precinct with multiple voting places on election day, but a voter must, when appearing to vote, report any change of address.

"(12) Before voting centers may be used under this section, a Plan of Implementation must be approved unanimously by the county board of elections and then approved by the Executive Director of the State Board of Elections. Prior to adoption, the county board of elections shall conduct a public hearing and notify the county chair of each political party under Article 9 of Chapter 163 of the General Statutes. The county board of elections shall develop an outreach and education campaign to inform voters about the changes in voting locations.

"(13) If any polling place that had been a satellite voting place in 2004 under G.S. 163-130 is designated as a voting center, the county board of elections may provide in its Plan of Implementation that only voters assigned to the satellite voting place may vote at the voting center there, and that such voters may not vote at any other voting center on election day."

Session Laws 2005-256, s. 1.1, as added by Session Laws 2005-305, s. 4.2, provides: "If no elections are conducted under this act in 2005, then any or all elections occurring in 2007 may also be held under this act in addition to those in 2006."

Session Laws 2005-256, s. 2, provides: "The State Board of Elections shall closely monitor the pilot program and report its findings and recommendations to the General Assembly at its 2005 Regular Session in 2006, and to the 2007 Regular Session of the General Assembly."

Session Laws 2005-323, s. 9, provides: "The State Board of Elections may conduct, for primaries and elections in 2006 only, experiments with voting systems that use a means in addition to paper to fulfill the backup record and voter verification requirements of G.S. 163-165.7(a)(4) and G.S. 163-165.7(a)(5), as enacted by this act. The pilot program may be conducted in no more than nine counties. The county boards of elections shall cooperate in conducting the pilot program. The pilot program shall be conducted according to the following requirements:

"(1) The experiment may be conducted in no more than two voting sites per county. The voting sites may include election-day voting places or one-stop sites.

"(2) At each voting site in which the experiment is conducted, voters must have a choice of voting on the experimental voting system or on a voting system that is not part of the experiment.

"(3) Each experimental voting system shall include an additional means for the voter to verify the choices that the voter makes in the electronically cast ballot, which means shall also provide for an additional count. That additional means may utilize audio technology, digital scanners, or some other material or technology that shall record the voters' choices but shall not record any image of any part of the voter.

"(4) On each voting machine or unit used in the experiment, the voting system shall comply with all the applicable requirements of G.S. 163-165.7, including the requirement in G.S. 163-165.7(a)(4) that a DRE system must generate a paper backup record of each individual vote cast electronically and the requirement in G.S. 163-165.7(a)(5) that the paper record generated by the DRE system must be viewable by the voter before the vote is cast electronically and that the system allow the voter to correct any discrepancy between the electronic vote and the paper record before the vote is cast. On every machine or unit, the experimental means to fulfill those functions shall be used in addition to, rather than instead of, the required paper means.

"(5) For all votes cast on an experimental voting system under the pilot, there shall be, in addition to an electronic count, a full hand-to-eye paper count and a full comparison count of the experimental verification technology.

"The State Board of Elections shall report the results of the pilot program, together with its recommendations, to the 2007 General Assembly and to the Joint Legislative Commission on Governmental Operations by February 1, 2007."

Session Laws 2005-323, s. 10, provides, in part: "The requirement for testing a voting system in an election provided in G.S. 163-165.9(a)(3), as enacted in Section 4 of this act, does not apply to any voting system acquired before January 1, 2008, as long as the voting system is demonstrated in a public forum in the county. Notwithstanding G.S. 163-132.5G, as amended by this act, voting data by precinct shall be reported for the general elections of 2006 by March 1, 2007, and for the primary elections of 2006 by May 1, 2007."

Session Laws 2007-391, s. 6(f), as amended by Session Laws 2008-187. s. 33(b), provides in part: "Subsections 6(b) through 6(e) of this section become effective January 1, 2008."

Effect of Amendments. — Session Laws 2007-391, s. 6(c), effective January 1, 2008, substituted "voting tabulation district" for "precinct" in the section catchline and rewrote the section.

§ 163-132.6: Repealed by Session Laws 1991 (Regular Session, 1992), c. 927, s. 1.

§§ 163-133, 163-134: Reserved for future codification purposes.

ARTICLE 13.

General Instructions.

§§ 163-135 through 163-159: Repealed by Session Laws 2001-460, s. 1, effective January 1, 2002.

Cross References. — As to voting, see now G.S. 163-165 et seq.

Editor's Note. — Repealed G.S. 163-154 had been repealed by Session Laws 1981, c. 559. Repealed G.S. 163-157 to 163-159 had been reserved for future codification purposes.

Session Laws 2001-288, s. 1, effective with respect to all primaries, elections, and referenda held on or after August 1, 2001, and expiring January 1, 2012, unless extended by legislation before that date, enacted G.S. 163-140.2, regarding ballot instructions in English and Spanish. Session Laws 2001-288, s. 2, provided that if Senate Bill 17 becomes law, then G.S. 163-140.2 is recodified as G.S. 163-165.5A. Senate Bill 17 is now Session Laws 2001-460, approved November 14, 2001, and effective January 1, 2002.

Session Laws 2001-292, s. 1, effective August 10, 2001, amended G.S. 163-153, regarding access to voting enclosures, by inserting "except as provided in subdivision (3a) of this section" following "A near relative of the voter, but" in subdivision (3) and inserting new subdivision (3a), which read, "Minor children of the voter under the age of 18, or minor children under the age of 18 in the care of the voter, but only while accompanying the voter and while under the control of the voter." Subsequently, Session Laws 2001-460, s. 1, repealed this Article, including G.S. 163-153, effective January 1, 2002.

Session Laws 2001-310, s. 1, effective July 28, 2001, and applicable to primaries, elections, and referenda conducted on or after that date, enacted G.S. 163-140.3, regarding Punch-Card ballots. Session Laws 2001-310, s. 2, also effective July 28, 2001, enacted G.S. 163-140.4, regarding Butterfly ballots. Session Laws 2001-310, s. 3, provided that if Senate Bill 17 becomes law, then effective January 1, 2002, these sections are recodified as G.S. 163-165.4A and G.S. 163-165.4B respectively. Senate Bill 17 is now Session Laws 2001-460, approved November 14, 2001.

Session Laws 2001-353, s. 8, effective August 10, 2001, amended G.S. 163-145 by adding "except that at all voting places there shall be a curtained or otherwise private area where a voter may mark the ballot unobserved." Subsequently, Session Laws 2001-460, s. 1, repealed this Article, including G.S. 163-145, effective January 1, 2002.

Session Laws 2001-403, ss. 6, 9, and 10, effective January 1, 2002, would have amended G.S. 163-135 and 163-140 to make this Article also applicable to district court judges. Subsequently, Session Laws 2001-460, ss. 1 and 11, also effective January 1, 2002, repealed this Article and repealed ss. 9 and 10 of Session Laws 2001-403; thus, the amendments by Session Laws 2001-403 were never given effect.

ARTICLE 14.

Voting Systems.

§§ 163-160 through 163-164: Repealed by Session Laws 2001-460, s. 1, effective January 1, 2002.

Cross References. — As to voting, see now G.S. 163-165 et seq.

Editor's Note. — Section 163-165, which had been reserved for future codification purposes under Article 14, is now codified under Article 13A. Section 163-166 had been repealed by Session Laws 1997-443, s. 31. Session Laws 2001-460, s. 3, enacted Article 13A containing G.S. 163-166 which was recodified as G.S. 163-166.01 at the direction of the Revisor of Statutes. Section 163-167 had been reserved for future codification purposes, and now appears at the end of Article 13A.

ARTICLE 14A.

Voting.

Editor's Note. — Session Laws 2002-159, s. 21(h), provides: "Article 13A of Chapter 163 of the General Statutes is recodified as Article 14A of Chapter 163 of the General Statutes."

Part 1. Definitions.

§ 163-165. Definitions.

In addition to the definitions stated below, the definitions set forth in Article 15A of Chapter 163 of the General Statutes also apply to this Article. As used in this Article:

(1) "Ballot" means an instrument on which a voter indicates a choice so that it may be recorded as a vote for or against a certain candidate or referendum proposal. The term "ballot " may include a paper ballot to be counted by hand, a paper ballot to be counted on an electronic scanner, the face of a lever voting machine, the image on a direct record electronic unit, or a ballot used on any other voting system.

(2) "Ballot item" means a single item on a ballot in which the voters are to choose between or among the candidates or proposals listed.

(3) "Ballot style" means the version of a ballot within a jurisdiction that an individual voter is eligible to vote. For example, in a county that uses essentially the same official ballot, a group office such as county commissioner may be divided into districts so that different voters in the same county vote for commissioner in different districts. The different versions of the county's official ballot containing only those district ballot items one individual voter may vote are the county's different ballot styles.

(4) "Election" means the event in which voters cast votes in ballot items concerning proposals or candidates for office in this State or the United States. The term includes primaries, general elections, referenda, and special elections.

(5) "Official ballot" means a ballot that has been certified by the State Board of Elections and produced by or with the approval of the county board of elections. The term does not include a sample ballot or a specimen ballot.

(6) "Provisional official ballot" means an official ballot that is voted and then placed in an envelope that contains an affidavit signed by the voter certifying identity and eligibility to vote. Except for its envelope, a provisional official ballot shall not be marked to make it identifiable to the voter.

(7) "Referendum" means the event in which voters cast votes for or against ballot questions other than the election of candidates to office.

(8) "Voting booth" means the private space in which a voter is to mark an official ballot.

(9) "Voting enclosure" means the room within the voting place that is used for voting.

(10) "Voting place" means the building or area of the building that contains the voting enclosure.

(11) "Voting system" means a system of casting and tabulating ballots. The term includes systems of paper ballots counted by hand as well as

systems utilizing mechanical and electronic voting equipment. (2001-460, s. 3; 2001-466, s. 3(a), (b); 2002-159, s. 21(h); 2006-262, s. 4.)

Voter Paper Trail Study. — Session Laws 2004-161, ss. 12.1 through 12.4, created the Electronic Voting Systems Study Commission. Session Laws 2004-161, s. 12.2, provides: "The Electronic Voting Systems Study Commission shall study the issue of whether direct record electronic (DRE) voting systems should be prohibited in North Carolina unless each unit of the system produces a voter-verifiable paper record that is suitable for a recount or a manual audit and that is equivalent or superior to the paper record produced by a paper ballot system."

"In conducting the study, the Commission shall consider DRE voting systems, compliance with the Help America Vote Act of 2002 (HAVA) and with voting-systems standards to be adopted under HAVA, including providing sufficient opportunity for access and participation, and privacy and independence, to all voters regardless of disability. The Commission shall consider any other issue related to the use of electronic voting systems. The Commission shall make a final report to the 2005 General Assembly upon its convening. The report shall contain the Commission's findings and recommendations. The Commission shall terminate on the earlier of the filing of its final report or the convening of the 2005 General Assembly."

Editor's note. — Session Laws 2001-460, s. 3 enacted this Article as Article 13A. At the direction of the Revisor of Statutes, Article 13A followed repealed Article 14 in order to maintain numerical order in the section numbers. Subsequently, Session Laws 2002-159, s. 21(h), effective October 11, 2002, recodified Article 13A as Article 14A.

Section 163-165 had been reserved for future codification purposes under Article 14, which was repealed by Session Laws 2001-460, s. 1, effective January 1, 2002.

Session Laws 2006-262, s. 5 provides: "Section 4 of this act becomes effective January 1, 2007. The remainder of this act is effective when it becomes law, except that any criminal penalty resulting from this act becomes effective October 1, 2006. Prosecutions for offenses committed before October 1, 2006, are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Legal Periodicals. — For article, "'High Court Wrongly Elected': A Public Choice Model of Judging and Its Implications for the Voting Rights Act," see 75 N.C.L. Rev. 1305 (1997).

CASE NOTES

Editor's Note. *— The case below was decided under former Article 13, which was repealed by Session Laws 2001-460, s. 1.*

As to construction of former Article 10 in pari materia with primary election law, see Phillips v. Slaughter, 209 N.C. 543, 183 S.E. 897 (1935).

Part 2. Ballots and Voting Systems.

§ 163-165.1. Scope and general rules.

(a) Scope. — This Article shall apply to all elections in this State.

(b) Requirements of Official Ballots in Voting. — In any election conducted under this Article:

(1) All voting shall be by official ballot.

(2) Only votes cast on an official ballot shall be counted.

(c) Compliance With This Article. — All ballots shall comply with the provisions of this Article.

(d) Other Uses Prohibited. — An official ballot shall not be used for any purpose not authorized by this Article.

(e) Voted ballots and paper and electronic records of individual voted ballots shall be treated as confidential, and no person other than elections officials performing their duties may have access to voted ballots or paper or electronic records of individual voted ballots except by court order or order of the appropriate board of elections as part of the resolution of an election protest or investigation of an alleged election irregularity or violation. Voted ballots and paper and electronic records of individual voted ballots shall not be disclosed to members of the public in such a way as to disclose how a particular voter voted, unless a court orders otherwise. Any person who has access to an official voted ballot or record and knowingly discloses in violation of this section how an individual has voted that ballot is guilty of a Class 1 misdemeanor. (2001-460, s. 3; 2002-159, s. 55(o); 2005-323, s. 1(f); 2007-391, s. 9(a).)

§ 163-165.2. Sample ballots.

(a) County Board to Produce and Distribute Sample Ballots. — The county board of elections shall produce sample ballots, in all the necessary ballot styles of the official ballot, for every election to be held in the county. The sample ballots shall be given an appearance that clearly distinguishes them from official ballots. The county board shall distribute sample ballots to the chief judge of every precinct in which the election is to be conducted. The chief judge shall post a sample ballot in the voting place and may use it for instructional purposes. The county board of elections may use the sample ballot for other informational purposes.

(b) Document Resembling an Official Ballot to Contain Disclaimer. — No person other than a board of elections shall produce or disseminate a document substantially resembling an official ballot unless the document contains on its face a prominent statement that the document was not produced by a board of elections and is not an official ballot. (2001-460, s. 3.)

§ 163-165.3. Responsibilities for preparing official ballots.

(a) **(Effective until July 1, 2010)** State Board Responsibilities. — The State Board of Elections shall certify the official ballots and voter instructions to be used in every election that is subject to this Article. In conducting its certification, the State Board shall adhere to the following:

(1) No later than January 31 of every calendar year, the State Board shall establish a schedule for the certification of all official ballots and instructions during that year. The schedule shall include a time for county boards of elections to submit their official ballots and instructions to the State Board for certification and times for the State Board to complete the certification.

(2) The State Board of Elections shall compose model ballot instructions, which county boards of elections may amend subject to approval by the State Board as part of the certification process. The State Board of Elections may permit a county board of elections to place instructions elsewhere than on the official ballot itself, where placing them on the official ballot would be impractical.

(3) With regard only to multicounty ballot items on the official ballot, the State Board shall certify the accuracy of the content on the official ballot.

(4) With regard to the entire official ballot, the State Board shall certify that the content and arrangement of the official ballot are in substantial compliance with the provisions of this Article and standards adopted by the State Board.

(5) The State Board shall proofread the official ballot of every county, if practical, prior to final production.

(6) The State Board is not required to certify or review every official ballot style in the county but may require county boards to submit and may review a composite official ballot showing races that will appear in every district in the county.

The State Board shall be responsible for oversight of all ballot coding. In order to produce the data necessary for equipment programming, each county

G.S. 163-165.3(a) is set out twice. See note.

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shall either contract with a qualified vendor certified by the State Board or be certified by the State Board to produce the data.

(a) **(Effective July 1, 2010)** State Board Responsibilities. — The State Board of Elections shall certify the official ballots and voter instructions to be used in every election that is subject to this Article. In conducting its certification, the State Board shall adhere to the following:

(1) No later than January 31 of every calendar year, the State Board shall establish a schedule for the certification of all official ballots and instructions during that year. The schedule shall include a time for county boards of elections to submit their official ballots and instructions to the State Board for certification and times for the State Board to complete the certification.

(2) The State Board of Elections shall compose model ballot instructions, which county boards of elections may amend subject to approval by the State Board as part of the certification process. The State Board of Elections may permit a county board of elections to place instructions elsewhere than on the official ballot itself, where placing them on the official ballot would be impractical.

(3) With regard only to multicounty ballot items on the official ballot, the State Board shall certify the accuracy of the content on the official ballot.

(4) With regard to the entire official ballot, the State Board shall certify that the content and arrangement of the official ballot are in substantial compliance with the provisions of this Article and standards adopted by the State Board.

(5) The State Board shall proofread the official ballot of every county, if practical, prior to final production.

(6) The State Board is not required to certify or review every official ballot style in the county but may require county boards to submit and may review a composite official ballot showing races that will appear in every district in the county.

The State Board shall be responsible for oversight of all ballot coding. In order to produce the data necessary for equipment programming, each county shall either contract with a qualified vendor certified by the State Board or be certified by the State Board to produce the data.

(b) County Board Responsibilities. — Each county board of elections shall prepare and produce official ballots for all elections in that county. The county board of elections shall submit the format of each official ballot and set of instructions to the State Board of Elections for review and certification in accordance with the schedule established by the State Board. The county board of elections shall follow the directions of the State Board in placing candidates, referenda, and other material on official ballots and in placing instructions.

(c) Late Changes in Ballots. — The State Board shall promulgate rules for late changes in ballots. The rules shall provide for the reprinting, where practical, of official ballots as a result of replacement candidates to fill vacancies in accordance with G.S. 163-114 or other late changes. If an official ballot is not reprinted, a vote for a candidate who has been replaced in accordance with G.S. 163-114 will count for the replacement candidate.

(d) Special Ballots. — The State Board of Elections, with the approval of a county board of elections, may produce special official ballots, such as those for disabled voters, where production by the State Board would be more practical than production by the county board. (2001-460, s. 3; 2007-391, s. 24(a); 2008-187, s. 33(a); 2009-541, s. 18(a).)

Subsection (a) Set Out Twice. — The first version of subsection (a) set out above is effective until July 1, 2010. The second version of subsection (a) set out above is effective July 1, 2010.

Editor's Note. — Session Laws 2007-391, s. 24(b), provides: "This section becomes effective only if any funds necessary to implement it are appropriated." Funds were appropriated in Session Laws 2007-323, s. 25.1(a)(3).

Session Laws 2007-391, s. 1(c), was amended by Session Laws 2008-198, s. 33(a), to eliminate any confusion as to effective dates of the 2007 act. Session Laws 2007-391, s. 24(a), which, in subsection (a), substituted "Responsibilities" for "to Certify Official Ballots and Instructions to Voters" in the catchline and added the last paragraph, and substituted "Responsibilities" for "to Prepare and Produce Official Ballots and Instructions" in the subsection (b) catchline, is effective August 19, 2007.

Effect of Amendments. — Session Laws 2009-541, s. 18(a), effective July 1, 2010, rewrote the last paragraph of subsection (a).

CASE NOTES

Procedure for Election of Superior Court Judges Upheld. — A superior court judge is a hybrid official with both local and statewide functions and authority, and there is a reasonable basis for election procedure requiring him to be nominated in the primary election and elected in the general election by statewide vote, which serves and achieves a legitimate state purpose and is not arbitrary and capricious. Holshouser v. Scott, 335 F. Supp. 928 (M.D.N.C. 1971), aff'd, 409 U.S. 807, 93 S. Ct. 43, 34 L. Ed. 2d 68 (1972).

Requiring regular superior court judges to be nominated in the primary election by districts and elected in the general election by statewide vote does not deny equal protection of the laws. Holshouser v. Scott, 335 F. Supp. 928 (M.D.N.C. 1971), aff'd, 409 U.S. 807, 93 S. Ct. 43, 34 L. Ed. 2d 68 (1972).

The one man, one vote rule does not apply to the state judiciary, and therefore a mere showing of a disparity among the voters or in the population figures of the district would not be sufficient to strike down the election procedure for superior court judges. A showing of an arbitrary and capricious or invidious action or distinction between citizens and voters would be required. Holshouser v. Scott, 335 F. Supp. 928 (M.D.N.C. 1971), aff'd, 409 U.S. 807, 93 S. Ct. 43, 34 L. Ed. 2d 68 (1972).

It is the duty of the county board of elections to keep official ballots in its possession until delivery to the local officials. State v. Abernethy, 220 N.C. 226, 17 S.E.2d 25 (1941).

Cited in Republican Party v. Hunt, 841 F. Supp. 722 (E.D.N.C. 1994).

§ 163-165.4. Standards for official ballots.

The State Board of Elections shall seek to ensure that official ballots throughout the State have all the following characteristics:

(1) Are readily understandable by voters.
(2) Present all candidates and questions in a fair and nondiscriminatory manner.
(3) Allow every voter to cast a vote in every ballot item without difficulty.
(4) Facilitate an accurate vote count.
(5) Are uniform in content and format, subject to varied presentations required or made desirable by different voting systems. (2001-460, s. 3.)

§ 163-165.4A. Punch-card ballots and lever machines.

(a) No ballot may be used in any referendum, primary, or other election as an official ballot if it requires the voter to punch out a hole with a stylus or other tool.

(a1) No lever machine voting system may be used in any referendum, primary, or other election as a means of voting the official ballot. A "lever machine voting system" is a voting system on which the voter casts a vote by pressing a lever and the vote is mechanically recorded by the machine.

(b) In any counties that used punch-card ballots as official ballots or lever machines in the election of November 2000, and in any municipalities located in those counties, this section becomes effective January 1, 2006. It is the intent of the General Assembly that any county that uses county funds to replace voting equipment to satisfy this section shall be given priority in appropriations to counties for voting equipment. (2001-310, ss. 1, 3; 2003-226, s. 12.)

Editor's Note. — Session Laws 2001-310, s. 3, provides: "If Senate Bill 17, 2001 Regular Session of the General Assembly, becomes law, then effective January 1, 2002, G.S. 163-140.3, as enacted by this act, is recodified as G.S. 163-165.4A, and G.S. 163-140.4, as enacted by this act, is recodified as G.S. 163-165.4B." Senate Bill 17 is Session Laws 2001-460.

Session Laws 2001-310, s. 4, provides in part: "Section 1 of this act is effective when it becomes law and applies to primaries, elections, and referenda conducted on or after that date. Nothing in this act shall obligate the General Assembly to appropriate funds to implement this act."

Session Laws 2003-226, s. 1, provides: "The purpose of this act is to ensure that the State of North Carolina has a system for all North Carolina elections that complies with the requirements for federal elections set forth in the federal Help America Vote Act of 2002, Public Law 107-252, 116 Stat. 1666 (2002), codified at 42 U.S.C. §§ 15481-15485.

"The General Assembly finds that the education and training of election officials as required by G.S. 163-82.34 has met and continues to meet the mandate for the education and training of precinct officials and other election officials in section 254(a)(3) of the Help America Vote Act of 2002. The General Assembly further finds that the establishment, development, and continued operation of the statewide list maintenance program for voter registration set forth in G.S. 163-82.14 has met and continues to meet the mandates of section 303(a)(2) of the Help America Vote Act of 2002.

"In certain other areas of the election statutes and other laws, the General Assembly finds that the statutes must be amended to comply with the Help America Vote Act."

§ 163-165.4B. Butterfly ballots.

No butterfly ballot may be used as an official ballot in any referendum, primary, or other election. The term "butterfly ballot" means a ballot having more than one column listing ballot choices that share a common column for designating those choices. (2001-310, ss. 2, 3.)

Editor's Note. — Session Laws 2001-310, s. 3, provides: "If Senate Bill 17, 2001 Regular Session of the General Assembly, becomes law, then effective January 1, 2002, G.S. 163-140.3, as enacted by this act, is recodified as G.S. 163-165.4A, and G.S. 163-140.4, as enacted by this act, is recodified as G.S. 163-165.4B." Senate Bill 17 is Session Laws 2001-460.

Session Laws 2001-310, s. 4, provides in part: "Nothing in this act shall obligate the General Assembly to appropriate funds to implement this act."

§ 163-165.5. Contents of official ballots.

Each official ballot shall contain all the following elements:

(1) The heading prescribed by the State Board of Elections. The heading shall include the term "Official Ballot".

(2) The title of each office to be voted on and the number of seats to be filled in each ballot item.

(3) The names of the candidates as they appear on their notice of candidacy filed pursuant to G.S. 163-106 or G.S. 163-323, or on petition forms filed in accordance with G.S. 163-122. No title, appendage, or appellation indicating rank, status, or position shall be printed on the official ballot in connection with the candidate's name. Candidates, however, may use the title Mr., Mrs., Miss, or Ms. Nicknames shall be permitted on an official ballot if used in the notice of candidacy or qualifying petition, but the nickname shall appear according to standards adopted by the State Board of Elections. Those standards shall allow the presentation of legitimate nicknames in ways that do not mislead the voter or unduly advertise the candidacy. In the case of candidates for presidential elector, the official ballot

shall not contain the names of the candidates for elector but instead shall contain the nominees for President and Vice President which the candidates for elector represent. The State Board of Elections shall establish a review procedure that local boards of elections shall follow to ensure that candidates' names appear on the official ballot in accordance with this subdivision.

(4) Party designations in partisan ballot items.

(5) A means by which the voter may cast write-in votes, as provided in G.S. 163-123. No space for write-ins is required unless a write-in candidate has qualified under G.S. 163-123 or unless the ballot item is exempt from G.S. 163-123.

(6) Instructions to voters, unless the State Board of Elections allows instructions to be placed elsewhere than on the official ballot.

(7) The printed title and facsimile signature of the chair of the county board of elections. (2001-460, s. 3; 2003-209, s. 1; 2007-391, s. 10; 2008-187, s. 33(a).)

Editor's Note. — Session Laws 2007-391, s. 1(c), was amended by Session Laws 2008-198, s. 33(a), to eliminate any confusion as to effective dates of the 2007 act. Session Laws 2007-391, s. 10, which added the last sentence in subdivision (5), is effective August 19, 2007.

§ 163-165.5A. (Effective until January 1, 2012) Ballot instructions in English and Spanish.

In every county or municipality where the Hispanic population exceeds six percent (6%), in accordance with the most recent decennial federal census, all instructions to the voter for ballots shall be printed in both English and Spanish. The State Board of Elections shall prepare a Spanish translation of ballot instructions for local boards of elections. (2001-288, ss. 1, 2.)

Editor's Note. — Session Laws 2001-288, s. 3 makes this section effective with respect to all primaries, elections, and referenda held on or after August 1, 2001, and provides that it expires January 1, 2012, unless extended by legislation enacted before that date.

Session Laws 2001-288, s. 2 provides that if Senate Bill 17 of the 2001 Session of the General Assembly is enacted, then G.S. 163-140.2, as enacted by Section 1 of this act, is recodified as G.S. 163-165.5A. Senate Bill 17 is Session Laws 2001-460.

§ 163-165.5B. Ballots may be combined.

Notwithstanding any other statute or local act, a county board of elections, with the approval of the State Board of Elections, may combine ballot items on the same official ballot. (2007-391, s. 7; 2008-187, s. 33(a).)

Editor's Note. — Session Laws 2007-391, s. 1(c), was amended by Session Laws 2008-198, s. 33(a), to eliminate any confusion as to effective dates of the act. Session Laws 2007-391, s. 39 made this section effective August 19, 2007.

§ 163-165.6. Arrangement of official ballots.

(a) Order of Precedence Generally. — Candidate ballot items shall be arranged on the official ballot before referenda.

(b) Order of Precedence for Candidate Ballot Items. — The State Board of Elections shall promulgate rules prescribing the order of offices to be voted on the official ballot. Those rules shall adhere to the following guidelines:

(1) Federal offices shall be listed before State and local offices. Member of the United States House of Representatives shall be listed immediately after United States Senator.

(2) State and local offices shall be listed according to the size of the electorate.

(3) Partisan offices, regardless of the size of the constituency, shall be listed before nonpartisan offices.

(4) When offices are in the same class, they shall be listed in alphabetical order by office name, or in numerical or alphabetical order by district name. Governor and Lieutenant Governor, in that order, shall be listed before other Council of State offices. Mayor shall be listed before other citywide offices. Chair of a board, where elected separately, shall be listed before other board seats having the same electorate. Chief Justice shall be listed before Associate Justices.

(5) Ballot items for full terms of an office shall be listed before ballot items for partial terms of the same office.

(c) Order of Candidates on Primary Official Ballots. — The order in which candidates shall appear on a county's official ballots in any primary ballot item shall be determined by the county board of elections using a process designed by the State Board of Elections for random selection.

(d) Order of Party Candidates on General Election Official Ballot. — Candidates in any ballot item on a general election official ballot shall appear in the following order:

(1) Nominees of political parties that reflect at least five percent (5%) of statewide voter registration, according to the most recent statistical report published by the State Board of Elections, in alphabetical order by party and in alphabetical order within the party.

(2) Nominees of other political parties, in alphabetical order by party and in alphabetical order within the party.

(3) Unaffiliated candidates, in alphabetical order.

(e) Straight-Party Voting. — Each official ballot shall be arranged so that the voter may cast one vote for a party's nominees for all offices except President and Vice President. A vote for President and Vice President shall be cast separately from a straight-party vote. The official ballot shall be prepared so that a voter may cast a straight-party vote, but then make an exception to that straight-party vote by voting for a candidate not nominated by that party or by voting for fewer than all the candidates nominated by that party. Instructions for general election ballots shall clearly advise voters of the rules in this subsection and of the statutes providing for the counting of ballots.

(f) Write-In Voting. — Each official ballot shall be so arranged so that voters may cast write-in votes for candidates except where prohibited by G.S. 163-123 or other statutes governing write-in votes. Instructions for general election ballots shall clearly advise voters of the rules of this subsection and of the statutes governing write-in voting.

(g) Order of Precedence for Referenda. — The referendum questions to be voted on shall be arranged on the official ballot in the following order:

(1) Proposed amendments to the North Carolina Constitution, in the chronological order in which the proposals were approved by the General Assembly.

(2) Other referenda to be voted on by all voters in the State, in the chronological order in which the proposals were approved by the General Assembly.

(3) Referenda to be voted on by fewer than all the voters in the State, in the chronological order of the acts by which the referenda were properly authorized. (2001-460, s. 3; 2002-158, s. 14.)

Editor's Note. — Session Laws 2002-158, s. 15, contains a severability clause.

Session Laws 2002-158, s. 15.1, states that nothing in this act obligates the General Assembly to appropriate funds to implement the provisions of the act now or in the future.

CASE NOTES

Editor's Note. — The cases below were decided under former Article 13, which was repealed by Session Laws 2001-460, s. 1.

The right of a candidate to have his name printed on the official ballot is dependent upon his becoming a nominee in the required manner. McLean v. Durham County Bd. of Elections, 222 N.C. 6, 21 S.E.2d 842 (1942).

The one man, one vote rule does not apply to the state judiciary, and therefore a mere showing of a disparity among the voters or in the population figures of the district would not be sufficient to strike down the election procedure for superior court judges. A showing of an arbitrary and capricious or invidious action or distinction between citizens and voters would be required. Holshouser v. Scott, 335 F. Supp. 928 (M.D.N.C. 1971).

Procedure for Election of Superior Court Judges Upheld. — A superior court judge is a hybrid official with both local and statewide functions and authority, and there is a reasonable basis for election procedure requiring him to be nominated in the primary election and elected in the general election by statewide vote, which serves and achieves a legitimate state purpose and is not arbitrary and capricious. Holshouser v. Scott, 335 F. Supp. 928 (M.D.N.C. 1971), aff'd, 409 U.S. 807, 93 S. Ct. 43, 34 L. Ed. 2d 68 (1972).

Requiring regular superior court judges to be nominated in the primary election by districts and elected in the general election by statewide vote does not deny equal protection of the laws. Holshouser v. Scott, 335 F. Supp. 928 (M.D.N.C. 1971), aff'd, 409 U.S. 807, 93 S. Ct. 43, 34 L. Ed. 2d 68 (1972).

Failure of ballots to comply fully with the statutory requirements of this section (former § 163-140) pertaining to the printing of the ballots did not constitute a violation of the due process clause, where there was no indication that the failure was other than simple negligence on the part of election officials, and where the ballots used in the election sufficiently complied with the state law so that voters should not have been confused or deceived. Hendon v. North Carolina State Bd. of Elections, 710 F.2d 177 (4th Cir. 1983).

Violation of the "sufficient ballot space" portion of this section (former § 163-165.6) would not vitiate an election unless the violation altered the outcome of the election. In re Cleveland County Comm'rs, 56 N.C. App. 187, 287 S.E.2d 451 (1982).

Applied in Hendon v. North Carolina State Bd. of Elections, 710 F.2d 177 (4th Cir. 1983).

§ 163-165.7. Voting systems: powers and duties of State Board of Elections.

(a) Only voting systems that have been certified by the State Board of Elections in accordance with the procedures and subject to the standards set forth in this section and that have not been subsequently decertified shall be permitted for use in elections in this State. Those certified voting systems shall be valid in any election held in the State or in any county, municipality, or other electoral district in the State. Subject to all other applicable rules adopted by the State Board of Elections and, with respect to federal elections, subject to all applicable federal regulations governing voting systems, paper ballots marked by the voter and counted by hand shall be deemed a certified voting system. The State Board of Elections shall certify optical scan voting systems, optical scan with ballot markers voting systems, and direct record electronic voting systems if any of those systems meet all applicable requirements of federal and State law. The State Board may certify additional voting systems only if they meet the requirements of the request for proposal process set forth in this section and only if they generate either a paper ballot or a paper record by which voters may verify their votes before casting them and which provides a backup means of counting the vote that the voter casts. Those voting systems may include optical scan and direct record electronic (DRE) voting systems. In consultation with the Office of Information Technology Services, the State Board shall develop the requests for proposal subject to the provisions of this Chapter and other applicable State laws. Among other requirements, the request for proposal shall require at least all of the following elements:

(1) That the vendor post a bond or letter of credit to cover damages resulting from defects in the voting system. Damages shall include,

among other items, any costs of conducting a new election attributable to those defects.

(2) That the voting system comply with all federal requirements for voting systems.

(3) That the voting system must have the capacity to include in voting tabulation district returns the votes cast by voters outside of the voter's voting tabulation district as required by G.S. 163-132.5G.

(4) With respect to electronic voting systems, that the voting system generate a paper record of each individual vote cast, which paper record shall be maintained in a secure fashion and shall serve as a backup record for purposes of any hand-to-eye count, hand-to-eye recount, or other audit. Electronic systems that employ optical scan technology to count paper ballots shall be deemed to satisfy this requirement.

(5) With respect to DRE voting systems, that the paper record generated by the system be viewable by the voter before the vote is cast electronically, and that the system permit the voter to correct any discrepancy between the electronic vote and the paper record before the vote is cast.

(6) With respect to all voting systems using electronic means, that the vendor provide access to all of any information required to be placed in escrow by a vendor pursuant to G.S. 163-165.9A for review and examination by the State Board of Elections; the Office of Information Technology Services; the State chairs of each political party recognized under G.S. 163-96; the purchasing county; and designees as provided in subdivision (9) of subsection (d) of this section.

(7) That the vendor must quote a statewide uniform price for each unit of the equipment.

(8) That the vendor must separately agree with the purchasing county that if it is granted a contract to provide software for an electronic voting system but fails to debug, modify, repair, or update the software as agreed or in the event of the vendor having bankruptcy filed for or against it, the source code described in G.S. 163-165.9A(a) shall be turned over to the purchasing county by the escrow agent chosen under G.S. 163-165.9A(a)(1) for the purposes of continuing use of the software for the period of the contract and for permitting access to the persons described in subdivision (6) of this subsection for the purpose of reviewing the source code.

In its request for proposal, the State Board of Elections shall address the mandatory terms of the contract for the purchase of the voting system and the maintenance and training related to that voting system.

If a voting system was acquired or upgraded by a county before August 1, 2005, the county shall not be required to go through the purchasing process described in this subsection if the county can demonstrate to the State Board of Elections compliance with the requirements in subdivisions (1) through (6) and subdivision (8) of this subsection, where those requirements are applicable to the type of voting system involved. If the county cannot demonstrate to the State Board of Elections that the voting system is in compliance with those subdivisions, the county board shall not use the system in an election during or after 2006, and the county shall be subject to the purchasing requirements of this subsection.

(a1) Federal Assistance. — The State Board may use guidelines, information, testing reports, certification, decertification, recertification, and any relevant data produced by the Election Assistance Commission, its Standards Board, its Board of Advisors, or the Technical Guidelines Development Committee as established in Title II of the Help America Vote Act of 2002 with regard to any action or investigation the State Board may take concerning a voting system. The State Board may use, for the purposes of voting system certification, laboratories accredited by the Election Assistance Commission under the provisions of section 231(2) of the Help America Vote Act of 2002.

(b) The State Board may also, upon notice and hearing, decertify types, makes, and models of voting systems. Upon decertifying a type, make, or model of voting system, the State Board shall determine the process by which the decertified system is discontinued in any county. A county may appeal a decision by the State Board concerning the process by which the decertified system is discontinued in that county to the Superior Court of Wake County. The county has 30 days from the time it receives notice of the State Board's decision on the process by which the decertified system is discontinued in that county to make that appeal.

(c) Prior to certifying a voting system, the State Board of Elections shall review, or designate an independent expert to review, all source code made available by the vendor pursuant to this section and certify only those voting systems compliant with State and federal law. At a minimum, the State Board's review shall include a review of security, application vulnerability, application code, wireless security, security policy and processes, security/privacy program management, technology infrastructure and security controls, security organization and governance, and operational effectiveness, as applicable to that voting system. Any portion of the report containing specific information related to any trade secret as designated pursuant to G.S. 132-1.2 shall be confidential and shall be accessed only under the rules adopted pursuant to subdivision (9) of subsection (d) of this section. The State Board may hear and discuss the report of any such review under G.S. 143-318.11(a)(1).

(d) Subject to the provisions of this Chapter, the State Board of Elections shall prescribe rules for the adoption, handling, operation, and honest use of certified voting systems, including all of the following:

(1) Procedures for county boards of elections to utilize when recommending the purchase of a certified voting system for use in that county.
(2) Form of official ballot labels to be used on voting systems.
(3) Operation and manner of voting on voting systems.
(4) Instruction of precinct officials in the use of voting systems.
(5) Instruction of voters in the use of voting systems.
(6) Assistance to voters using voting systems.
(7) Duties of custodians of voting systems.
(8) Examination and testing of voting systems in a public forum in the county before and after use in an election.
(9) Notwithstanding G.S. 132-1.2, procedures for the review and examination of any information placed in escrow by a vendor pursuant to G.S. 163-165.9A by only the following persons:
    a. State Board of Elections.
    b. Office of Information Technology Services.
    c. The State chairs of each political party recognized under G.S. 163-96.
    d. The purchasing county.

    Each person listed in sub-subdivisions a. through d. of this subdivision may designate up to three persons as that person's agents to review and examine the information. No person shall designate under this subdivision a business competitor of the vendor whose proprietary information is being reviewed and examined. For purposes of this review and examination, any designees under this subdivision and the State party chairs shall be treated as public officials under G.S. 132-2.

(10) With respect to electronic voting systems, procedures to maintain the integrity of both the electronic vote count and the paper record. Those procedures shall at a minimum include procedures to protect against the alteration of the paper record after a machine vote has been recorded and procedures to prevent removal by the voter from the voting enclosure of any paper record or copy of an individually voted ballot or of any other device or item whose removal from the voting enclosure could permit compromise of the integrity of either the machine count or the paper record.

(11) Compliance with section 301 of the Help America Vote Act of 2002.

Any rules adopted under this subsection shall be in conjunction with procedures and standards adopted under G.S. 163-182.1, are exempt from Chapter 150B of the General Statutes, and are subject to the same procedures for notice and publication set forth in G.S. 163-182.1.

(e) The State Board of Elections shall facilitate training and support of the voting systems utilized by the counties. The training may be conducted through the use of videoconferencing or other technology. (2001-460, s. 3; 2003-226, s. 11; 2005-323, s. 1(a)-(d); 2006-264, s. 76(a); 2007-391, s. 6(d); 2008-187, s. 33(b); 2009-541, s. 19.)

Instant Runoff Voting Pilot Program — Session Laws 2006-192, s. 1(a) and (b), provides: "(a) The State Board of Elections shall select local jurisdictions in which to conduct a pilot program during the 2007 and 2008 elections for local offices using instant runoff voting. The State Board shall select:

"(1) Up to 10 cities for the 2007 elections.

"(2) Up to 10 counties for the 2008 elections.

"In selecting those local jurisdictions, the State Board shall seek diversity of population size, regional location, and demographic composition. The pilot shall be conducted only with the concurrence of the county board of elections that conducts elections for the local jurisdiction. If a city is selected that has voters in more than one county, the concurrence of all the county boards of elections that conduct that city's elections is required. The pilot program shall consist of using instant runoff voting as the method for determining the winner or winners of a partisan primary or a nonpartisan election that normally uses nonpartisan election and runoff or nonpartisan primary and election. Instant runoff voting may also be used to determine results in an election where nonpartisan plurality elections are normally used, but only if the governing board of the local jurisdiction concurs.

"As used in this section, 'instant runoff voting' means a system in which voters rank up to three of the candidates by order of preference, first, second, or third. If the candidate with the most first-choice votes receives the threshold of victory of the first-choice votes, that candidate wins. If no candidate receives the threshold of victory of first-choice votes, the two candidates with the greatest number of first-choice votes advance to a second round of counting. In this round, each ballot counts as a vote for whichever of the two final candidates is ranked highest by the voter. The candidate with the most votes in the second round wins the election.

"The threshold of victory of first-choice votes for a partisan primary shall be forty percent (40%) plus one vote. The threshold of victory for a nonpartisan election and runoff or nonpartisan primary and election shall be a majority of the vote. The threshold of victory in a contest that normally uses nonpartisan plurality shall be determined by the State Board with the concurrence of the county board of elections and the local governing board.

"If more than one seat is to be filled in the same race, the voter votes the same way as if one seat were to be filled. The counting is the same as when one seat is to be filled, with one or two rounds as needed, except that counting is done separately for each seat to be filled. The first counting results in the first winner. Then the second count proceeds without the name of the first winner. This process results in the second winner. For each additional seat to be filled, an additional count is done without the names of the candidates who have already won.

"Other details of instant runoff voting are as described in House Bill 1024 (First Edition) of the 2005 Regular Session of the General Assembly, with modifications the State Board deems necessary, in primaries and/or elections for city offices, for county offices, or for both. Those modifications may include giving the voter more than three choices in case of multi-seat contests. The State Board shall not use instant runoff voting in a primary or election for an office unless the entire electorate for the office uses the same method.

"(b) The State Board of Elections shall closely monitor the pilot program established in this section and report its findings and recommendations to the 2007 General Assembly."

Session Laws 2008-150, s. 3(a), as amended by Session Laws 2009-541, s. 30(a), provides: "The State Board of Elections is authorized to select elections for offices of local government in which to use instant runoff voting in up to 10 local jurisdictions in each of the following years: 2009, 2010, and 2011. The selection of jurisdictions and administration of instant runoff voting shall follow the provisions of Section 1(a) of Session Law 2006-192, except that the local governing board that is the subject of the election must approve participation in the pilot and must hold at least one public hearing on the pilot before approving it, with notice of the hearing published at least 10 days before the hearing. The local governing board also must agree to cooperate with the county board of elections and the Board in the development and implementation of a plan to educate candidates and voters about how to use the runoff voting method. In a multiseat contest, the Board shall modify the method used for instant runoff voting in single-seat contests to apply its essential principles suitably to that election. In the case of a board of education election where the "local governing board" must be asked to authorize instant runoff voting because nonpartisan plurality elections are normally used, the "local governing board" is the board of education itself. If instant runoff voting is used in place of the nonpartisan election and runoff method as described in G.S. 163-293, the county board of elections, with the approval of the local governing board, may hold the election on the first Tuesday after the first Monday in November. The State Board of Elections, in consultation with the School of Government at the University of North Carolina, shall by January 1, 2009, develop for the pilot program authorized in this section goals, standards consistent with general election law, and criteria for implementation and evaluation. The pilot program shall be conducted according to those goals, standards, and criteria. The term "ranked choice voting" shall have the same meaning as, and may be used as a substitute for, the term "instant runoff voting" in describing the pilot."

Session Laws 2009-541, s. 30(b), provides: "This section is effective when it becomes law. The requirement for holding a public hearing applies only to primaries and elections held on and after January 1, 2010, but a local governing board may give notice of and conduct a public hearing to satisfy the requirement before January 1, 2010."

Editor's Note. — Session Laws 2007-391, s. 6(f), as amended by Session Laws 2008-187, s. 33(b), provides in part: "Subsections 6(b) through 6(e) of this section become effective January 1, 2008."

Session Laws 2007-391, s. 6(g), provides: "This section becomes effective only if any funds necessary to implement it are appropriated." Funds were appropriated in Session Laws 2007-323, s. 25.1(a)(1).

Effect of Amendments. — Session Laws 2007-391, s. 6(d), effective January 1, 2008, substituted "voting tabulation district" for "precint" twice in subdivision (a)(3).

Session Laws 2009-541, s. 19, effective August 28, 2009, added the last sentence in subsection (e).

§ 163-165.8. Voting systems: powers and duties of board of county commissioners.

The board of county commissioners, with the approval of the county board of elections, may adopt and acquire only a voting system of a type, make, and model certified by the State Board of Elections for use in some or all voting places in the county at some or all elections.

The board of county commissioners may decline to adopt and acquire any voting system recommended by the county board of elections but may not adopt and acquire any voting system that has not been approved by the county board of elections. Article 8 of Chapter 143 of the General Statutes does not apply to the purchase of a voting system certified by the State Board of Elections. (2001-460, s. 3; 2005-323, s. 3.)

§ 163-165.9. Voting systems: powers and duties of county board of elections.

(a) Before approving the adoption and acquisition of any voting system by the board of county commissioners, the county board of elections shall do all of the following:

(1) Recommend to the board of county commissioners which type of voting system should be acquired by the county.

(2) Witness a demonstration, in that county or at a site designated by the State Board of Elections, of the type of voting system to be recommended and also witness a demonstration of at least one other type of voting system certified by the State Board of Elections.

(3) Test, during an election, the proposed voting system in at least one precinct in the county where the voting system would be used if adopted.

(b) After the acquisition of any voting system, the county board of elections shall comply with any requirements of the State Board of Elections regarding training and support of the voting system by completing all of the following:

(1) The county board of elections shall comply with all specifications of its voting system vendor for ballot printers. The county board of elections is authorized to contract with noncertified ballot printing vendors, so long as the noncertified ballot printing vendor meets all specifications and all quality assurance requirements as set by the State Board of Elections.

(2) The county board of elections shall annually maintain software license and maintenance agreements necessary to maintain the warranty of its voting system. The State Board of Elections shall not provide routine maintenance to any county board of elections that does not maintain the warranty of its voting system. If the State Board of Elections provides any maintenance to a county that has not maintained the warranty of its voting system, the county shall reimburse the State for the cost.

(3) The county board of elections shall not replace any voting system, or any portion thereof, without approval of the State Board of Elections.

(4) The county board of elections may have its voting system repaired pursuant to its maintenance agreement but shall notify the State Board of Elections at the time of every repair, according to guidelines that shall be provided by the State Board of Elections. (2001-460, s. 3; 2005-323, s. 4; 2007-391, s. 25; 2008-187, s. 33(a); 2009-541, s. 20.)

Editor's Note. — Session Laws 2005-323, s. 10, provides, in part: "The requirement for testing a voting system in an election provided in G.S. 163-165.9(a)(3), as enacted in Section 4 of this act, does not apply to any voting system acquired before January 1, 2008, as long as the voting system is demonstrated in a public forum in the county. Notwithstanding G.S. 163-132.5G, as amended by this act, voting data by precinct shall be reported for the general elections of 2006 by March 1, 2007, and for the primary elections of 2006 by May 1, 2007."

Session Laws 2007-391, s. 1(c), was amended by Session Laws 2008-198, s. 33(a), to eliminate any confusion as to effective dates of the 2007 act. Session Laws 2007-391, s. 25, which, in subsection (b), added "by completing all of the following" at the end of the introductory paragraph, and added subdivisions (b)(1) and (b)(2), is effective August 19, 2007.

Effect of Amendments. — Session Laws 2009-541, s. 20, effective August 28, 2009, added the last sentence in subdivision (b)(2); and added subdivisions (b)(3) and (b)(4).

§ 163-165.9A. Voting systems: requirements for voting systems vendors; penalties.

(a) Duties of Vendor. — Every vendor that has a contract to provide a voting system in North Carolina shall do all of the following:

(1) The vendor shall place in escrow with an independent escrow agent approved by the State Board of Elections all software that is relevant to functionality, setup, configuration, and operation of the voting system, including, but not limited to, a complete copy of the source and executable code, build scripts, object libraries, application program interfaces, and complete documentation of all aspects of the system including, but not limited to, compiling instructions, design

documentation, technical documentation, user documentation, hardware and software specifications, drawings, records, and data. The State Board of Elections may require in its request for proposal that additional items be escrowed, and if any vendor that agrees in a contract to escrow additional items, those items shall be subject to the provisions of this section. The documentation shall include a list of programmers responsible for creating the software and a sworn affidavit that the source code includes all relevant program statements in low-level and high-level languages.

(2) The vendor shall notify the State Board of Elections of any change in any item required to be escrowed by subdivision (1) of this subsection.

(3) The chief executive officer of the vendor shall sign a sworn affidavit that the source code and other material in escrow is the same being used in its voting systems in this State. The chief executive officer shall ensure that the statement is true on a continuing basis.

(4) The vendor shall promptly notify the State Board of Elections and the county board of elections of any county using its voting system of any decertification of the same system in any state, of any defect in the same system known to have occurred anywhere, and of any relevant defect known to have occurred in similar systems.

(5) The vendor shall maintain an office in North Carolina with staff to service the contract.

(b) Penalties. — Willful violation of any of the duties in subsection (a) of this section is a Class G felony. Substitution of source code into an operating voting system without notification as provided by subdivision (a)(2) of this section is a Class I felony. In addition to any other applicable penalties, violations of this section are subject to a civil penalty to be assessed by the State Board of Elections in its discretion in an amount of up to one hundred thousand dollars ($100,000) per violation. A civil penalty assessed under this section shall be subject to the provisions of G.S. 163-278.34(e). (2005-323, s. 2(a).)

§ 163-165.10. Adequacy of voting system for each precinct.

The county board of elections shall make available for each precinct voting place an adequate quantity of official ballots or equipment. When the board of county commissioners has decided to adopt and purchase or lease a voting system for voting places under the provisions of G.S. 165-165.8, the board of county commissioners shall, as soon as practical, provide for each of those voting places sufficient equipment of the approved voting system in complete working order. If it is impractical to furnish each voting place with the equipment of the approved voting system, that which has been obtained may be placed in voting places chosen by the county board of elections. In that case, the county board of elections shall choose the voting places and allocate the equipment in a way that as nearly as practicable provides equal access to the voting system for each voter. The county board of elections shall appoint as many voting system custodians as may be necessary for the proper preparation of the system for each election and for its maintenance, storage, and care. The Executive Director of the State Board of Elections may permit a county board of elections to provide more than one type of voting system in a precinct, but only upon a finding that doing so is necessary to comply with federal or State law. (2001-460, s. 3; 2005-428, s. 2.)

Part 3. Procedures at the voting place.

§ 163-166: Repealed by Session Laws 1997-443, s. 31.

§ 163-166.01. Hours for voting.

In every election, the voting place shall be open at 6:30 A.M. and shall be closed at 7:30 P.M. In extraordinary circumstances, the county board of elections may direct that the polls remain open until 8:30 P.M. If any voter is in line to vote at the time the polls are closed, that voter shall be permitted to vote. No voter shall be permitted to vote who arrives at the voting place after the closing of the polls.

Any voter who votes after the statutory poll closing time of 7:30 P.M. by virtue of a federal or State court order or any other lawful order, including an order of a county board of elections, shall be allowed to vote, under the provisions of that order, only by using a provisional official ballot. Any special provisional official ballots cast under this section shall be separated, counted, and held apart from other provisional ballots cast by other voters not under the effect of the order extending the closing time of the voting place. If the court order has not been reversed or stayed by the time of the county canvass, the total for that category of provisional ballots shall be added to the official canvass. (2001-460, s. 3; 2003-226, s. 14.)

Editor's Note. — Session Laws 2001-460, s. 3, enacted this section as G.S. 163-166; it was recodified as G.S. 163-166.01 at the direction of the Revisor of Statutes. Former G.S. 163-166, which was formerly codified under Article 14, had been repealed by Session Laws 1997-443, s. 31.

Session Laws 2003-226, s. 1, provides: "The purpose of this act is to ensure that the State of North Carolina has a system for all North Carolina elections that complies with the requirements for federal elections set forth in the federal Help America Vote Act of 2002, Public Law 107-252, 116 Stat. 1666 (2002), codified at 42 U.S.C. §§ 15481-15485.

"The General Assembly finds that the education and training of election officials as required by G.S. 163-82.34 has met and continues to meet the mandate for the education and training of precinct officials and other election officials in section 254(a)(3) of the Help America Vote Act of 2002. The General Assembly further finds that the establishment, development, and continued operation of the statewide list maintenance program for voter registration set forth in G.S. 163-82.14 has met and continues to meet the mandates of section 303(a)(2) of the Help America Vote Act of 2002.

"In certain other areas of the election statutes and other laws, the General Assembly finds that the statutes must be amended to comply with the Help America Vote Act."

§ 163-166.1. Duties of county board of elections.

The county board of elections shall:

(1) Provide for the timely delivery to each voting place of the supplies, records, and equipment necessary for the conduct of the election.
(2) Ensure that adequate procedures are in place at each voting place for a safe, secure, fair, and honest election.
(3) Respond to precinct officials' questions and problems where necessary.
(4) Provide adequate technical support for the voting system, which shall be done in conjunction with the State Board of Elections. (2001-460, s. 3; 2009-541, s. 21.)

Effect of Amendments. — Session Laws 2009-541, s. 21, effective August 28, 2009, added subdivision (4).

§ 163-166.2. Arrangement of the voting enclosure.

Each voting enclosure shall contain at a minimum:

(1) A sufficient number of private spaces for all voters to mark their official ballots in secrecy.
(2) Adequate space and furniture for the separate functions of:

a. The checking of voter registration records.
b. The distribution of official ballots.
c. Private discussion with voters concerning irregular situations.

(3) A telephone or some facility for communication with the county board of elections.

The equipment and furniture in the voting enclosure shall be arranged so that it can be generally seen from the public space of the enclosure. (2001-460, s. 3.)

§ 163-166.3. Limited access to the voting enclosure.

(a) Persons Who May Enter Voting Enclosure. — During the time allowed for voting in the voting place, only the following persons may enter the voting enclosure:

(1) An election official.
(2) An observer appointed pursuant to G.S. 163-45.
(2a) A runner appointed pursuant to G.S. 163-45, but only to the extent necessary to announce that runner's presence and to receive the voter list as provided in G.S. 163-45.
(3) A person seeking to vote in that voting place on that day but only while in the process of voting or seeking to vote.
(4) A voter in that precinct while entering or explaining a challenge pursuant to G.S. 163-87 or G.S. 163-88.
(5) A person authorized under G.S. 163-166.8 to assist a voter but, except as provided in subdivision (6) of this section, only while assisting that voter.
(6) Minor children of the voter under the age of 18, or minor children under the age of 18 in the care of the voter, but only while accompanying the voter and while under the control of the voter.
(7) Persons conducting or participating in a simulated election within the voting place or voting enclosure, if that simulated election is approved by the county board of elections.
(8) Any other person determined by election officials to have an urgent need to enter the voting enclosure but only to the extent necessary to address that need.

(b) Photographing Voters Prohibited. — No person shall photograph, videotape, or otherwise record the image of any voter within the voting enclosure, except with the permission of both the voter and the chief judge of the precinct. If the voter is a candidate, only the permission of the voter is required. This subsection shall also apply to one-stop sites under G.S. 163-227.2. This subsection does not apply to cameras used as a regular part of the security of the facility that is a voting place or one-stop site.

(c) Photographing Voted Ballot Prohibited. — No person shall photograph, videotape, or otherwise record the image of a voted official ballot for any purpose not otherwise permitted under law. (2001-460, s. 3; 2005-428, s. 1(b); 2007-391, s. 23; 2008-187, s. 33(a).)

Editor's Note. — Session Laws 2007-391, s. 1(c), was amended by Session Laws 2008-198, s. 33(a), to eliminate any confusion as to effective dates of the 2007 act. Session Laws 2007-391, s. 23, which rewrote this section, is effective August 19, 2007.

OPINIONS OF ATTORNEY GENERAL

***Editor's Note.** — The opinion below was decided under prior similar law.*

Use of Video Cameras and Cellular Telephones by Observers. — Videotaping of voters by observers designated by a political party is outside their permissible statutory activities and is inconsistent with the right of voters to vote by secret ballot, but the discreet use of cellular phones is permissible. See opinion of Attorney General to Gary O. Bartlett, Executive Secretary-Director, State Board of Elections, 1998 N.C.A.G. 43 (10/22/98).

§ 163-166.4. Limitation on activity in the voting place and in a buffer zone around it.

(a) Buffer Zone. — No person or group of persons shall hinder access, harass others, distribute campaign literature, place political advertising, solicit votes, or otherwise engage in election-related activity in the voting place or in a buffer zone which shall be prescribed by the county board of elections around the voting place. In determining the dimensions of that buffer zone for each voting place, the county board of elections shall, where practical, set the limit at 50 feet from the door of entrance to the voting place, measured when that door is closed, but in no event shall it set the limit at more than 50 feet or at less than 25 feet.

(a1) Area for Election-Related Activity. — Except as provided in subsection (b) of this section, the county board of elections shall also provide an area adjacent to the buffer zone for each voting place in which persons or groups of persons may distribute campaign literature, place political advertising, solicit votes, or otherwise engage in election-related activity.

(b) Special Agreements About Election-Related Activity. — The Executive Director of the State Board of Elections may grant special permission for a county board of elections to enter into an agreement with the owners or managers of a nonpublic building to use the building as a voting place on the condition that election-related activity as described in subsection (a1) of this section not be permitted on their property adjacent to the buffer zone, if the Executive Director finds all of the following:

(1) That no other suitable voting place can be secured for the precinct.
(2) That the county board will require the chief judge of the precinct to monitor the grounds around the voting place to ensure that the restriction on election-related activity shall apply to all candidates and parties equally.
(3) That the pattern of voting places subject to agreements under this subsection does not disproportionately favor any party, racial or ethnic group, or candidate.

An agreement under this subsection shall be valid for as long as the nonpublic building is used as a voting place.

(c) Notice About Buffer Zone and Area for Election-Related Activity. — No later than 30 days before each election, the county board of elections shall make available to the public the following information concerning each voting place:

(1) The door from which the buffer zone is measured.
(2) The distance the buffer zone extends from that door.
(3) Any available information concerning where political activity, including sign placement, is permitted beyond the buffer zone.

(d) Buffer Zone and Area for Election-Related Activity at One-Stop Sites. — Except as modified in this subsection, the provisions of this section shall apply to one-stop voting sites in G.S. 163-227.2.

(1) Subsection (b) of this section shall not apply.
(2) The notice in subsection (c) of this section shall be provided no later than 10 days before the opening of one-stop voting at the site. (2001-460, s. 3; 2003-365, s. 1; 2007-391, s. 13; 2008-187, s. 33(a); 2009-541, s. 22(a).)

Editor's Note. — Session Laws 2007-391, s. 1(c), was amended by Session Laws 2008-198, s. 33(a), to eliminate any confusion as to effective dates of the 2007 act. Session Laws 2007-391, s. 13, which added subsection (d), is effective August 19, 2007.

Effect of Amendments. — Session Laws 2009-541, s. 22(a), effective January 1, 2010, and applicable to primaries and elections held on and after that date, in subsection (a), redesignated the former second paragraph as present subsection (a1) and deleted "and Adjacent Area for Election-Related Activity" at the end of the subsection (a) heading; in present subsection (a1), inserted the subsection heading and substituted "subsection (b) of the section" for "subsection (b)"; added "and Area for Election-Related Activity" at the end of the subsection (c) heading; and rewrote subsection (d).

CASE NOTES

Editor's Note. — *The cases below were decided under former Article 13, which was repealed by Session Laws 2001-460, s. 1.*

Local Modification Held Invalid under Voting Rights Act. — Session Laws 1969, c. 1039, is inoperable in Cumberland, Franklin, Guilford and Vance Counties. Clayton v. North Carolina State Bd. of Elections, 317 F. Supp. 915 (E.D.N.C. 1970).

Session Laws 1969, c. 1039, changed electioneering practices in the four counties covered by the Voting Rights Act in 1969 from what they had been on November 1, 1964. This change was a change in "standard, practice, or procedure with respect to voting" within the meaning of section 5 of the Voting Rights Act. Clayton v. North Carolina State Bd. of Elections, 317 F. Supp. 915 (E.D.N.C. 1970).

There is no possible basis to explain, or any state of facts to justify, the difference in treatment between the counties to which Session Laws 1969, c. 1039, is applicable and the 94 counties which are governed by prior law. Therefore, Session Laws 1969, c. 1039, denies equal protection of the laws. Clayton v. North Carolina State Bd. of Elections, 317 F. Supp. 915 (E.D.N.C. 1970).

The right to vote includes the right to be educated on the candidates and propositions for which a vote is to be cast. To increase the closest distribution points to the circumference of a circle having a 500 foot radius rather than the circumference of a circle having a 50 foot radius would result in a greatly increased burden on political parties and render more difficult the distribution of campaign literature to persons converging on the polling place. More importantly, distributions to far fewer voters would be accomplished under Session Laws 1969, c. 1039, than previously. Clayton v. North Carolina State Bd. of Elections, 317 F. Supp. 915 (E.D.N.C. 1970).

§ 163-166.5. Procedures at voting place before voting begins.

The State Board of Elections shall promulgate rules for precinct officials to set up the voting place before voting begins. Those rules shall emphasize:

(1) Continual participation or monitoring by officials of more than one party.
(2) Security of official ballots, records, and equipment.
(3) The appearance as well as the reality of care, efficiency, impartiality, and honest election administration.

The county boards of elections and precinct officials shall adhere to those procedures. (2001-460, s. 3.)

§ 163-166.6. Designation of tasks.

The State Board of Elections shall promulgate rules for the delegation of tasks among the election officials at each precinct. Those rules shall emphasize:

(1) The need to place primary managerial responsibility upon the chief judge.
(2) The need to have maximum multiparty participation in all duties where questions of partisan partiality might be raised.
(3) The need to provide flexibility of management to the county board of elections and to the chief judge, in consideration of different abilities

of officials, the different availability of officials, and the different needs of voters precinct by precinct. (2001-460, s. 3.)

§ 163-166.7. Voting procedures.

(a) Checking Registration. — A person seeking to vote shall enter the voting enclosure through the appropriate entrance. A precinct official assigned to check registration shall at once ask the voter to state current name and residence address. The voter shall answer by stating current name and residence address. In a primary election, that voter shall also be asked to state, and shall state, the political party with which the voter is affiliated or, if unaffiliated, the authorizing party in which the voter wishes to vote. After examination, that official shall state whether that voter is duly registered to vote in that precinct and shall direct that voter to the voting equipment or to the official assigned to distribute official ballots. If a precinct official states that the person is duly registered, the person shall sign the pollbook, other voting record, or voter authorization document in accordance with subsection (c) of this section before voting.

(b) Distribution of Official Ballots. — If the voter is found to be duly registered and has not been successfully challenged, the official assigned to distribute the official ballots shall hand the voter the official ballot that voter is entitled to vote, or that voter shall be directed to the voting equipment that contains the official ballot. No voter in a primary shall be permitted to vote in more than one party's primary. The precinct officials shall provide the voter with any information the voter requests to enable that voter to vote as that voter desires.

(c) The State Board of Elections shall promulgate rules for the process of voting. Those rules shall emphasize the appearance as well as the reality of dignity, good order, impartiality, and the convenience and privacy of the voter. Those rules, at a minimum, shall include procedures to ensure that all the following occur:

(1) The voting system remains secure throughout the period voting is being conducted.

(2) Only properly voted official ballots or paper records of individual voted ballots are introduced into the voting system.

(3) Except as provided by G.S. 163-166.9, no official ballots leave the voting enclosure during the time voting is being conducted there. The rules shall also provide that during that time no one shall remove from the voting enclosure any paper record or copy of an individually voted ballot or of any other device or item whose removal from the voting enclosure could permit compromise of the integrity of either the machine count or the paper record.

(4) All improperly voted official ballots or paper records of individual voted ballots are returned to the precinct officials and marked as spoiled.

(5) Voters leave the voting place promptly after voting.

(6) Voters not clearly eligible to vote in the precinct but who seek to vote there are given proper assistance in voting a provisional official ballot or guidance to another voting place where they are eligible to vote.

(7) Information gleaned through the voting process that would be helpful to the accurate maintenance of the voter registration records is recorded and delivered to the county board of elections.

(8) The registration records are kept secure. The State Board of Elections shall permit the use of electronic registration records in the voting place in lieu of or in addition to a paper pollbook or other registration record.

(9) Party observers are given access as provided by G.S. 163-45 to current information about which voters have voted.

(10) The voter, before voting, shall sign that voter's name on the pollbook, other voting record, or voter authorization document. If the voter is unable to sign, a precinct official shall enter the person's name on the same document before the voter votes. (2001-460, s. 3; 2003-226, s. 14.1; 2005-323, s. 1(a1); 2005-428, s. 12.)

Editor's Note. — Session Laws 2003-226, s. 1, provides: "The purpose of this act is to ensure that the State of North Carolina has a system for all North Carolina elections that complies with the requirements for federal elections set forth in the federal Help America Vote Act of 2002, Public Law 107-252, 116 Stat. 1666 (2002), codified at 42 U.S.C. §§ 15481-15485.

"The General Assembly finds that the education and training of election officials as required by G.S. 163-82.34 has met and continues to meet the mandate for the education and training of precinct officials and other election officials in section 254(a)(3) of the Help America Vote Act of 2002. The General Assembly further finds that the establishment, development, and continued operation of the statewide list maintenance program for voter registration set forth in G.S. 163-82.14 has met and continues to meet the mandates of section 303(a)(2) of the Help America Vote Act of 2002.

"In certain other areas of the election statutes and other laws, the General Assembly finds that the statutes must be amended to comply with the Help America Vote Act."

Session Laws 2005-323, s. 8, provides: "The State Board of Elections shall recommend a model code of ethics for members and employees of county boards of elections and of the State Board of Elections. The code shall address the appropriate relations between those members and staff and vendors who do business or seek to do business with boards of elections in North Carolina. It shall address how to avoid both the reality and the appearance of conflicts of interest and impropriety. The State Board shall report its recommended code to the Joint Select Committee on Electronic Voting Systems and to the Joint Legislative Commission on Governmental Operations no later than 60 days after this act becomes law."

CASE NOTES

Editor's Note. *— The cases below were decided under former Article 13, which was repealed by Session Laws 2001-460, s. 1.*

Right of Voter to Make Ballot Public. — The provision of the state Constitution providing that elections by the people shall be by ballot (see N.C. Const., Art. VI, § 5) means that the elector has the right to put his ballot in the box and to refuse to disclose for whom he voted, but this privilege of voting a secret ballot is entirely a personal one. Hence, the voter has the right at the time of voting to voluntarily make his ballot public. Jenkins v. State Bd. of Elections, 180 N.C. 169, 104 S.E. 346 (1920).

Election Held Not Vitiated by Short Absence of Officer in Charge. — Fact that one of the officers appointed to conduct an election was absent a short time from the polls, during which time no vote was cast and the ballot boxes were not tampered with, nor was any opportunity afforded for tampering with them, did not vitiate election. State ex rel. DeBerry v. Nicholson, 102 N.C. 465, 9 S.E. 545 (1889).

Inquiry as to Voter's Qualifications Rests with Election Officials. — The law does not contemplate that a watcher or any other person, when he challenges a voter at the polls, may take charge and conduct a hearing with respect to the voter's right to vote. The inquiry with respect to the voter's qualifications to vote rests with the election officials. Overton v. Mayor & City Comm'rs, 253 N.C. 306, 116 S.E.2d 808 (1960).

§ 163-166.7A. Voter education and information.

(a) Posting the Information. — For each election that involves candidates for federal or State office, each county board of elections shall post at each active voting place the following information in a manner and format approved by the State Board of Elections:

(1) A sample ballot as required by G.S. 163-165.2.

(2) The date of the election and the hours the voting place will be open.

(3) Instructions on how to vote, including how to cast a vote or correct a vote on the voting systems available for use in that voting place.

(4) Instructions on how to cast a provisional ballot.

(5) Instructions to mail-in registrants and first-time voters on how to comply with the requirements in section 303(b) of the Help America Vote Act of 2002 concerning voter identifications.

(6) General information on voting rights under applicable federal and State law, including information on the right of an individual to cast a provisional ballot and instructions on how to contact the appropriate officials if the voter believes those rights have been violated.

(7) General information on federal and State laws that prohibit acts of fraud and misrepresentation as to voting and elections.

(b) Intent. — The posting required by subsection (a) of this section is intended to meet the mandate of the voting information requirements in section 302(b) of the Help America Vote Act of 2002. (2003-226, s. 8.)

Editor's Note. — Session Laws 2003-226, s. 1, provides: "The purpose of this act is to ensure that the State of North Carolina has a system for all North Carolina elections that complies with the requirements for federal elections set forth in the federal Help America Vote Act of 2002, Public Law 107-252, 116 Stat. 1666 (2002), codified at 42 U.S.C. §§ 15481-15485.

"The General Assembly finds that the education and training of election officials as required by G.S. 163-82.34 has met and continues to meet the mandate for the education and training of precinct officials and other election officials in section 254(a)(3) of the Help America Vote Act of 2002. The General Assembly further finds that the establishment, development, and continued operation of the statewide list maintenance program for voter registration set forth in G.S. 163-82.14 has met and continues to meet the mandates of section 303(a)(2) of the Help America Vote Act of 2002.

"In certain other areas of the election statutes and other laws, the General Assembly finds that the statutes must be amended to comply with the Help America Vote Act."

§ 163-166.8. Assistance to voters.

(a) Any registered voter qualified to vote in the election shall be entitled to assistance with entering and exiting the voting booth and in preparing ballots in accordance with the following rules:

(1) Any voter is entitled to assistance from the voter's spouse, brother, sister, parent, grandparent, child, grandchild, mother-in-law, father-in-law, daughter-in-law, son-in-law, stepparent, or stepchild, as chosen by the voter.

(2) A voter in any of the following four categories is entitled to assistance from a person of the voter's choice, other than the voter's employer or agent of that employer or an officer or agent of the voter's union:

a. A voter who, on account of physical disability, is unable to enter the voting booth without assistance.

b. A voter who, on account of physical disability, is unable to mark a ballot without assistance.

c. A voter who, on account of illiteracy, is unable to mark a ballot without assistance.

d. A voter who, on account of blindness, is unable to enter the voting booth or mark a ballot without assistance.

(b) A qualified voter seeking assistance in an election shall, upon arriving at the voting place, request permission from the chief judge to have assistance, stating the reasons. If the chief judge determines that such assistance is appropriate, the chief judge shall ask the voter to point out and identify the person the voter desires to provide such assistance. If the identified person meets the criteria in subsection (a) of this section, the chief judge shall request the person indicated to render the assistance. The chief judge, one of the judges, or one of the assistants may provide aid to the voter if so requested, if the election official is not prohibited by subdivision (a) (2) of this section. Under no circumstances shall any precinct official be assigned to assist a voter qualified for assistance, who was not specified by the voter.

(c) A person rendering assistance to a voter in an election shall be admitted to the voting booth with the voter being assisted. The State Board of Elections shall promulgate rules governing voter assistance, and those rules shall adhere to the following guidelines:

(1) The person rendering assistance shall not in any manner seek to persuade or induce any voter to cast any vote in any particular way.
(2) The person rendering assistance shall not make or keep any memorandum of anything which occurs within the voting booth.
(3) The person rendering assistance shall not, directly or indirectly, reveal to any person how the assisted voter marked ballots, unless the person rendering assistance is called upon to testify in a judicial proceeding for a violation of the election laws. (2001-460, s. 3.)

CASE NOTES

Editor's Note. *— The case below was decided under former Article 13, which was repealed by Session Laws 2001-460, s. 1.*

Violations. — It was a violation of a former version of G.S. 163-172 for a judge of elections to mark the ballots for voters without any request for assistance by the voters, or, in the event of a request for assistance, to fail to return the marked ballot to the voter in order that the voter might see how it was marked before putting it in the ballot box. Overton v. Mayor & City Comm'rs, 253 N.C. 306, 116 S.E.2d 808 (1960).

§ 163-166.9. Curbside voting.

In any election or referendum, if any qualified voter is able to travel to the voting place, but because of age or physical disability and physical barriers encountered at the voting place is unable to enter the voting enclosure to vote in person without physical assistance, that voter shall be allowed to vote either in the vehicle conveying that voter or in the immediate proximity of the voting place. The State Board of Elections shall promulgate rules for the administration of this section. (2001-460, s. 3.)

§ 163-166.10. Procedures after the close of voting.

The State Board of Elections shall promulgate rules for closing the voting place and delivering voting information to the county board of elections for counting, canvassing, and record maintenance. Those rules shall emphasize the need for the appearance as well as the reality of security, accuracy, participation by representatives of more than one political party, openness of the process to public inspection, and honesty. The rules, at a minimum, shall include procedures to ensure all of the following:

(1) The return and accurate accounting of all official ballots, regular, provisional, voted, unvoted, and spoiled, according to the provisions of Article 15A of this Chapter.
(2) The certification of ballots and voter-authorization documents by precinct officials of more than one political party.
(3) The delivery to the county board of elections of registration documents and information gleaned through the voting process that would be helpful in the accurate maintenance of the voter registration records.
(4) The return to the county board of all issued equipment.
(5) The restoration of the voting place to the condition in which it was found. (2001-460, ss. 3, 3.1.)

Editor's Note. — Session Laws 2001-460, s. 3.1, effective January 1, 2002, contingent on Senate Bill 14 becoming law, substituted "Article 15A" for "Articles 15 and 16" in subdivision (1). Senate Bill 14 is now Session Laws 2001-398.

§ 163-166.11. Provisional voting requirements.

If an individual seeking to vote claims to be a registered voter in a jurisdiction as provided in G.S. 163-82.1 and though eligible to vote in the election does not appear on the official list of eligible registered voters in the voting place, that individual may cast a provisional official ballot as follows:

(1) An election official at the voting place shall notify the individual that the individual may cast a provisional official ballot in that election.

(2) The individual may cast a provisional official ballot at that voting place upon executing a written affirmation before an election official at the voting place, stating that the individual is a registered voter in the jurisdiction as provided in G.S. 163-82.1 in which the individual seeks to vote and is eligible to vote in that election.

(2a) A voter who has moved within the county more than 30 days before election day but has not reported the move to the board of elections shall not be required on that account to vote a provisional ballot at the one-stop site, as long as the one-stop site has available all the information necessary to determine whether a voter is registered to vote in the county and which ballot the voter is eligible to vote based on the voter's proper residence address. The voter with that kind of unreported move shall be allowed to vote the same kind of absentee ballot as other one-stop voters as provided in G.S. 163-227.2(e2).

(3) At the time the individual casts the provisional official ballot, the election officials shall provide the individual written information stating that anyone casting a provisional official ballot can ascertain whether and to what extent the ballot was counted and, if the ballot was not counted in whole or in part, the reason it was not counted. The State Board of Elections or the county board of elections shall establish a system for so informing a provisional voter. It shall make the system available to every provisional voter without charge, and it shall build into it reasonable procedures to protect the security, confidentiality, and integrity of the voter's personal information and vote.

(4) The cast provisional official ballot and the written affirmation shall be secured by election officials at the voting place according to guidelines and procedures adopted by the State Board of Elections. At the close of the polls, election officials shall transmit the provisional official ballots cast at that voting place to the county board of elections for prompt verification according to guidelines and procedures adopted by the State Board of Elections.

(5) The county board of elections shall count the individual's provisional official ballot for all ballot items on which it determines that the individual was eligible under State or federal law to vote. (2003-226, s. 15; 2005-2, s. 4; 2005-428, s. 6(b).)

Editor's Note. — Session Laws 2003-226, s. 1, provides: "The purpose of this act is to ensure that the State of North Carolina has a system for all North Carolina elections that complies with the requirements for federal elections set forth in the federal Help America Vote Act of 2002, Public Law 107-252, 116 Stat. 1666 (2002), codified at 42 U.S.C. §§ 15481-15485. "The General Assembly finds that the education and training of election officials as required by G.S. 163-82.34 has met and continues to meet the mandate for the education and training of precinct officials and other election officials in section 254(a)(3) of the Help America Vote Act of 2002. The General Assembly further finds that the establishment, development, and continued operation of the statewide list maintenance program for voter registration set forth in G.S. 163-82.14 has met and continues to meet the mandates of section 303(a)(2) of the Help America Vote Act of 2002.

"In certain other areas of the election statutes and other laws, the General Assembly finds that the statutes must be amended to comply with the Help America Vote Act."

Session Laws 2005-2, s. 1, provides: "The General Assembly makes the following findings:

"(1) In 2003, the General Assembly enacted S.L. 2003-226, which contained a number of changes to the State's election laws, designed in part to implement provisions of the federal Help America Vote Act of 2002 (HAVA) in such a way as to avoid having separate laws for federal and State elections and otherwise to encourage and expand the exercise of the franchise. One such enactment was codified as G.S. 163-166.11, which spells out procedures for the casting of provisional official ballots. A voter's eligibility to cast a provisional official ballot depends on being a registered voter in the jurisdiction in which the voter seeks to vote. The 'jurisdiction' in which a voter in North Carolina registers to vote is the county. This is the unmistakable meaning of G.S. 163-82.1 and has not heretofore been challenged or questioned.

"(2) In S.L. 2003-226, the General Assembly expressly stated its intent to 'ensure that the State of North Carolina has a system for all elections that complies with the requirements for federal elections set forth in' HAVA. It was then and is now the intent of the General Assembly that the provisions of HAVA be broadly construed and that they be implemented in North Carolina in a manner to ensure a unified system of federal and State elections in compliance with HAVA.

"(3) When it enacted G.S. 163-166.11, it was then and is now the intent of the General Assembly that any individual who is a registered voter in a county but whose name does not appear on the official list of registered voters at the voting place at which that voter appears be allowed to cast a provisional official ballot.

"(4) When it enacted G.S. 163-166.11, it was then and is now the intent of the General Assembly that all provisional ballots be counted for all those ballot items for which a voter was eligible to vote. In enacting G.S. 163-166.11 in 2003, the General Assembly was fully mindful of and intended to reinforce the fact that prior statutory enactments in 2001 had already recognized the right of a voter to cast a provisional ballot and to have that ballot counted for all items for which that voter was eligible to vote. See G.S. 163-182.2(a)(4). Even prior to 2003, the General Statutes recognized the right of a registered voter to cast a provisional ballot and to have that ballot counted for all those items for which the voter was duly qualified to vote.

"(5) When it enacted G.S. 163-166.11, it was then and is now the intent of the General Assembly that the State Board of Elections act in a manner that would result in a single system for federal and State elections, rather than one system for federal elections and another for State elections. In enacting G.S. 163-166.11 in 2003, the General Assembly was mindful of and intended to reinforce the fact that it had already provided in 2001 in G.S. 163-166.7(c)(6) that the State Board of Elections would adopt rules to ensure that voters 'not clearly eligible to vote in the precinct but who seek to vote there are given proper assistance in voting a provisional official ballot or guidance to another voting place where they are eligible to vote.' The possibility of out-of-precinct provisional voting was thus recognized by the General Assembly as early as 2001.

"(6) The law regarding provisional ballots does not rest solely on G.S. 163-82.15(e), which addresses the narrow circumstance of 'Unreported Move[s] to Another Precinct Within the County.' Though that statute mentions two ways in which precinct officials may process registrants, it is not exclusive. G.S. 163-82.15(e) is part of the statutory Article on voter registration, rather than on voting, and should be read in that context. It was enacted in 1994, before provisional voting was codified in North Carolina. The enactment of G.S. 163-166.7(c)(6) in 2001 is the authority giving the State Board of Elections the duty to apply the broader laws of provisional voting, including G.S. 163-166.11. Any reading of G.S. 163-166.11 that would limit that statute's provisions to the narrower class of voting situations governed by the earlier enacted provisions of G.S. 163-82.15(e) would ignore the long-standing principle of statutory construction that statutes relating to the same subject matter should be reconciled in such a manner as to effect the scope and meaning of the later enactment and read in a manner that would tend most completely to secure the rights of all persons affected by the legislation. It was then and is now the intent of the General Assembly in enacting G.S. 163-166.11 to expand the exercise of the franchise, not to limit it or to restrict it by the terms of earlier and narrower enactments.

"(7) The State Board of Elections and all county boards of elections were following the intent of the General Assembly when they administered G.S. 163-166.11 and the earlier enacted statutes in G.S. 163-182.2(a)(4) and G.S. 163-166.7(c)(6) to count in whole or in part ballots cast by registered voters in the county who voted outside their resident precincts in the July 20, 2004, Primary, the August 17, 2004, Second Primary, and the November 2, 2004, General Election.

"(8) Several hundred thousand registered North Carolina voters cast ballots outside their resident precincts during the one-stop absentee balloting ('early voting') period pursuant to G.S. 163-227.2 prior to the General Election in November 2004, during the two primaries in 2004, and then on the date of the General Election in November 2004. There is no statutory basis upon which to distinguish out-of-precinct voting that occurred on the date of the General Election in November 2004 from out-of-precinct voting that occurred during the First and Second Primaries in 2004 or that occurred during the period of one-stop absentee ('early') voting prior to the General Election of 2004.

"(9) The General Assembly takes note of the fact that of those registered voters who happened to vote provisional ballots outside their resident precincts on the day of the November 2004 General Election, a disproportionately high percentage were African-American.

"(10) The General Assembly notes that in addition to provisional voting on the date of the General Election pursuant to G.S. 163-166.11, the General Statutes abound with provisions that allow voters to cast votes outside their resident precincts:

"a. Civilian absentee voting by mail, G.S. 163-226.

"b. Military and overseas citizens absentee voting, G.S. 163-245.

"c. One-stop absentee (early) voting, G.S. 163-227.2.

"d. Voting in a voting place on a lot adjacent to the precinct, G.S. 163-128.

"e. Temporarily voting in an adjacent precinct, G.S. 163-128.

"f. Voting in a precinct outside the voting place where no suitable facility exists inside it or adjacent to it, G.S. 163-130.1.

"g. Voting at a central location in the county by voters who no longer live in the precinct where their name is listed on registration lists, G.S. 163-82.15(e).

"All those provisions were enacted prior to G.S. 163-166.11. Most were enacted decades before. As many as 1,000,000 people in North Carolina may have cast out-of-precinct votes using all out-of-precinct methods in 2004.

"(11) It would be fundamentally unfair to discount the provisional official ballots cast by properly registered and duly qualified voters voting and acting in reliance on the statutes adopted by the General Assembly and administered by the State Board of Elections in accordance with its intent. Moreover, to subtract such ballots only from the count for the General Election of 2004 without also doing so for the First or Second Primaries of 2004 would create a bizarre result in which out-of-precinct provisional ballots are allowed to count for some elections but not others. The General Assembly did not and does not now intend to create such a system.

"(12) Even if the State Board of Elections had misread the language and intent of the General Statutes concerning provisional voting, which it did not do, it has been the long-standing and hitherto unquestioned law of this State, confirmed by prior decisions of the North Carolina Supreme Court, that an innocent voter's ballot shall not be disqualified because of errors or omissions by elections officials. This fundamental principle was adopted by Justice Samuel J. Ervin Jr. in the case of *Owens v. Chaplin,* 228 N.C. 705 (1948) using the following language:

> 'We can conceive of no principle which permits the disfranchisement of innocent voters for the mistake, or even the willful misconduct, of election officials in performing the duty cast upon them. The object of elections is to ascertain the popular will, and not to thwart it. The object of election laws is to secure the rights of duly-qualified electors, and not to defeat them.'

"See also *Appeal of Judicial Review by Republican Candidates for Election in Clay County,* 45 N.C. App. 556 (1980).

"The General Assembly endorses and reaffirms this fundamental principle.

"(13) It is the will of the people, as expressed through their representatives in the General Assembly, that the validity of the primaries and elections conducted in 2004 and certified by a county board of elections or the State Board of Elections, not be called into question by retroactively revisiting the propriety of provisional ballots cast by duly registered voters of a county.

"(14) To avoid all doubt and remove any possible future question as to the General Assembly's plain intent with respect to the subject of provisional voting, and to avoid misinterpretation of any other statute, the General Assembly enacts Sections 2 through 5 of this act."

Subdivision (2a), added by Session Laws 2005-428, s. 6(b), effective September 22, 2005, is applicable to all primaries and elections held on or after that date.

CASE NOTES

Provisional Ballots Cast in Incorrect Precinct. — North Carolina Board of Elections, pursuant to G.S. 163-82.15(e), improperly counted provisional ballots cast by voters on election day in a general election at precincts other than the voter's correct precinct of residence. James v. Bartlett, 359 N.C. 260, 607 S.E.2d 638, 2005 N.C. LEXIS 146 (2005).

§ 163-166.12. Requirements for certain voters who register by mail.

(a) Voting in Person. — An individual who has registered to vote by mail on or after January 1, 2003, and has not previously voted in an election that includes a ballot item for federal office in North Carolina, shall present to a local election official at a voting place before voting there one of the following:

(1) A current and valid photo identification.

(2) A copy of one of the following documents that shows the name and address of the voter: a current utility bill, bank statement, government check, paycheck, or other government document.

(b) Voting Mail-In Absentee. — An individual who has registered to vote by mail on or after January 1, 2003, and has not previously voted in an election that includes a ballot item for federal office in North Carolina, in order to cast a mail-in absentee vote, shall submit with the mailed-in absentee ballot one of the following:

(1) A copy of a current and valid photo identification.

(2) A copy of one of the following documents that shows the name and address of the voter: a current utility bill, bank statement, government check, paycheck, or other government document.

(b1) The county board of elections shall note the type of identification proof submitted by the voter under the provisions of subsection (a) or (b) of this section and may dispose of the tendered copy of identification proof as soon as the type of proof is noted in the voter registration records.

(b2) Voting When Identification Numbers Do Not Match. — Regardless of whether an individual has registered by mail or by another method, if the individual has provided with the registration form a drivers license number or last four digits of a Social Security number but the computer validation of the number as required by G.S. 163-82.12 did not result in a match, and the number has not been otherwise validated by the board of elections, in the first election in which the individual votes that individual shall submit with the ballot the form of identification described in subsection (a) or subsection (b) of this section, depending upon whether the ballot is voted in person or absentee. If that identification is provided and the board of elections does not determine that the individual is otherwise ineligible to vote a ballot, the failure of identification numbers to match shall not prevent that individual from registering to vote and having that individual's vote counted. If the individual registers and votes under G.S. 163-82.6A, the identification documents required in that section, rather than those described in subsection (a) or (b) of this section, apply.

(c) The Right to Vote Provisionally. — If an individual is required under subsection (a), (b), or (b2) of this section to present identification in order to vote, but that individual does not present the required identification, that individual may vote a provisional official ballot. If the voter is at the voting place, the voter may vote provisionally there without unnecessary delay. If the voter is voting by mail-in absentee ballot, the mailed ballot without the required identification shall be treated as a provisional official ballot.

(d) Exemptions. — This section does not apply to any of the following:

(1) An individual who registers by mail and submits as part of the registration application either of the following:

a. A copy of a current and valid photo identification.

b. A copy of one of the following documents that shows the name and address of the voter: a current utility bill, bank statement, government check, paycheck, or other government document.

(2) An individual who registers by mail and submits as part of the registration application the individual's drivers license number or at least the last four digits of the individual's social security number where an election official matches either or both of the numbers submitted with an existing State identification record bearing the same number, name, and date of birth contained in the submitted registration. If any individual's number does not match, the individual shall provide identification as required in subsection (b2) of this section in the first election in which the individual votes.

(3) An individual who is entitled to vote by absentee ballot under the Uniformed and Overseas Citizens Absentee Voting Act.

(4) An individual who is entitled to vote otherwise than in person under section 3(b)(2)(B)(ii) of the Voting Accessibility for the Elderly and Handicapped Act.

(5) An individual who is entitled to vote otherwise than in person under any other federal law. (2003-226, s. 16; 2004-127, s. 3; 2007-391, s. 21(a); 2008-187, s. 33(a).)

Editor's Note. — Session Laws 2003-226, s. 1, provides: "The purpose of this act is to ensure that the State of North Carolina has a system for all North Carolina elections that complies with the requirements for federal elections set forth in the federal Help America Vote Act of 2002, Public Law 107-252, 116 Stat. 1666. (2002), codified at 42 U.S.C. §§ 15481-15485.

"The General Assembly finds that the education and training of election officials as required by G.S. 163-82.34 has met and continues to meet the mandate for the education and training of precinct officials and other election officials in section 254(a)(3) of the Help America Vote Act of 2002. The General Assembly further finds that the establishment, development, and continued operation of the statewide list maintenance program for voter registration set forth in G.S. 163-82.14 has met and continues to meet the mandates of section 303(a)(2) of the Help America Vote Act of 2002.

"In certain other areas of the election statutes and other laws, the General Assembly finds that the statutes must be amended to comply with the Help America Vote Act."

Session Laws 2007-391, s. 1(c), was amended by Session Laws 2008-198, s. 33(a), to eliminate any confusion as to effective dates of the 2007 act. Session Laws 2007-391, s. 21(a), which added subsection (b2), substituted "(a), (b), or (b2)" for "(a) or (b)" in subsection (c), and added the last sentence in (d)(2), is effective August 19, 2007.

CASE NOTES

Cited in James v. Bartlett, 359 N.C. 260, 607 S.E.2d 638, 2005 N.C. LEXIS 146 (2005).

§ 163-167: Reserved for future codification purposes.

ARTICLE 15.

Counting Ballots, Canvassing Votes, and Certifying Results in Precinct and County.

§§ 163-168 through 163-181: Repealed by Session Laws 2001-398, s. 1, effective January 1, 2002.

Editor's Note. — Repealed G.S. 163-178 had been repealed by Session Laws 1981, c. 564, s. 1. Sections 163-182 to 163-186 had been reserved under this Article for future codification purposes. Section 163-182 is now codified under Article 15A.

Article 15A.

Counting Official Ballots, Canvassing Votes, Hearing Protests, and Certifying Results.

§ 163-182. Definitions.

In addition to the definitions stated below, the definitions set forth in Article 13A of Chapter 163 of the General Statutes also apply to this Article. As used in this Article, the following definitions apply:

(1) "Abstract" means a document signed by the members of the board of elections showing the votes for each candidate and ballot proposal on the official ballot in the election. The abstract shall show a total number of votes for each candidate in each precinct and a total for each candidate in the county. It shall also show the number of votes for each candidate among the absentee official ballots, among the provisional official ballots, and in any other category of official ballots that is not otherwise reported.

(2) "Certificate of election" means a document prepared by the official or body with the legal authority to do so, conferring upon a candidate the right to assume an elective office as a result of being elected to it.

(3) "Composite abstract" means a document signed by the members of the State Board of Elections showing the total number of votes for each candidate and ballot proposal and the number of votes in each county. A composite abstract does not include precinct returns.

(4) "Protest" means a complaint concerning the conduct of an election which, if supported by sufficient evidence, may require remedy by one or more of the following:
  a. A correction in the returns.
  b. A discretionary recount as provided in G.S. 163-182.7.
  c. A new election as provided in G.S. 163-182.13. (2001-398, s. 3.)

Editor's Note. — At the direction of the Revisor of Statutes, subdivisions (2) and (3) have been redesignated as subdivisions (3) and (2), respectively, to maintain alphabetical order.

Session Laws 2001-398, s. 16, provides: "The State Board of Elections shall adopt temporary rules pursuant to G.S. 150B-21.1(a5) prior to the first election following the effective date of this act."

Former G.S. 163-182 had been reserved for future codification purposes under Article 15, which was repealed by Session Laws 2001-398, s. 1, effective January 1, 2002.

Legal Periodicals. — For article, "'High Court Wrongly Elected': A Public Choice Model of Judging and Its Implications for the Voting Rights Act," see 75 N.C.L. Rev. 1305 (1997).

CASE NOTES

Editor's Note. *— The case below was decided under former Article 13, which was repealed by Session Laws 2001-460, s. 1.*

As to construction of former Article 10 in pari materia with primary election law, see Phillips v. Slaughter, 209 N.C. 543, 183 S.E. 897 (1935); McLean v. Durham County Bd. of Elections, 222 N.C. 6, 21 S.E.2d 842 (1942).

§ 163-182.1. Principles and rules for counting official ballots.

(a) General Principles That Shall Apply. — The following general principles shall apply in the counting of official ballots, whether the initial count or any recount:

(1) Only official ballots shall be counted.

(2) No official ballot shall be rejected because of technical errors in marking it, unless it is impossible to clearly determine the voter's choice.

(3) If it is impossible to clearly determine a voter's choice in a ballot item, the official ballot shall not be counted for that ballot item, but shall be counted in all other ballot items in which the voter's choice can be clearly determined.

(4) If an official ballot is marked in a ballot item with more choices than there are offices to be filled or propositions that may prevail, the official ballot shall not be counted for that ballot item, but shall be counted in all other ballot items in which there is no overvote and the voter's choice can be clearly determined.

(5) If an official ballot is rejected by a scanner or other counting machine, but human counters can clearly determine the voter's choice, the official ballot shall be counted by hand and eye.

(6) Write-in votes shall not be counted in party primaries or in referenda, but shall be counted in general elections if all of the following are true:

a. The write-in vote is written by the voter or by a person authorized to assist the voter pursuant to G.S. 163-166.8.

b. The write-in vote is not cast for a candidate who has failed to qualify under G.S. 163-123 as a write-in candidate.

c. The voter's choice can be clearly determined.

(7) Straight-party ticket and split-ticket votes shall be counted in general elections according to the following guidelines:

a. If a voter casts a vote for a straight-party ticket, that vote shall be counted for all the candidates of that party, other than those for President and Vice President, in the partisan ballot items on that official ballot except as otherwise provided in this subdivision.

b. If a voter casts a vote for a straight-party ticket and also votes in a partisan ballot item for a candidate not of that party, the official ballot shall be counted in that ballot item only for the individually marked candidate. In partisan ballot items where no mark is made for an individual candidate, the official ballot shall be counted for the candidates of the party whose straight ticket the voter voted.

c. If a voter casts a vote for a straight-party ticket and also casts a write-in vote in any partisan ballot item, the straight-party ticket vote shall not control the way the official ballot is counted in that ballot item, except to the extent it would control in the case of crossover voting under this subdivision. The following principles shall apply:

1. If the write-in vote is proper under subdivision (6) of this subsection, that write-in candidate shall receive a vote.

2. If the write-in vote is not proper under subdivision (6) of this subsection and no other candidate is individually marked in that ballot item, then no vote shall be counted in that ballot item.

3. If the straight-ticket voter casts both write-in votes and individually marked votes for ballot candidates in a ballot item, then the write-in and individually marked votes shall be counted unless the write-in is not proper under subdivision (6) of this subsection or an overvote results.

(b) Procedures and Standards. — The State Board of Elections shall adopt uniform and nondiscriminatory procedures and standards for voting systems. The standards shall define what constitutes a vote and what will be counted as a vote for each category of voting system used in the State. The State Board shall adopt those procedures and standards at a meeting occurring not earlier than 15 days after the State Board gives notice of the meeting. The procedures and standards adopted shall apply to all elections occurring in the State and shall be subject to amendment or repeal by the State Board acting at any meeting where notice that the action has been proposed has been given at least 15 days before the meeting. These procedures and standards shall not be considered to be rules subject to Article 2A of Chapter 150B of the General Statutes. However, the State Board shall publish in the North Carolina Register the procedures and standards and any changes to them after adoption, with that publication noted as information helpful to the public under G.S. 150B-21.17(a)(6). Copies of those procedures and standards shall be made available to the public upon request or otherwise by the State Board. For optical scan and direct record electronic voting systems, and for any other voting systems in which ballots are counted other than on paper by hand and eye, those procedures and standards shall do both of the following:

(1) Provide for a sample hand-to-eye count of the paper ballots or paper records of a statewide ballot item in every county. The presidential ballot item shall be the subject of the sampling in a presidential election. If there is no statewide ballot item, the State Board shall provide a process for selecting district or local ballot items to adequately sample the electorate. The State Board shall approve in an open meeting the procedure for randomly selecting the sample precincts for each election. The random selection of precincts for any county shall be done publicly after the initial count of election returns for that county is publicly released or 24 hours after the polls close on election day, whichever is earlier. The sample chosen by the State Board shall be of one or more full precincts, full counts of mailed absentee ballots, full counts of one or more one-stop early voting sites, or a combination. The size of the sample of each category shall be chosen to produce a statistically significant result and shall be chosen after consultation with a statistician. The actual units shall be chosen at random. In the event of a material discrepancy between the electronic or mechanical count and a hand-to-eye count, the hand-to-eye count shall control, except where paper ballots or records have been lost or destroyed or where there is another reasonable basis to conclude that the hand-to-eye count is not the true count. If the discrepancy between the hand-to-eye count and the mechanical or electronic count is significant, a complete hand-to-eye count shall be conducted.

(2) Provide that if the voter selects votes for more than the number of candidates to be elected or proposals to be approved in a ballot item, the voting system shall do all the following:
  a. Notify the voter that the voter has selected more than the correct number of candidates or proposals in the ballot item.
  b. Notify the voter before the vote is accepted and counted of the effect of casting overvotes in the ballot item.
  c. Provide the voter with the opportunity to correct the official ballot before it is accepted and counted. (2001-398, s. 3; 2003-226, s. 13; 2005-323, s. 5(a); 2006-192, s. 7(a); 2006-264, s. 76(b).)

Editor's Note. — Session Laws 2003-226, s. 1, provides: "The purpose of this act is to ensure that the State of North Carolina has a system for all North Carolina elections that complies with the requirements for federal elections set forth in the federal Help America Vote Act of 2002, Public Law 107-252, 116 Stat. 1666 (2002), codified at 42 U.S.C. §§ 15481-15485.

"The General Assembly finds that the education and training of election officials as required by G.S. 163-82.34 has met and continues to meet the mandate for the education and training of precinct officials and other election officials in section 254(a)(3) of the Help America Vote Act of 2002. The General Assembly further finds that the establishment, development, and continued operation of the statewide list maintenance program for voter registration set forth in G.S. 163-82.14 has met and continues to meet the mandates of section 303(a)(2) of the Help America Vote Act of 2002.

"In certain other areas of the election statutes and other laws, the General Assembly finds that the statutes must be amended to comply with the Help America Vote Act."

CASE NOTES

Editor's Note. — *The cases below were decided under former Articles 13 and 15.*

Constitutionality of Anti-Single Shot Law. — Selective and arbitrary application of the anti-single shot law formerly set forth in this section [former G.S. 163-151] in some districts and not in others denied to the voters of North Carolina the equal protection of the laws and was unconstitutional, as the state showed no justification or even rationale for discriminating between voters of covered and exempted areas. Such an unexplained classification was inherently suspect and failed even the ordinary test of equal protection. Dunston v. Scott, 336 F. Supp. 206 (E.D.N.C. 1972).

The anti-single shot law formerly contained in this section [former G.S. 163-151] denied to voters in North Carolina the equal protection of the laws, because it allowed voters to single shot vote in some areas of the state while prohibiting this manner of voting in others, and the state showed no justification for this discrimination. Dunston v. Scott, 336 F. Supp. 206 (E.D.N.C. 1972).

Legislative directive to count an improperly split ballot as a vote for the straight party ticket is unconstitutional. — This provision of the statute [former G.S. 163-151] denies the equal protection of the laws to both the voter and the opponent of the candidate named on the straight party ticket. Hendon v. North Carolina State Bd. of Elections, 710 F.2d 177 (4th Cir. 1983).

This provision of the statute [former G.S. 163-170] denies the equal protection of the laws to both the voter and the opponent of the candidate named on the straight party ticket. Hendon v. North Carolina State Bd. of Elections, 710 F.2d 177 (4th Cir. 1983).

Although subdivision (5)a of this section [former § 163-151] is not facially unconstitutional, it may turn out to be unconstitutionally applied if (1) the electronic punch card system (CES) and optically scanned paper ballot system (Airmac) can be programmed to record split tickets in substantially the same manner as voting machines, and (2) the State offers no rational explanation for requiring voters who are furnished the CES and Airmac systems to suffer a much more onerous burden than voters who are furnished voting machines. Hendon v. North Carolina State Bd. of Elections, 710 F.2d 177 (4th Cir. 1983).

Treatment of Amendments Under Voting Rights Act. — Every amendment to the anti-single shot law formerly contained in this section [former G.S. 163-151], whether an addition or deletion, which affected any part of one or more of the 39 counties covered by the Voting Rights Act of 1965 should have been submitted to the Attorney General of the United States or been the subject of a declaratory judgment action as outlined by 42 U.S.C. § 1973c. Dunston v. Scott, 336 F. Supp. 206 (E.D.N.C. 1972).

Write-in provisions of this section [former § 163-151] are not available to candidate denied access to primary election ballot under § 163-107, nor are the provisions of G.S. 163-96, 163-98 and 163-122. Brown v. North Carolina State Bd. of Elections, 394 F. Supp. 359 (W.D.N.C. 1975).

Extrinsic Evidence to Determine Voter's Choice. — If a write-in candidate's name is on the ballot, but not in exact accordance with mandatory statutory requirements, the court may look to extrinsic evidence to see if the voter's choice can be determined. In re Manteo Town Election, 117 N.C. App. 213, 450 S.E.2d 519 (1994).

Ballots which had no name written on them did not express an intention of the voter's choice because they did not contain a write-in candidate's name, a variation of his name, or any name at all, and completely disregarded the requirements of this section [former G.S. 163-151] and former G.S. 163-170, or the instructions on the ballot. In re Manteo Town Election, 117 N.C. App. 213, 450 S.E.2d 519 (1994).

Evidence as to Which of Two Candidates with Same Name Intended. — If there are two candidates for different offices who have the same name, and a ticket is found in the ballot box having that name and no other on it, it may be proved by extrinsic evidence for which of the candidates it was given. Wilson v. Peterson, 69 N.C. 113 (1873).

Ballots Held Improperly Rejected. — The statute [former G.S. 163-170] does not contemplate throwing out the whole ballot for voting one ticket for too many candidates. Hence, a ballot for one claiming the office of register of deeds, which was thrown out because it contained two unmarked names, instead of one, for the office of recorder of the county, was improperly rejected as a vote for register, since the elector's choice for such office was properly indicated. Bray v. Baxter, 171 N.C. 6, 86 S.E. 163 (1915).

A ballot the only defect of which was that it contained unmarked names of four persons for the office of county commissioner, while only three commissioners were to be elected, was improperly rejected. Bray v. Baxter, 171 N.C. 6, 86 S.E. 163 (1915).

Ballots which had no name written on them did not express an intention of the voter's choice because they did not contain a write-in candidate's name, a variation of his name, or any name at all, and completely disregarded the requirements of former G.S. 163-151 and 163-170, or the instructions on the ballot. In re Manteo Town Election, 117 N.C. App. 213, 450 S.E.2d 519 (1994).

Applied in In re Cleveland County Comm'rs, 56 N.C. App. 187, 287 S.E.2d 451 (1982).

Cited in Hendon v. North Carolina State Bd. of Elections, 633 F. Supp. 454 (W.D.N.C. 1986).

§ 163-182.2. Initial counting of official ballots.

(a) The initial counting of official ballots shall be conducted according to the following principles:

(1) Vote counting at the precinct shall occur immediately after the polls close and shall be continuous until completed.

(2) Vote counting at the precinct shall be conducted with the participation of precinct officials of all political parties then present. Vote counting at the county board of elections shall be conducted in the presence or under the supervision of board members of all political parties then present.

(3) Any member of the public wishing to witness the vote count at any level shall be allowed to do so. No witness shall interfere with the orderly counting of the official ballots. Witnesses shall not participate in the official counting of official ballots.

(4) Provisional official ballots shall be counted by the county board of elections before the canvass. If the county board finds that an individual voting a provisional official ballot is not eligible to vote in one or more ballot items on the official ballot, the board shall not count the official ballot in those ballot items, but shall count the official ballot in any ballot items for which the individual is eligible to vote. Eligibility shall be determined by whether the voter is registered in the county as provided in G.S. 163-82.1 and whether the voter is qualified by residency to vote in the election district as provided in G.S. 163-55 and G.S. 163-57. If a voter was properly registered to vote in the election by the county board, no mistake of an election official in giving the voter a ballot or in failing to comply with G.S. 163-82.15 or G.S. 163-166.11 shall serve to prevent the counting of the vote on any ballot item the voter was eligible by registration and qualified by residency to vote.

(5) Precinct officials shall provide a preliminary report of the vote counting to the county board of elections as quickly as possible. The preliminary report shall be unofficial and has no binding effect upon the official county canvass to follow.

(6) In counties that use any certified mechanical or electronic voting system, subject to the sample counts under G.S. 163-182.1 and subdivision (1a) of subsection (b) of this section, and of a hand-to-eye recount under G.S. 163-182.7 and G.S. 163-182.7A, a board of elections shall rely in its canvass on the mechanical or electronic count of the vote rather than the full hand-to-eye count of the paper ballots or records. In the event of a material discrepancy between the electronic or mechanical count and a hand-to-eye count or recount, the hand-to-eye count or recount shall control, except where paper ballots or records have been lost or destroyed or where there is another

reasonable basis to conclude that the hand-to-eye count is not the true count.

(b) The State Board of Elections shall promulgate rules for the initial counting of official ballots. All election officials shall be governed by those rules. In promulgating those rules, the State Board shall adhere to the following guidelines:

(1) For each voting system used, the rules shall specify the role of precinct officials and of the county board of elections in the initial counting of official ballots.

(1a) For optical scan and direct record electronic voting systems, and for any other voting systems in which ballots are counted other than on paper by hand and eye, those rules shall provide for a sample hand-to-eye count of the paper ballots or paper records of a sampling of a statewide ballot item in every county. The presidential ballot item shall be the subject of the sampling in a presidential election. If there is no statewide ballot item, the State Board shall provide a process for selecting district or local ballot items to adequately sample the electorate. The State Board shall approve in an open meeting the procedure for randomly selecting the sample precincts for each election. The random selection of precincts for any county shall be done publicly after the initial count of election returns for that county is publicly released or 24 hours after the polls close on election day, whichever is earlier. The sample chosen by the State Board shall be of one or more full precincts, full counts of mailed absentee ballots, and full counts of one or more one-stop early voting sites. The size of the sample of each category shall be chosen to produce a statistically significant result and shall be chosen after consultation with a statistician. The actual units shall be chosen at random. In the event of a material discrepancy between the electronic or mechanical count and a hand-to-eye count, the hand-to-eye count shall control, except where paper ballots or records have been lost or destroyed or where there is another reasonable basis to conclude that the hand-to-eye count is not the true count. If the discrepancy between the hand-to-eye count and the mechanical or electronic count is significant, a complete hand-to-eye count shall be conducted. The sample count need not be done on election night.

(2) The rules shall provide for accurate unofficial reporting of the results from the precinct to the county board of elections with reasonable speed on the night of the election.

(3) The rules shall provide for the prompt and secure transmission of official ballots from the voting place to the county board of elections.

The State Board shall direct the county boards of elections in the application of the principles and rules in individual circumstances. (2001-398, s. 3; 2005-2, s. 5; 2005-323, s. 5(b); 2006-192, s. 7(b); 2006-264, s. 76(c).)

Editor's Note. — Session Laws 2005-2, s. 1, provides: "The General Assembly makes the following findings:

"(1) In 2003, the General Assembly enacted S.L. 2003-226, which contained a number of changes to the State's election laws, designed in part to implement provisions of the federal Help America Vote Act of 2002 (HAVA) in such a way as to avoid having separate laws for federal and State elections and otherwise to encourage and expand the exercise of the franchise. One such enactment was codified as G.S. 163-166.11, which spells out procedures for the casting of provisional official ballots. A voter's eligibility to cast a provisional official ballot depends on being a registered voter in the jurisdiction in which the voter seeks to vote. The 'jurisdiction' in which a voter in North Carolina registers to vote is the county. This is the unmistakable meaning of G.S. 163-82.1 and has not heretofore been challenged or questioned.

"(2) In S.L. 2003-226, the General Assembly expressly stated its intent to 'ensure that the State of North Carolina has a system for all elections that complies with the requirements for federal elections set forth in' HAVA. It was then and is now the intent of the General Assembly that the provisions of HAVA be broadly construed and that they be implemented in North Carolina in a manner to ensure a unified system of federal and State elections in compliance with HAVA.

"(3) When it enacted G.S. 163-166.11, it was then and is now the intent of the General Assembly that any individual who is a registered voter in a county but whose name does not appear on the official list of registered voters at the voting place at which that voter appears be allowed to cast a provisional official ballot.

"(4) When it enacted G.S. 163-166.11, it was then and is now the intent of the General Assembly that all provisional ballots be counted for all those ballot items for which a voter was eligible to vote. In enacting G.S. 163-166.11 in 2003, the General Assembly was fully mindful of and intended to reinforce the fact that prior statutory enactments in 2001 had already recognized the right of a voter to cast a provisional ballot and to have that ballot counted for all items for which that voter was eligible to vote. See G.S. 163-182.2(a)(4). Even prior to 2003, the General Statutes recognized the right of a registered voter to cast a provisional ballot and to have that ballot counted for all those items for which the voter was duly qualified to vote.

"(5) When it enacted G.S. 163-166.11, it was then and is now the intent of the General Assembly that the State Board of Elections act in a manner that would result in a single system for federal and State elections, rather than one system for federal elections and another for State elections. In enacting G.S. 163-166.11 in 2003, the General Assembly was mindful of and intended to reinforce the fact that it had already provided in 2001 in G.S. 163-166.7(c)(6) that the State Board of Elections would adopt rules to ensure that voters 'not clearly eligible to vote in the precinct but who seek to vote there are given proper assistance in voting a provisional official ballot or guidance to another voting place where they are eligible to vote.' The possibility of out-of-precinct provisional voting was thus recognized by the General Assembly as early as 2001.

"(6) The law regarding provisional ballots does not rest solely on G.S. 163-82.15(e), which addresses the narrow circumstance of 'Unreported Move[s] to Another Precinct Within the County.' Though that statute mentions two ways in which precinct officials may process registrants, it is not exclusive. G.S. 163-82.15(e) is part of the statutory Article on voter registration, rather than on voting, and should be read in that context. It was enacted in 1994, before provisional voting was codified in North Carolina. The enactment of G.S. 163-166.7(c)(6) in 2001 is the authority giving the State Board of Elections the duty to apply the broader laws of provisional voting, including G.S. 163-166.11. Any reading of G.S. 163-166.11 that would limit that statute's provisions to the narrower class of voting situations governed by the earlier enacted provisions of G.S. 163-82.15(e) would ignore the long-standing principle of statutory construction that statutes relating to the same subject matter should be reconciled in such a manner as to effect the scope and meaning of the later enactment and read in a manner that would tend most completely to secure the rights of all persons affected by the legislation. It was then and is now the intent of the General Assembly in enacting G.S. 163-166.11 to expand the exercise of the franchise, not to limit it or to restrict it by the terms of earlier and narrower enactments.

"(7) The State Board of Elections and all county boards of elections were following the intent of the General Assembly when they administered G.S. 163-166.11 and the earlier enacted statutes in G.S. 163-182.2(a)(4) and G.S. 163-166.7(c)(6) to count in whole or in part ballots cast by registered voters in the county who voted outside their resident precincts in the July 20, 2004, Primary, the August 17, 2004, Second Primary, and the November 2, 2004, General Election.

"(8) Several hundred thousand registered North Carolina voters cast ballots outside their resident precincts during the one-stop absentee balloting ('early voting') period pursuant to G.S. 163-227.2 prior to the General Election in November 2004, during the two primaries in 2004, and then on the date of the General Election in November 2004. There is no statutory basis upon which to distinguish out-of-precinct voting that occurred on the date of the General Election in November 2004 from out-of-precinct voting that occurred during the First and Second Primaries in 2004 or that occurred during the period of one-stop absentee ('early') voting prior to the General Election of 2004.

"(9) The General Assembly takes note of the fact that of those registered voters who happened to vote provisional ballots outside their resident precincts on the day of the November 2004 General Election, a disproportionately high percentage were African-American.

"(10) The General Assembly notes that in addition to provisional voting on the date of the General Election pursuant to G.S. 163-166.11, the General Statutes abound with provisions that allow voters to cast votes outside their resident precincts:

"a. Civilian absentee voting by mail, G.S. 163-226.

"b. Military and overseas citizens absentee voting, G.S. 163-245.

"c. One-stop absentee (early) voting, G.S. 163-227.2.

"d. Voting in a voting place on a lot adjacent to the precinct, G.S. 163-128.

"e. Temporarily voting in an adjacent precinct, G.S. 163-128.

"f. Voting in a precinct outside the voting place where no suitable facility exists inside it or adjacent to it, G.S. 163-130.1.

"g. Voting at a central location in the county by voters who no longer live in the precinct where their name is listed on registration lists, G.S. 163-82.15(e).

"All those provisions were enacted prior to G.S. 163-166.11. Most were enacted decades before. As many as 1,000,000 people in North Carolina may have cast out-of-precinct votes using all out-of-precinct methods in 2004.

"(11) It would be fundamentally unfair to discount the provisional official ballots cast by properly registered and duly qualified voters voting and acting in reliance on the statutes adopted by the General Assembly and administered by the State Board of Elections in accordance with its intent. Moreover, to subtract such ballots only from the count for the General Election of 2004 without also doing so for the First or Second Primaries of 2004 would create a bizarre result in which out-of-precinct provisional ballots are allowed to count for some elections but not others. The General Assembly did not and does not now intend to create such a system.

"(12) Even if the State Board of Elections had misread the language and intent of the General Statutes concerning provisional voting, which it did not do, it has been the long-standing and hitherto unquestioned law of this State, confirmed by prior decisions of the North Carolina Supreme Court, that an innocent voter's ballot shall not be disqualified because of errors or omissions by elections officials. This fundamental principle was adopted by Justice Samuel J. Ervin Jr. in the case of *Owens v. Chaplin,* 228 N.C. 705 (1948) using the following language:

> 'We can conceive of no principle which permits the disfranchisement of innocent voters for the mistake, or even the willful misconduct, of election officials in performing the duty cast upon them. The object of elections is to ascertain the popular will, and not to thwart it. The object of election laws is to secure the rights of duly-qualified electors, and not to defeat them.'

"See also *Appeal of Judicial Review by Republican Candidates for Election in Clay County,* 45 N.C. App. 556 (1980).

"The General Assembly endorses and reaffirms this fundamental principle.

"(13) It is the will of the people, as expressed through their representatives in the General Assembly, that the validity of the primaries and elections conducted in 2004 and certified by a county board of elections or the State Board of Elections, not be called into question by retroactively revisiting the propriety of provisional ballots cast by duly registered voters of a county.

"(14) To avoid all doubt and remove any possible future question as to the General Assembly's plain intent with respect to the subject of provisional voting, and to avoid misinterpretation of any other statute, the General Assembly enacts Sections 2 through 5 of this act."

CASE NOTES

Editor's Note. *— The case below was decided under former Article 15, which was repealed by Session Laws 2001-398, s. 1.*

Counting by Persons Other Than Officers of Election. — While it is irregular to permit persons other than the officers of election to count the ballots, yet, unless it appears affirmatively that the count was not correct, that fact will not be allowed to vitiate the election, especially when the judges accepted and certified the result thus ascertained as true. Roberts v. Calvert, 98 N.C. 580, 4 S.E. 127 (1887).

§ 163-182.3. Responsibility of chief judge.

The chief judge of each precinct shall be responsible for the adherence of the precinct officials to the State Board rules for counting, reporting, and transmitting official ballots. (2001-398, s. 3.)

§ 163-182.4. Jurisdiction for certain ballot items.

(a) Jurisdiction of County Board of Elections. — As used in this Article, the county board of elections shall have jurisdiction over the following:

(1) Offices of that county, including clerk of superior court and register of deeds.

(2) Membership in either house of the General Assembly from a district lying entirely within that county.

(3) Offices of municipalities, unless the municipality has a valid board of election.
(4) Referenda in which only residents of that county are eligible to vote.

(b) Jurisdiction of State Board of Elections. — As used in this Article, the State Board of Elections shall have jurisdiction over the following:

(1) National offices.
(2) State offices.
(3) District offices (including General Assembly seats) in which the district lies in more than one county.
(4) Superior court judge, district court judge, and district attorney, regardless of whether the district lies entirely in one county or in more than one county.
(5) Referenda in which residents of more than one county are eligible to vote.

(c) For the purposes of this Article, having jurisdiction shall mean that the appropriate board shall do all of the following with regard to the ballot item:

(1) Canvass for the entire electorate for the ballot item.
(2) Prepare abstracts or composite abstracts for the entire electorate for the ballot item.
(3) Issue certificates of nomination and election. (2001-398, s. 3.)

§ 163-182.5. Canvassing votes.

(a) The Canvass. — As used in this Article, the term “canvass” means the entire process of determining that the votes have been counted and tabulated correctly, culminating in the authentication of the official election results. The board of elections conducting a canvass has authority to send for papers and persons and to examine them and pass upon the legality of disputed ballots.

(b) Canvassing by County Board of Elections. — The county board of elections shall meet at 11:00 A.M. on the tenth day after every election held on the same day as a general election in November of the even-numbered year, and at 11:00 A.M. on the seventh day after every other election, to complete the canvass of votes cast and to authenticate the count in every ballot item in the county by determining that the votes have been counted and tabulated correctly. If, despite due diligence by election officials, the initial counting of all the votes has not been completed by that time, the county board may hold the canvass meeting a reasonable time thereafter. The canvass meeting shall be at the county board of elections office, unless the county board, by unanimous vote of all its members, designates another site within the county. The county board shall examine the returns from precincts, from absentee official ballots, from the sample hand-to-eye paper ballot counts, and from provisional official ballots and shall conduct the canvass.

(c) Canvassing by State Board of Elections. — After each general election, the State Board of Elections shall meet at 11:00 A.M. on the Tuesday three weeks after election day to complete the canvass of votes cast in all ballot items within the jurisdiction of the State Board of Elections and to authenticate the count in every ballot item in the county by determining that the votes have been counted and tabulated correctly. After each primary, the State Board shall fix the date of its canvass meeting. If, by the time of its scheduled canvass meeting, the State Board has not received the county canvasses, the State Board may adjourn for not more than 10 days to secure the missing abstracts. In obtaining them, the State Board is authorized to secure the originals or copies from the appropriate clerks of superior court or county boards of elections, at the expense of the counties. (2001-398, s. 3; 2003-278, s. 10(a); 2005-323, s. 5(c); 2005-428, s. 11(a).)

CASE NOTES

***Editor's Note.** — The cases below were decided under former Articles 15 and 16, which were repealed by Session Laws 2001-398, s. 1.*

Judicial Powers of County Board. — The county board of canvassers (now the county board of elections) is vested with statutory authority to pass judicially upon all facts relative to the election and to determine judicially and declare the results, and the courts will not interfere with the exercise of this discretion, except in an action to try title to the office by quo warranto. Britt v. Board of Canvassers, 172 N.C. 797, 90 S.E. 1005 (1916).

Canvass of Primary and Election Returns for County Offices by County Board. — A county board of elections is the proper agency to canvass the returns in a primary for the selection of party nominees for county offices, as well as in a general election to fill such offices. Ponder v. Joslin, 262 N.C. 496, 138 S.E.2d 143 (1964).

Authority to Conduct Recount in Primary Election. — Where a candidate in a primary election, prior to the time fixed for the county board of elections to canvass the returns, suggested errors in tabulating ballots in certain precincts because persons not legally qualified acted as counters and tabulators, but made no assertion that any person voted who was not entitled to vote or that any qualified elector was prevented from voting, and filed a written request for recount, the county board had the authority, in the exercise of its judgment and discretion in good faith, to order and conduct a recount of the ballots cast and to certify the candidate having the majority of the votes as ascertained by such recount as the nominee of the party, notwithstanding that the returns of the precinct officials were regular upon their face. Strickland v. Hill, 253 N.C. 198, 116 S.E.2d 463 (1960).

Access to Ballot Boxes. — Former version of G.S. 163-143, similar to the last paragraph of this section [former G.S. 163-175], applied only "when, on account of errors in tabulating returns or filling out blanks," the result of the election could not be accurately known, and conferred no authority on the courts to investigate and pass upon the methods or manner in which the primary might have been conducted. Brown v. Costen, 176 N.C. 63, 96 S.E. 659 (1918).

Returns made by the precinct officials constitute only a preliminary step in ascertaining the results of an election, and such returns must be canvassed and declared by the board of canvassers (now the board of elections) as an essential part of the election machinery. Ledwell v. Proctor, 221 N.C. 161, 19 S.E.2d 234 (1942).

Correction of Tabulations by Registrar and Judges of Election. — In a primary for county officers, the registrar (now chief judge) and judges of election may correct their tabulation of the results to the county board of elections before the latter has judicially determined the results, as the duties of the latter board are continuous, and such powers are not functus officio until they have finally determined the results of the election. Bell v. County Bd. of Elections, 188 N.C. 311, 124 S.E. 311 (1924).

Supplementary Returns After Adjournments of Registrar and Judges. — Additional or supplemental returns made up by the county board of canvassers (now the county board of elections) after the registrar and poll holders (now the chief judge and judges) had fully performed their duties and adjourned, and without calling them together for reconsideration as a body, should not be given effect by the courts. Britt v. Board of Canvassers, 172 N.C. 797, 90 S.E. 1005 (1916).

Result as Declared by Board Prima Facie Correct. — In proceedings in the nature of a quo warranto to determine the respective rights of the parties contesting for an office, the result of the election, as declared by the county board of canvassers (now the county board of elections), must be taken as prima facie correct. State ex rel. Robertson v. Jackson, 183 N.C. 695, 110 S.E. 593 (1922).

The finding by the board of canvassers (now the county board of elections) as to the number of votes received by a contestant in an election is prima facie correct. State ex rel. Jones v. Flynt, 159 N.C. 87, 74 S.E. 817 (1912).

There is a final and conclusive presumption in favor of the correctness of the result of an election, as declared by the proper officials, until the issues raised by the pleadings have been tried and disposed of before the jury. Wallace v. Salisbury, 147 N.C. 58, 60 S.E. 713 (1908).

Decisions of Board Subject to Collateral Attack. — The decisions or judgments of the county board of canvassers (now the county board of elections) are not of such conclusiveness or finality as to exclude collateral attack, and the use of the word "judicially" in the statute [former G.S. 163-175] does not affect the construction. State ex rel. Barnett v. Midgett, 151 N.C. 1, 65 S.E. 441 (1909).

Quo Warranto as Remedy to Determine Correctness of Election Result. — The correctness of the result of the election of a clerk of the superior court, determined and declared by the county board of canvassers (now the county board of elections), can be investigated, passed upon and determined in a civil action in the nature of a quo warranto, and such is the proper remedy. State ex rel. Barnett v. Midgett, 151 N.C. 1, 65 S.E. 441 (1909).

Jurisdiction of Superior Court in Quo Warranto. — The act of the county canvassers (now the county board of elections) in declaring the result of an election to public office cannot have the effect of ousting the jurisdiction of the superior court in quo warranto or information in the nature thereof. Harkrader v. Lawrence, 190 N.C. 441, 130 S.E. 35 (1925).

As to use of mandamus to reconvene board to require board to complete its labors, see Britt v. Board of Canvassers, 172 N.C. 797, 90 S.E. 1005 (1916).

Mandamus by Candidate. — Where county board of elections has assumed to pass upon the qualifications of the electors voting in a primary for the selection of a party candidate for a county office, and in so doing has declared certain of the electors disqualified and has accordingly changed its returns and declared the one appearing to have received a smaller vote as the choice of the party as a candidate, an action will lie by the one appearing to have received the larger vote against the county board, to compel them, by mandamus, to tabulate the returns made by the registrars (now chief judges) and judges of the precinct, and then to publish and declare the same as the result of the election. Rowland v. Board of Elections, 184 N.C. 78, 113 S.E. 629 (1922).

State Board of Elections has general supervision over primaries and elections in the State, with authority to promulgate legally consistent rules and regulations for their conduct and to compel the observance of the election laws by county boards of election. Burgin v. North Carolina State Bd. of Elections, 214 N.C. 140, 198 S.E. 592 (1938).

Supervisory Power Not Affected by Canvassing Duties. — The duty of the State Board to canvass returns and declare the count does not affect its supervisory power, which perforce must be exercised prior to the final acceptance of the returns made by the county boards. Burgin v. North Carolina State Bd. of Elections, 214 N.C. 140, 198 S.E. 592 (1938).

The fact that, after the returns are in, the State Board of Elections is to canvass the returns and determine who has been nominated or elected is not to be construed as a denial or negation of its supervisory powers, which perforce are to be exercised prior to the final acceptance of the several returns. Ponder v. Joslin, 262 N.C. 496, 138 S.E.2d 143 (1964).

Canvass of Primary Returns in Multi-County Senatorial District. — The State Board of Elections is the appropriate agency to canvass and judicially declare the results of a primary for the nomination of a candidate in a senatorial district composed of more than one county. A county board of elections in a multiple county senatorial district has no such power. Ponder v. Joslin, 262 N.C. 496, 138 S.E.2d 143 (1964).

The courts will not undertake to control the State Board in exercising its duty of general supervision so long as such supervision conforms to the rudiments of fair play and the statutes on the subject. Ponder v. Joslin, 262 N.C. 496, 138 S.E.2d 143 (1964).

Review of State Board's Decision. — When the State Board of Elections obtained jurisdiction of an election protest upon an appeal from a single county in a multiple county senatorial district, or by the filing in apt time of a protest directly with the State Board of Elections, its decision could only be reviewed in the manner prescribed by former G.S. 143-306 et seq. (now repealed). Ponder v. Joslin, 262 N.C. 496, 138 S.E.2d 143 (1964).

§ 163-182.6. Abstracts.

(a) Abstracts to Be Prepared by County Board of Elections. — As soon as the county canvass has been completed, the county board of elections shall prepare abstracts of all the ballot items in a form prescribed by the State Board of Elections. The county board shall prepare those abstracts in triplicate originals. The county board shall retain one of the triplicate originals, and shall distribute one each to the clerk of superior court for the county and the State Board of Elections. The State Highway Patrol may, upon request of the State Board of Elections, be responsible for the delivery of the abstracts from each county to the State Board of Elections. The State Board of Elections shall forward the original abstract it receives to the Secretary of State.

(b) Composite Abstracts to Be Prepared by the State Board of Elections. — As soon as the State canvass has been completed, the State Board shall prepare composite abstracts of all those ballot items. It shall prepare those composite abstracts in duplicate originals. It shall retain one of the originals and shall send the other original to the Secretary of State.

(c) Duty of the Secretary of State. — The Secretary of State shall maintain the certified copies of abstracts received from the county and State boards of elections. The Secretary shall keep the abstracts in a form readily accessible and useful to the public.

(d) Forms by State Board of Elections. — The State Board of Elections shall prescribe forms for all abstracts. Those forms shall be uniform and shall, at a minimum, state the name of each candidate and the office sought and each referendum proposal, the number of votes cast for each candidate and proposal, the candidate or proposal determined to have prevailed, and a statement authenticating the count. (2001-398, s. 3.)

CASE NOTES

Editor's Note. *— The case below was decided under former Article 15, which was repealed by Session Laws 2001-398, s. 1.*

As to admissibility of abstract as substantive evidence, see State ex rel. Freeman v. Ponder, 234 N.C. 294, 67 S.E.2d 292 (1951).

§ 163-182.7. Ordering recounts.

(a) Discretionary Recounts. — The county board of elections or the State Board of Elections may order a recount when necessary to complete the canvass in an election. The county board may not order a recount where the State Board of Elections has already denied a recount to the petitioner.

(b) Mandatory Recounts for Ballot Items Within the Jurisdiction of the County Board of Elections. — In a ballot item within the jurisdiction of the county board of elections, a candidate shall have the right to demand a recount of the votes if the difference between the votes for that candidate and the votes for a prevailing candidate is not more than one percent (1%) of the total votes cast in the ballot item, or in the case of a multiseat ballot item not more than one percent (1%) of the votes cast for those two candidates. The demand for a recount must be made in writing and must be received by the county board of elections by 5:00 P.M. on the first business day after the canvass. The recount shall be conducted under the supervision of the county board of elections.

(c) Mandatory Recounts for Ballot Items Within the Jurisdiction of the State Board of Elections. — In a ballot item within the jurisdiction of the State Board of Elections, a candidate shall have the right to demand a recount of the votes if the difference between the votes for that candidate and the votes for a prevailing candidate are not more than the following:

(1) For a nonstatewide ballot item, one percent (1%) of the total votes cast in the ballot item, or in the case of a multiseat ballot item, one percent (1%) of the votes cast for those two candidates.

(2) For a statewide ballot item, one-half of one percent (0.5%) of the votes cast in the ballot item, or 10,000 votes, whichever is less.

The demand for a recount must be in writing and must be received by the State Board of Elections by noon on the second business day after the county canvass. If at that time the available returns show a candidate not entitled to a mandatory recount, but the Executive Director determines subsequently that the margin is within the threshold set out in this subsection, the Executive Director shall notify the eligible candidate immediately and that candidate shall be entitled to a recount if that candidate so demands within 48 hours of notice. The recount shall be conducted under the supervision of the State Board of Elections.

(d) Rules for Conducting Recounts. — The State Board of Elections shall promulgate rules for conducting recounts. Those rules shall be subject to the following guidelines:

(1) The rules shall specify, with respect to each type of voting system, when and to what extent the recount shall consist of machine recounts and hand-to-eye recounts. Hand-to-eye recounts shall also be ordered as provided by G.S. 163-182.7A.

(2) The rules shall provide guidance in interpretation of the voter's choice.

(3) The rules shall specify how the goals of multipartisan participation, opportunity for public observation, and good order shall be balanced. (2001-398, s. 3; 2003-278, ss. 10(b), 10(c); 2005-323, s. 6(a); 2005-428, s. 11(b).)

§ 163-182.7A. Additional provisions for hand-to-eye recounts.

(a) The rules promulgated by the State Board of Elections for recounts shall provide that if the initial recount is not hand-to-eye, and if the recount does not reverse the results, the candidate who had originally been entitled to a recount may, within 24 hours of the completion of the first recount, demand a second recount on a hand-to-eye basis in a sample of precincts. If the initial recount was not hand-to-eye and it reversed the results, the candidate who had initially been the winner shall have the same right to ask for a hand-to-eye recount in a sample of precincts.

That sample shall be all the ballots in three percent (3%) of the precincts casting ballots in each county in the jurisdiction of the office, rounded up to the next whole number of precincts. For the purpose of that calculation, each one-stop (early) voting site shall be considered to be a precinct. The precincts to be recounted by a hand-to-eye count shall be chosen at random within each county. If the results of the hand-to-eye recount differ from the previous results within those precincts to the extent that extrapolating the amount of the change to the entire jurisdiction (based on the proportion of ballots recounted to the total votes cast for that office) would result in the reversing of the results, then the State Board of Elections shall order a hand-to-eye recount of the entire jurisdiction in which the election is held. There shall be no cost to the candidate for that recount in the entire jurisdiction.

(b) Recounts under this section shall be governed by rules adopted under G.S. 163-182.7(d).

(c) No complete hand-to-eye recount shall be conducted under this section if one has already been done under another provision of law. (2005-323, s. 6(b).)

Editor's Note. — Session Laws 2005-323, s. 6(c), made this section effective January 1, 2006.

§ 163-182.8. Determining result in case of a tie.

If the count, upon completion of canvass by the proper board of elections, shows a tie vote other than in a primary, the tie shall be resolved as follows:

(1) If more than 5,000 voters cast official ballots in the ballot item, the State Board of Elections shall order a new election in which only the candidates or positions tied will be on the official ballot. The State Board of Elections shall set the schedule for publication of the notice, preparation of absentee official ballots, and the other actions necessary to conduct the election. Eligibility to vote in the new election shall be determined by the voter's eligibility at the time of the new election.

(2) If 5,000 or fewer voters cast official ballots in the ballot item, the board of elections with jurisdiction to certify the election shall break the tie by a method of random selection to be determined by the State Board of Elections. (2001-398, s. 3.)

§ 163-182.9. Filing an election protest.

(a) Who May File a Protest With County Board. — A protest concerning the conduct of an election may be filed with the county board of elections by any registered voter who was eligible to vote in the election or by any person who was a candidate for nomination or election in the election.

(b) How Protest May Be Filed. — The following principles shall apply to the filing of election protests with the county board of elections:

(1) The protest shall be in writing and shall be signed by the protester. It shall include the protester's name, address, and telephone number and a statement that the person is a registered voter in the jurisdiction or a candidate.

(2) The protest shall state whether the protest concerns the manner in which votes were counted and results tabulated or concerns some other irregularity.

(3) The protest shall state what remedy the protester is seeking.

(4) The timing for filing a protest shall be as follows:

a. If the protest concerns the manner in which votes were counted or results tabulated, the protest shall be filed before the beginning of the county board of election's canvass meeting.

b. If the protest concerns the manner in which votes were counted or results tabulated and the protest states good cause for delay in filing, the protest may be filed until 5:00 P.M. on the second business day after the county board of elections has completed its canvass and declared the results.

c. If the protest concerns an irregularity other than vote counting or result tabulation, the protest shall be filed no later than 5:00 P.M. on the second business day after the county board has completed its canvass and declared the results.

d. If the protest concerns an irregularity on a matter other than vote counting or result tabulation and the protest is filed before election day, the protest proceedings shall be stayed, unless a party defending against the protest moves otherwise, until after election day if any one of the following conditions exists:

1. The ballot has been printed.
2. The voter registration deadline for that election has passed.
3. Any of the proceedings will occur within 30 days before election day.

(c) State Board to Prescribe Forms. — The State Board of Elections shall prescribe forms for filing protests. (2001-398, s. 3; 2005-428, s. 4.)

CASE NOTES

Applied in James v. Bartlett, 359 N.C. 260, 607 S.E.2d 638, 2005 N.C. LEXIS 146 (2005).

§ 163-182.10. Consideration of protest by county board of elections.

(a) Preliminary Consideration. — The following principles shall apply to the initial consideration of election protests by the county board of elections:

(1) The county board shall, as soon as possible after the protest is filed, meet to determine whether the protest substantially complies with G.S. 163-182.9 and whether it establishes probable cause to believe that a violation of election law or irregularity or misconduct has occurred. If the board determines that one or both requirements are

not met, the board shall dismiss the protest. The board shall notify both the protester and the State Board of Elections. The protester may file an amended protest or may appeal to the State Board. If the board determines that both requirements are met, it shall schedule a hearing.

(2) If a protest was filed before the canvass and concerns the counting and tabulating of votes, the county board shall resolve the protest before the canvass is completed. If necessary to provide time to resolve the protest, the county board may recess the canvass meeting, but shall not delay the completion of the canvass for more than three days unless approved by the State Board of Elections. Resolution of the protest shall not delay the canvass of ballot items unaffected by the protest. The appeal of a dismissal shall not delay the canvass.

(3) If a protest concerns an irregularity other than the counting or tabulating of votes, that protest shall not delay the canvass.

(b) Notice of Hearing. — The county board shall give notice of the protest hearing to the protester, any candidate likely to be affected, any election official alleged to have acted improperly, and those persons likely to have a significant interest in the resolution of the protest. Each person given notice shall also be given a copy of the protest or a summary of its allegations. The manner of notice shall be as follows:

(1) If the protest concerns the manner in which the votes were counted or the results tabulated, the protester shall be told at the time of filing that the protest will be heard at the time of the canvass. Others shall be notified as far in advance of the canvass as time permits.

(2) If the protest concerns a matter other than the manner in which votes were counted or results tabulated, the county board shall comply with rules to be promulgated by the State Board of Elections concerning reasonable notice of the hearing.

Failure to comply with the notice requirements in this subsection shall not delay the holding of a hearing nor invalidate the results if it appears reasonably likely that all interested persons were aware of the hearing and had an opportunity to be heard.

(c) Conduct of Hearing. — The following principles shall apply to the conduct of a protest hearing before the county board of elections:

(1) The county board may allow evidence to be presented at the hearing in the form of affidavits or it may examine witnesses. The chair or any two members of the board may subpoena witnesses or documents. Each witness must be placed under oath before testifying.

(2) The county board may receive evidence at the hearing from any person with information concerning the subject of the protest. The person who made the protest shall be permitted to present allegations and introduce evidence at the hearing. Any other person to whom notice of hearing was given, if present, shall be permitted to present evidence. The board may allow evidence by affidavit. The board may permit evidence to be presented by a person to whom notice was not given, if the person apparently has a significant interest in the resolution of the protest that is not adequately represented by other participants.

(3) The hearing shall be recorded by a reporter or by mechanical means, and the full record of the hearing shall be preserved by the county board until directed otherwise by the State Board.

(d) Findings of Fact and Conclusions of Law by County Board. — The county board shall make a written decision on each protest which shall state separately each of the following:

(1) Findings of fact. — The findings of fact shall be based exclusively on the evidence and on matters officially noticed. Findings of fact, if set

forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting them.

(2) Conclusions of law. — The conclusions the county board may state, and their consequences for the board's order, are as follows:

a. "The protest should be dismissed because it does not substantially comply with G.S. 163-182.9." If the board makes this conclusion, it shall order the protest dismissed.

b. "The protest should be dismissed because there is not substantial evidence of a violation of the election law or other irregularity or misconduct." If the county board makes this conclusion, it shall order the protest dismissed.

c. "The protest should be dismissed because there is not substantial evidence of any violation, irregularity, or misconduct sufficient to cast doubt on the results of the election." If the county board makes this conclusion, it shall order the protest dismissed.

d. "There is substantial evidence to believe that a violation of the election law or other irregularity or misconduct did occur, and might have affected the outcome of the election, but the board is unable to finally determine the effect because the election was a multicounty election." If the county board makes this conclusion, it shall order that the protest and the county board's decision be sent to the State Board for action by it.

e. "There is substantial evidence to believe that a violation of the election law or other irregularity or misconduct did occur and that it was sufficiently serious to cast doubt on the apparent results of the election." If the county board makes this conclusion, it may order any of the following as appropriate:

1. That the vote total as stated in the precinct return or result of the canvass be corrected and new results declared.
2. That votes be recounted.
3. That the protest and the county board's decision be sent to the State Board for action by it.
4. Any other action within the authority of the county board.

(3) An order. — Depending on the conclusion reached by the county board, its order shall be as directed in subdivision (c)(2). If the county board is not able to determine what law is applicable to the Findings of Fact, it may send its findings of fact to the State Board for it to determine the applicable law.

(e) Rules by State Board of Elections. — The State Board of Elections shall promulgate rules providing for adequate notice to parties, scheduling of hearings, and the timing of deliberations and issuance of decision. (2001-398, s. 3.)

CASE NOTES

Applied in James v. Bartlett, 359 N.C. 260, 607 S.E.2d 638, 2005 N.C. LEXIS 146 (2005).

§ 163-182.11. Appeal of a protest decision by the county board to the State Board of Elections.

(a) Notice and Perfection of Appeal. — The decision by the county board of elections on an election protest may be appealed to the State Board of Elections by any of the following:

(1) The person who filed the protest.

(2) A candidate or elected official adversely affected by the county board's decision.

(3) Any other person who participated in the hearing and has a significant interest adversely affected by the county board's decision.

Written notice of the appeal must be given to the county board within 24 hours after the county board files the written decision at its office. The appeal to the State Board must be in writing. The appeal must be delivered or deposited in the mail, addressed to the State Board, by the appropriate one of the following: (i) the end of the second day after the day the decision was filed by the county board in its office, if the decision concerns a first primary; or (ii) the end of the fifth day after the day the decision was filed in the county board office, if the decision concerns an election other than a first primary.

The State Board shall prescribe forms for filing appeals from the county board.

(b) Consideration of Appeal by State Board. — In its consideration of an appeal from a decision of a county board of elections on a protest, the State Board of Elections may do any of the following:

(1) Decide the appeal on the basis of the record from the county board, as long as the county board has made part of the record a transcript of the evidentiary hearing.

(2) Request the county board or any interested person to supplement the record from the county board, and then decide the appeal on the basis of that supplemented record.

(3) Receive additional evidence and then decide the appeal on the basis of the record and that additional evidence.

(4) Hold its own hearing on the protest and resolve the protest on the basis of that hearing.

(5) Remand the matter to the county board for further proceedings in compliance with an order of the State Board.

The State Board shall follow the procedures set forth in subsections (c) and (d) of G.S. 163-182.10 except where they are clearly inapplicable.

The State Board shall give notice of its decision as required by G.S. 163-182.14, and may notify the county board and other interested persons in its discretion. (2001-398, s. 3.)

CASE NOTES

Applied in James v. Bartlett, 359 N.C. 260, 607 S.E.2d 638, 2005 N.C. LEXIS 146 (2005).

§ 163-182.12. Authority of State Board of Elections over protests.

The State Board of Elections may consider protests that were not filed in compliance with G.S. 163-182.9, may initiate and consider complaints on its own motion, may intervene and take jurisdiction over protests pending before a county board, and may take any other action necessary to assure that an election is determined without taint of fraud or corruption and without irregularities that may have changed the result of an election. Where a known group of voters cast votes that were lost beyond retrieval or where a known group of voters was given an incorrect ballot style, the State Board of Elections may authorize a county board of elections to allow those voters to recast their votes during a period of two weeks after the canvass by the State Board of Elections required in G.S. 163-182.5(c). If there is no State Board canvass after the election, the State Board may authorize the county board to allow the recasting of votes during the two weeks after the county canvass set in G.S.

163-182.5(a). If the State Board approves a recasting of votes under this section, any procedures the county board uses to contact those voters and allow them to recast their votes shall be subject to approval by the State Board. Those recast votes shall be added to the returns and included in the canvass. The recasting of those votes shall not be deemed a new election for purposes of G.S. 163-182.13. (2001-398, s. 3; 2005-428, s. 17; 2007-391, s. 12; 2008-187, s. 33(a).)

Editor's Note. — Session Laws 2007-391, s. 1(c), was amended by Session Laws 2008-198, s. 33(a), to eliminate any confusion as to effective dates of the 2007 act. Session Laws 2007-391, s. 12, which rewrote the second sentence and added the third sentence, is effective August 19, 2007.

§ 163-182.13. New elections.

(a) When State Board May Order New Election. — The State Board of Elections may order a new election, upon agreement of at least four of its members, in the case of any one or more of the following:

(1) Ineligible voters sufficient in number to change the outcome of the election were allowed to vote in the election, and it is not possible from examination of the official ballots to determine how those ineligible voters voted and to correct the totals.

(2) Eligible voters sufficient in number to change the outcome of the election were improperly prevented from voting.

(3) Other irregularities affected a sufficient number of votes to change the outcome of the election.

(4) Irregularities or improprieties occurred to such an extent that they taint the results of the entire election and cast doubt on its fairness.

(b) State Board to Set Procedures. — The State Board of Elections shall determine when a new election shall be held and shall set the schedule for publication of the notice, preparation of absentee official ballots, and the other actions necessary to conduct the election.

(c) Eligibility to Vote in New Election. — Eligibility to vote in the new election shall be determined by the voter's eligibility at the time of the new election, except that in a primary, no person who voted in the initial primary of one party shall vote in the new election in the primary of another party. The State Board of Elections shall promulgate rules to effect the provisions of this subsection.

(d) Jurisdiction in Which New Election Held. — The new election shall be held in the entire jurisdiction in which the original election was held.

(e) Which Candidates to Be on Official Ballot. — All the candidates who were listed on the official ballot in the original election shall be listed in the same order on the official ballot for the new election, except in either of the following:

(1) If a candidate dies or otherwise becomes ineligible between the time of the original election and the new election, that candidate may be replaced in the same manner as if the vacancy occurred before the original election.

(2) If the election is for a multiseat office, and the irregularities could not have affected the election of one or more of the candidates, the new election, upon agreement of at least four members of the State Board, may be held among only those candidates whose election could have been affected by the irregularities.

(f) Tie Votes. — If ineligible voters voted in an election and it is possible to determine from the official ballots the way in which those votes were cast and to correct the results, and consequently the election ends in a tie, the provisions of G.S. 163-182.8 concerning tie votes shall apply. (2001-398, s. 3; 2003-278, s. 8(a); 2008-150, s. 2(a).)

Effect of Amendments. — Session Laws 2008-150, s. 2(a), effective August 2, 2008, in subdivision (e)(2), substituted "one or more of the candidates" for "one or more of the leading vote getters" and deleted "remaining" preceding "candidates whose election."

Legal Periodicals. — For comment on election contests in North Carolina, see 55 N.C.L. Rev. 1228 (1977).

CASE NOTES

Editor's Note. *— The case below was decided under prior similar law.*

Authority to Order New Election for Absentee Ballot Irregularities. — The State Board of Elections had authority under this section to order a new election for certain public offices in a county because of numerous irregularities connected with absentee ballots in the past general election without finding that such irregularities affected the outcome of the past election. In re Judicial Review by Republican Candidates, 45 N.C. App. 556, 264 S.E.2d 338, cert. denied, 299 N.C. 736, 267 S.E.2d 672 (1980).

Order of Candidates on New Ballot. — Under G.S. 163-182.13(e), all the candidates for a town council were to be listed in the same order on a ballot for a new election as although the two highest vote getters won a seat on the town council, three leading vote getters were within 18 votes of each other; there were no leading vote getters who could not have been affected by the voting irregularity in allowing 18 unqualified votes and disallowing 2 qualified votes. In re Election Protest of Atchison, — N.C. App. —, 666 S.E.2d 209, 2008 N.C. App. LEXIS 1653 (2008).

§ 163-182.13A. Contested elections for Council of State offices.

(a) Application of Procedures. — A contested election for any elective office established by Article III of the Constitution shall be determined by joint ballot of both houses of the General Assembly under Article VI, Section 5 of the Constitution in accordance with the provisions of this section. Except as provided by this section, the provisions of Article 3 of Chapter 120 shall apply to contested elections under this section and shall govern standing, notice of intent to contest, answers, service of process, evidence, the petition, procedures, grounds, and relief except as provided in this section. All filings shall be with the Principal Clerk of the House of Representatives.

(b) Notice of Intent. — Notice of the intent to contest the election under this section shall be filed with the Principal Clerk of the House of Representatives as if it were a contested election for the House of Representatives as prescribed in Article 3 of Chapter 120.

(c) Jurisdiction. — When a contest arises out of the general election, the General Assembly elected at the same time shall hear and decide it. Any other contest shall be heard by the General Assembly sitting at the time of the election.

(d) Committee. — A contest filed under this section shall initially be heard before a select committee consisting of five Senators appointed by the President Pro Tempore and five Representatives appointed by the Speaker of the House of Representatives. Not more than three members of the Senate appointed by the President Pro Tempore shall be members of the same political party. Not more than three members of the House of Representatives appointed by the Speaker shall be members of the same political party. That committee shall have the same power as a committee under Article 3 of Chapter 120 and may adopt supplemental rules as necessary to govern its proceedings. The committee shall report its findings as to the law and the facts and make recommendations to the General Assembly for its action.

(e) Final Determination. — The final determination on the recommendations of the committee shall be made by the General Assembly, both houses sitting in joint session in the Hall of the House of Representatives, with the Speaker of the House of Representatives presiding. The vote shall be taken as provided by Article VI, Section 5 of the Constitution. In order to find for the contestant or contestee and order the contestant or contestee elected, the vote on the joint ballot must include the affirmative vote of a majority of the members of the General Assembly voting on the issue. The ballots shall be in writing and are subject to the provisions of G.S. 143-318.13(b).

(f) Basis for Decision. —

(1) If the contest is as to the eligibility or qualifications of the contestee, the General Assembly shall determine if the contestee is eligible and qualified. If it determines that the contestee is not eligible or not qualified, it shall order a new election.

(2) If the contest is as to the conduct or results of the election, the General Assembly shall determine which candidate received the highest number of votes. If it can determine which candidate received the highest number of votes, it shall declare that candidate to be elected. If it cannot determine which candidate received the highest number of votes, it may order a new election, or may order such other relief as may be necessary and proper. If it determines that two or more candidates shall be equal and highest in votes, the provisions of G.S. 147-4 shall apply.

(g) Final Determination. — A copy of the final determination of the General Assembly under this section shall be filed with the Secretary of State and with the State Board of Elections.

(h) Copies. — The Principal Clerk of the House of Representatives shall make copies of any filings and transmit them to the Principal Clerk for the Senate.

(i) Applicability. — This section applies only to a general or special election and does not apply to the primary or any other part of the nominating process.

(j) Judicial Proceedings Abated. — Notwithstanding any other provision of law, upon the initiation of a contest under this Article, any judicial proceedings involving either the contestant or the contestee encompassing the issues set forth in the notice of intent or an answer thereto concerning the election that is the subject of the contest shall abate. The clerk shall file a copy of the notice of intent and final determination with the court in any judicial proceeding pending prior to the filing of the notice of intent.

(k) General Assembly Determination Not Reviewable. — The decision of the General Assembly in determining the contest of the election pursuant to this section may not be reviewed by the General Court of Justice.

(*l*) Definition. — As used in this section, "contest" means a challenge to the apparent election for any elective office established by Article III of the Constitution or to request the decision of an undecided election to any elective office established by Article III of the Constitution, where the challenge or the request is filed in accordance with the timing and procedures of this section. (2005-3, s. 3(a).)

§ 163-182.14. Appeal of a final decision to superior court; appeal to the General Assembly or a house thereof.

(a) Final Decision. — A copy of the final decision of the State Board of Elections on an election protest shall be served on the parties personally or through delivery by U.S. mail or a designated delivery service authorized under 26 U.S.C. § 7502(f)(2) if that delivery provides a record of the date and time of delivery to the address provided by the party. A decision to order a new election is considered a final decision for purposes of seeking review of the decision.

(b) Timing of Right of Appeal. — Except in the case of a general or special election to either house of the General Assembly or to an office established by Article III of the Constitution, an aggrieved party has the right to appeal the final decision to the Superior Court of Wake County within 10 days of the date of service.

After the decision by the State Board of Elections has been served on the parties, the certification of nomination or election or the results of the referendum shall issue pursuant to G.S. 163-182.15 unless an appealing party obtains a stay of the certification from the Superior Court of Wake County within 10 days after the date of service. The court shall not issue a stay of certification unless the petitioner shows the court that the petitioner has appealed the decision of the State Board of Elections, that the petitioner is an aggrieved party, and that the petitioner is likely to prevail in the appeal.

If service is by mail or a designated delivery service, the additional time after service provided in Rule 6(e) of the North Carolina Rules of Civil Procedure shall apply to both the time for appeal and the time to obtain a stay under this subsection.

(c) Contests for General Assembly and Executive Branch Offices. — In the case of a general or special election to either house of the General Assembly or to an office established by Article III of the Constitution, an unsuccessful candidate has the right to appeal the final decision to the General Assembly in accordance with Article 3 of Chapter 120 and G.S. 163-182.13A, as appropriate.

After the decision by the State Board of Elections has been served on the parties, the certification of nomination or election shall issue pursuant to G.S. 163-182.15 unless a contest of the election is initiated pursuant to Article 3 of Chapter 120 or G.S. 163-182.13A, as appropriate.

(d) Attorney's fees shall not be awarded against the State Board of Elections in any election protest brought under this Article. (2001-398, s. 3; 2003-278, s. 8(b); 2005-3, s. 4; 2008-150, s. 4(a); 2009-541, s. 27.)

Effect of Amendments. — Session Laws 2008-150, s. 4(a), effective October 1, 2008, in subsection (a), substituted "personally or through delivery by U.S. mail or a designated delivery service authorized under 26 U.S.C. § 7502(f)(2) if that delivery provides a record of the date and time of delivery to the address provided by the party" for "personally or by certified mail"; and in subsection (b), added the third paragraph.

Session Laws 2009-541, s. 27, effective August 28, 2009, added subsection (d).

Legal Periodicals. — For comment on election contests in North Carolina, see 55 N.C.L. Rev. 1228 (1977).

CASE NOTES

Applied in James v. Bartlett, 359 N.C. 260, 607 S.E.2d 638, 2005 N.C. LEXIS 146 (2005).

§ 163-182.15. Certificate of nomination or election, or certificate of the results of a referendum.

(a) Issued by County Board of Elections. — In ballot items within the jurisdiction of the county board of elections, the county board shall issue a certificate of nomination or election, or a certificate of the results of the referendum, as appropriate. The certificate shall be issued by the county board six days after the completion of the canvass pursuant to G.S. 163-182.5, unless there is an election protest pending. If there is an election protest, the certificate of nomination or election or the certificate of the result of the referendum shall be issued in one of the following ways, as appropriate:

(1) The certificate shall be issued five days after the protest is dismissed or denied by the county board of elections, unless that decision has been appealed to the State Board of Elections.

(2) The certificate shall be issued on the tenth day after the final decision of the State Board, unless the State Board has ordered a new election or the issuance of the certificate is stayed by the Superior Court of Wake County pursuant to G.S. 163-182.14.

(3) If the decision of the State Board has been appealed to the Superior Court of Wake County and the court has stayed the certification, the certificate shall be issued five days after the entry of a final order in the case in the Superior Court of Wake County, unless that court or an appellate court orders otherwise.

(4) No certificate of election need be issued for any member of the General Assembly following a contest of the election pursuant to Article 3 of Chapter 120.

(b) Issued by State Board of Elections. — In ballot items within the jurisdiction of the State Board of Elections, the State Board of Elections shall issue a certificate of nomination or election, or a certificate of the results of the referendum, as appropriate. The certificate shall be issued by the State Board six days after the completion of the canvass pursuant to G.S. 163-182.5, unless there is an election protest pending. If there is an election protest, the certificate of nomination or election or the certificate of the result of the referendum shall be issued in one of the following ways, as appropriate:

(1) The certificate shall be issued 10 days after the final decision of the State Board on the election protest, unless the State Board has ordered a new election or the issuance of the certificate is stayed by the Superior Court of Wake County pursuant to G.S. 163-182.14.

(2) If the decision of the State Board has been appealed to the Superior Court of Wake County and the court has stayed the certification, the certificate shall be issued five days after the entry of a final order in the case in the Superior Court of Wake County, unless that court or an appellate court orders otherwise.

(3) The certificate shall be issued immediately upon the filing of a copy of the determination of the General Assembly with the State Board of Elections in contested elections involving any elective office established by Article III of the Constitution.

(4) No certificate of election need be issued for any member of the General Assembly following a contest of the election pursuant to Article 3 of Chapter 120.

(c) Copy to Secretary of State. — The State Board of Elections shall provide to the Secretary of State a copy of each certificate of nomination or election, or certificate of the results of a referendum, issued by it. The Secretary shall keep the certificates in a form readily accessible and useful to the public.

(d) Determining Results. — In a primary for party nomination, the results shall be determined in accordance with G.S. 163-111. In a general election, the individuals having the highest number of votes for each office shall be declared elected to the office, and the certificate shall be issued accordingly. In a referendum, the ballot proposal receiving the highest number of votes shall be declared to have prevailed, and the certificate shall be issued accordingly. (2001-398, s. 3; 2003-278, s. 10(k); 2005-3, s. 5; 2005-428, s. 13; 2007-391, s. 11; 2007-484, s. 22; 2008-187, s. 33(a).)

Editor's Note. — Subsection (d), added by Session Laws 2005-428, s. 13, effective September 22, 2005, is applicable to all primaries and elections held on or after that date.

Session Laws 2007-391, s. 1(c), was amended by Session Laws 2008-198, s. 33(a), to eliminate any confusion as to effective dates of the 2007 act. Session Laws 2007-391, s. 11, which substituted "on the tenth day" for "10 days" in subdivision (a)(2), is effective August 19, 2007.

CASE NOTES

***Editor's Note.** — The case below was decided under former Article 15, which was repealed by Session Laws 2001-398, s. 1.*

Conclusiveness of Adjudication of Board and Certificate of Election. — The adjudication of the board and the resultant certificate of election constitute conclusive evidence of the certificate holder's right to the office in every proceeding except a direct proceeding under G.S. 1-514 et seq. to try the title to the office. State ex rel. Freeman v. Ponder, 234 N.C. 294, 67 S.E.2d 292 (1951).

§ 163-182.16. Governor to issue commissions for certain offices.

The Secretary of State shall send a notice to the Governor that a certificate of election has been issued for any of the following offices, and upon receiving the notice, the Governor shall provide to each such elected official a commission attesting to that person's election:

(1) Members of the United States House of Representatives.
(2) Justices, judges, and district attorneys of the General Court of Justice. (2001-398, s. 3.)

§ 163-182.17. Summary of officials' duties under this Article.

(a) This Section a Summary. — The provisions of this section provide a nonexclusive summary of the duties given to officials under this Article. The legal duty is contained, not in this section, but in the other sections of this Article.

(b) Duties of the Precinct Officials. — Precinct officials, in accordance with rules of the State Board of Elections and under the supervision of the county board of elections, shall perform all of the following:

(1) Count votes when votes are required to be counted at the voting place. G.S. 163-182.2.
(2) Make an unofficial report of returns to the county board of elections. G.S. 163-182.2.
(3) Certify the integrity of the vote and the security of the official ballots at the voting place. G.S. 163-182.2.
(4) Return official ballots and equipment to the county board of elections. G.S. 163-182.2.

(c) Duties of the County Board of Elections. — The county board of elections, in accordance with rules of the State Board of Elections, shall perform all of the following:

(1) Count absentee and provisional official ballots and other official ballots required to be initially counted by the county board of elections. G.S. 163-182.2.
(2) Canvass results in all ballot items on the official ballot in the county. G.S. 163-182.5.
(3) Order a recount in any ballot item on the official ballot in the county, where necessary to complete the canvass, and where not prohibited from doing so. G.S. 163-182.7.
(4) Conduct any recount that has been ordered by the county board of elections or the State Board of Elections or that has been properly demanded in accordance with G.S. 163-182.7(b).

(5) Conduct hearings in election protests as provided in G.S. 163-182.10.
(6) Prepare abstracts of returns in all the ballot items in the county. G.S. 163-182.6.
(7) Retain one original abstract and distribute the other two originals as follows:
  a. One to the clerk of superior court in the county.
  b. One to the State Board of Elections. G.S. 163-182.6.
(8) Issue a certificate of nomination or election or a certificate of the results of a referendum in each ballot item within the jurisdiction of the county board of elections. Provide a copy of the certificate to the clerk of court. G.S. 163-182.15.

(d) Duties of the State Board of Elections. — The State Board of Elections shall perform all the following:

(1) Promulgate rules as directed in this Article. G.S. 163-182.1, 163-182.2, 163-182.7, 163-182.10, and 163-182.13.
(2) Provide supervisory direction to the county boards of elections as provided in this Article. G.S. 163-182.1 and G.S. 163-182.2.
(3) Canvass the results in ballot items within the jurisdiction of the State Board of Elections. G.S. 163-182.5.
(4) Order and supervise a recount in any ballot item within the jurisdiction of the State Board of Elections, where necessary to complete the canvass. G.S. 163-182.7.
(5) Hear and decide appeals from decisions of county boards of elections in election protests. G.S. 163-182.11.
(6) Order new elections in accordance with G.S. 163-182.15.
(7) Prepare, in duplicate originals, composite abstracts of ballot items within the jurisdiction of the State Board of Elections. G.S. 163-182.6.
(8) Retain one original of the composite abstract and deliver to the Secretary of State the other original composite abstract of the results of ballot items within the jurisdiction of the State Board of Elections. G.S. 163-182.6.
(9) Certify the results of any election within the jurisdiction of the State Board of Elections and provide a copy to the Secretary of State. G.S. 163-182.15.

(e) Duties of the Secretary of State. — The Secretary of State shall retain and compile in a useful form all the abstracts and returns provided by the county boards of elections and the State Board of Elections. G.S. 163-182.6.

(f) Duty of the Governor. — The Governor shall issue a commission to any person elected to an office listed in G.S. 163-182.16 upon notification from the Secretary of State that a certificate of election has been issued to the person. G.S. 163-182.16. (2001-398, s. 3.)

§§ 163-183 through 163-186: Reserved for future codification purposes.

Article 16.

Canvass of Returns for Higher Offices and Preparation of State Abstracts.

§§ 163-187 through 163-200: Repealed by Session Laws 2001-398, s. 1, effective January 1, 2002.

Editor's Note. — Repealed G.S. 163-196 to 163-200 had been reserved for future codification purposes.

Session Laws 2001-319, s. 11, effective July 28, 2001, would have amended G.S. 163-192.1 by substituting "Executive Director" for "Executive Secretary-Director" in the last sentence of subsections (a) and (b). Session Laws 2001-353, s. 7, effective August 10, 2001, would have amended G.S. 163-192.1, in subsections (a) and (b), by substituting "second Wednesday" for "eighth day (Saturdays and Sundays included)," substituting "If, however, in a statewide contest" for "Provided, however, that in a statewide contest," substituting "no greater than one-half of one percent" for "at least one-half of one percent," and substituting "Further, if the canvass" for "Provided further that if the canvass." Subsequently, Session Laws 2001-398, s. 1, repealed this Article, including G.S. 163-192.1, effective January 1, 2002.

ARTICLE 17.

Members of United States House of Representatives.

§ 163-201. Congressional districts specified.

(a) For purposes of nominating and electing members of the House of Representatives of the Congress of the United States in 2002 and every two years thereafter; the State of North Carolina shall be divided into 13 districts as follows:

District 1: Bertie County, Chowan County, Edgecombe County, Gates County, Greene County, Halifax County, Hertford County, Martin County, Northampton County, Pasquotank County, Perquimans County, Warren County, Washington County, Beaufort County: Precinct BLOUNTS CREEK, Precinct AURORA, Precinct CHOCOWINITY, Precinct EDWARD, Precinct PS JONES WARD 3, Precinct WASHINGTON WARD 1, Precinct WASHINGTON WARD 2; Craven County: Precinct RHEMS, Precinct CLARKS, Precinct JASPER, Precinct COVE CITY, Precinct DOVER, Precinct FORT BARNWELL, Precinct WEST HAVELOCK: Tract 9611: Block Group 1: Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1996; Block Group 2: Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037, Block 2038, Block 2039, Block 2040, Block 2041, Block 2042, Block 2043, Block 2044, Block 2045, Block 2046, Block 2047, Block 2048, Block 2049, Block 2050, Block 2051, Block 2052, Block 2053, Block 2054, Block 2055, Block 2062, Block 2063, Block 2064, Block 2065, Block 2066, Block 2067, Block 2068, Block 2069, Block 2070, Block 2071, Block 2072, Block 2073, Block 2074, Block 2075, Block 2076, Block 2077, Block 2078, Block 2079, Block 2080, Block 2081, Block 2082, Block 2083, Block 2084, Block 2085, Block 2086, Block 2087, Block 2088, Block 2997, Block 2998, Block 2999; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023, Block 3024, Block 3025, Block 3026, Block 3027, Block 3028, Block 3998, Block 3999; Tract 9612: Block Group 1: Block 1000, Block 1001, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1992, Block 1993, Block 1995, Block 1996, Block 1997, Block 1998, Block 1999; Tract 9613: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block

1027, Block 1028, Block 1999; Block Group 6: Block 6047, Block 6048, Block 6049; Precinct GEORGE STREET, Precinct FORT TOTTEN, Precinct H J McDONALD, Precinct GLENBURNIE PARK; Granville County: Precinct CREDLE, Precinct EAST OXFORD, Precinct SALEM, Precinct SOUTH OXFORD, Precinct WEST OXFORD ELEMENTARY; Jones County: Precinct POLLOCKSVILLE: Tract 9801: Block Group 1: Block 1005, Block 1006, Block 1007, Block 1012, Block 1013, Block 1014, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1041, Block 1042, Block 1043, Block 1044, Block 1045, Block 1046, Block 1047, Block 1048, Block 1049, Block 1050, Block 1051, Block 1052, Block 1053, Block 1054, Block 1055, Block 1056, Block 1057, Block 1058, Block 1059, Block 1060, Block 1061, Block 1062, Block 1063, Block 1064, Block 1065, Block 1066, Block 1067, Block 1068, Block 1069, Block 1070, Block 1071, Block 1072, Block 1073, Block 1074, Block 1075, Block 1076, Block 1077, Block 1078, Block 1079, Block 1080, Block 1081, Block 1082, Block 1083, Block 1084, Block 1085, Block 1086, Block 1087, Block 1088, Block 1089, Block 1090, Block 1091, Block 1092, Block 1093, Block 1997, Block 1998; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2999; Block Group 3: Block 3000, Block 3001, Block 3002; Tract 9802: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025; Block Group 2: Block 2000, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2036, Block 2037, Block 2038, Block 2039, Block 2043, Block 2044, Block 2045, Block 2046, Block 2047, Block 2048, Block 2049, Block 2054; Precinct TRENTON, Precinct WHITE OAK; Lenoir County: Precinct CONTENTNEA, Precinct VANCE, Precinct KINSTON 1, Precinct KINSTON 2, Precinct KINSTON 3, Precinct KINSTON 5, Precinct KINSTON 6, Precinct KINSTON 7, Precinct KINSTON 8, Precinct MOSELEY HALL, Precinct SAND HILL; Nash County: Precinct ROCKY MOUNT 1, Precinct ROCKY MOUNT 2, Precinct ROCKY MOUNT 3, Precinct ROCKY MOUNT 4; Pitt County: Precinct 3.01, Precinct 4.01, Precinct 5.01, Precinct 9.01: Tract 19: Block Group 1: Block 1002, Block 1003, Block 1010, Block 1011, Block 1012, Block 1018; Block Group 2: Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2029, Block 2030, Block 2031, Block 2032, Block 2048; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023, Block 3024, Block 3025, Block 3028, Block 3029, Block 3030, Block 3031, Block 3032, Block 3033; Precinct 10.01, Precinct 11.01, Precinct 12.01, Precinct 15.01, Precinct 15.03, Precinct 15.04, Precinct 15.06, Precinct 2.00B, Precinct 8.00B, Precinct 15.05A, Precinct 15.05B; Vance County: Precinct EAST HENDERSON 1, Precinct NORTH HENDERSON 1, Precinct NORTH HENDERSON 2, Precinct SOUTH HENDERSON 1, Precinct WEST HENDERSON 1, Precinct WEST HENDERSON 2, Precinct DABNEY, Precinct MIDDLEBURG, Precinct TOWNSVILLE, Precinct WATKINS, Precinct WILLIAMSBORO; Wayne County: Precinct Precinct 7, Precinct Precinct 10, Precinct Precinct 11, Precinct Precinct 12, Precinct Precinct 13, Precinct Precinct 17, Precinct Precinct 18, Precinct Precinct 19, Precinct Precinct 20, Precinct Precinct 21, Precinct Precinct 22, Precinct Precinct 23, Precinct Precinct 26, Precinct Precinct 27, Precinct Precinct 29; Wilson County: Precinct GARDNERS, Precinct SARATOGA, Precinct TOISNOT, Precinct WILSON A, Precinct WILSON B, Precinct WILSON C, Precinct WILSON E, Precinct WILSON F, Precinct WILSON G, Precinct WILSON H, Precinct WILSON I, Precinct WILSON N, Precinct WILSON Q.

District 2: Franklin County, Harnett County, Johnston County, Lee County, Chatham County: Precinct ALBRIGHT, Precinct BENNETT, Precinct BONLEE, Precinct GOLDSTON, Precinct THREE RIVERS, Precinct HADLEY: Tract 202: Block Group 3: Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3042, Block 3043, Block 3044, Block 3045,Block 3046, Block 3047, Block 3048, Block 3049, Block 3053, Block 3054; Precinct HARPER'S CROSSROADS, Precinct HICKORY MOUNTAIN, Precinct OAKLAND, Precinct WEST PITTSBORO: Tract 202: Block Group 3: Block 3028, Block 3029, Block 3030, Block 3031, Block 3032, Block 3033, Block 3052, Block 3061, Block 3062, Block 3998; Block Group 4: Block 4000, Block 4001, Block 4002, Block 4003, Block 4004, Block 4006, Block 4007, Block 4008, Block 4028, Block 4029, Block 4030, Block 4039, Block 4040, Block 4082, Block 4083; Tract 208: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1041, Block 1042, Block 1043, Block 1044, Block 1045, Block 1046, Block 1047, Block 1048, Block 1049, Block 1050, Block 1051, Block 1052, Block 1053, Block 1999; Block Group 3: Block 3028, Block 3029, Block 3030, Block 3031; Block Group 4: Block 4000, Block 4001, Block 4002, Block 4003, Block 4004, Block 4005, Block 4006, Block 4007, Block 4008, Block 4009, Block 4010, Block 4011, Block 4012, Block 4013, Block 4014, Block 4015, Block 4016, Block 4017, Block 4018, Block 4019, Block 4020, Block 4021, Block 4022, Block 4023, Block 4024, Block 4025, Block 4026, Block 4027, Block 4028, Block 4029, Block 4030, Block 4031, Block 4032, Block 4033, Block 4034, Block 4035, Block 4036, Block 4037, Block 4038, Block 4039, Block 4040, Block 4041, Block 4042, Block 4043, Block 4044, Block 4045, Block 4046, Block 4047, Block 4048, Block 4049, Block 4050, Block 4051, Block 4052, Block 4053, Block 4054, Block 4055, Block 4056, Block 4057, Block 4058, Block 4059, Block 4060, Block 4061, Block 4062, Block 4063, Block 4064, Block 4065, Block 4066, Block 4067, Block 4068, Block 4998, Block 4999; Precinct EAST PITTSBORO, Precinct EAST SILER CITY, Precinct CENTRAL SILER CITY, Precinct WEST SILER CITY; Cumberland County: Precinct CROSS CREEK 3, Precinct CROSS CREEK 5, Precinct CROSS CREEK 9, Precinct CROSS CREEK 13, Precinct CROSS CREEK 16, Precinct CROSS CREEK 17, Precinct CROSS CREEK 19, Precinct CROSS CREEK 21, Precinct CROSS CREEK 22, Precinct CROSS CREEK 26, Precinct CROSS CREEK 32, Precinct CROSS CREEK 33, Precinct CLIFFDALE WEST, Precinct MANCHESTER: Tract 34: Block Group 1: Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011; Block Group 2: Block 2009, Block 2011, Block 2012, Block 2017, Block 2018, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037, Block 2038, Block 2039, Block 2040, Block 2041, Block 2042, Block 2043, Block 2044, Block 2045, Block 2046, Block 2047, Block 2048, Block 2049, Block 2050, Block 2051, Block 2052, Block 2053, Block 2054, Block 2055, Block 2056, Block 2057, Block 2058, Block 2059, Block 2060, Block 2061, Block 2062, Block 2063, Block 2064, Block 2065, Block 2066, Block 2067, Block 2068, Block 2069, Block 2070, Block 2071, Block 2072, Block 2073, Block 2074, Block 2075, Block 2076, Block 2077, Block 2078, Block 2079, Block 2080, Block 2081, Block 2082, Block 2083, Block 2084, Block 2085, Block 2086, Block 2087, Block 2088, Block 2089, Block 2090, Block 2091, Block 2092, Block 2093, Block 2094, Block 2095, Block 2096, Block 2097, Block 2098, Block 2099, Block 2100, Block 2997, Block 2998; Tract 35: Block Group 2: Block 2000, Block 2007, Block 2008, Block 2009; Tract 36: Block Group 1: Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1030, Block 1993, Block 1994, Block 1995, Block 1997, Block 1998; Block Group 2: Block 2003, Block 2004, Block 2012, Block 2013, Block 2017, Block 2031, Block 2995, Block 2996, Block 2998; Block Group 4: Block 4000, Block 4002, Block 4003, Block 4004, Block 4005, Block 4006, Block 4007, Block 4008, Block 4009, Block 4010, Block 4011, Block 4012, Block 4013, Block 4014, Block 4015, Block 4016, Block 4017, Block 4018, Block 4019, Block 4020, Block 4021, Block 4022, Block 4023, Block 4024, Block 4025, Block 4026, Block 4028, Block 4029, Block 4030, Block 4031, Block 4032, Block 4033, Block 4034, Block 4037, Block 4039, Block 4043, Block 4044, Block 4045, Block 4046, Block 4998; Precinct SPRING LAKE, Precinct WEST AREA; Nash County: Precinct STONY CREEK: Tract 105.03: Block Group 1: Block 1020, Block 1021, Block 1022; Tract 106: Block Group 2: Block 2000, Block 2001, Block 2006; Block Group 3: Block 3033; Tract 107: Block Group 3: Block 3036, Block 3037, Block 3038, Block 3040, Block 3042, Block 3043, Block 3044, Block 3045, Block 3047, Block 3055; Tract 108: Block Group 4: Block 4035, Block 4036, Block 4037, Block 4059, Block 4060; Precinct ROCKY MOUNT 8, Precinct NASHVILLE, Precinct ROCKY MOUNT 10, Precinct GRIFFINS, Precinct JACKSONS, Precinct MANNINGS 1, Precinct MANNINGS 2, Precinct SOUTH WHITAKERS, Precinct BAILEY, Precinct CASTALIA, Precinct DRYWELLS, Precinct FERRELLS, Precinct NORTH WHITAKERS 1, Precinct NORTH WHITAKERS 2; Sampson County: Precinct CENTRAL CLINTON, Precinct EAST CLINTON, Precinct NORTHEAST CLINTON: Tract 9706: Block Group 1: Block 1012, Block 1013, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037; Tract 9707: Block Group 1: Block 1009, Block 1010, Block 1012, Block 1013, Block 1014, Block 1015, Block 1025, Block 1026; Block Group 4: Block 4003, Block 4004, Block 4014; Precinct SOUTHWEST CLINTON, Precinct GARLAND, Precinct GIDDENSVILLE, Precinct HARRELLS, Precinct INGOLD, Precinct KEENER, Precinct LAKEWOOD, Precinct NEWTON GROVE, Precinct ROWAN, Precinct TURKEY; Vance County: Precinct EAST HENDERSON 2, Precinct SOUTH HENDERSON 2, Precinct HILLTOP, Precinct KITTRELL, Precinct SANDY SCREEK; Wake County: Precinct 01-19, Precinct 01-20, Precinct 01-21, Precinct 01-22, Precinct 01-23, Precinct 01-26, Precinct 01-27: Tract 501: Block Group 1: Block 1070; Precinct 01-35, Precinct 16-01, Precinct 16-02, Precinct 16-03, Precinct 16-04, Precinct 16-05, Precinct 16-06, Precinct 16-07, Precinct 18-01, Precinct 18-06.

District 3: Camden County, Carteret County, Currituck County, Dare County, Hyde County, Onslow County, Pamlico County, Tyrrell County, Beaufort County: Precinct HUNTERS BRIDGE, Precinct BELHAVEN, Precinct NORTH CREEK, Precinct OLD FORD, Precinct RIVER ROAD, Precinct TRANTERS CREEK, Precinct WOODARDS POND, Precinct BEAVER DAM, Precinct PANTEGO, Precinct PINETOWN, Precinct SURRY BATH, Precinct WASHINGTON WARD 4, Precinct WASHINGTON PARK, Precinct GILEAD; Craven County: Precinct TRENT WOODS, Precinct RIVER BEND, Precinct BRIDGETON, Precinct TRUITT, Precinct ERNUL, Precinct VANCEBORO, Precinct EPWORTH, Precinct GRANTHAM, Precinct CROATAN, Precinct WEST HAVELOCK: Tract 9611: Block Group 2: Block 2056, Block 2057, Block 2058, Block 2059, Block 2060, Block 2061; Tract 9612: Block Group 1: Block 1012, Block 1013; Tract 9613: Block Group 4: Block 4001, Block 4023, Block 4024; Block Group 5: Block 5015, Block 5016, Block 5017; Block Group 6: Block 6050; Precinct HARLOWE, Precinct FAIRFIELD HARBOUR, Precinct BRICES CREEK, Precinct EAST HAVELOCK, Precinct GROVER C FIELDS, Precinct WEST NEW BERN; Duplin County: Precinct ALBERTSON, Precinct BEULAVILLE: Tract 9905: Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037, Block 2038, Block 2039, Block 2040, Block 2041, Block 2042, Block 2043, Block 2044, Block 2045, Block 2046, Block 2047, Block 2048, Block 2049, Block 2050, Block 2051, Block 2052, Block 2053; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3024, Block 3025, Block 3026, Block 3027, Block 3028, Block 3029, Block 3030, Block 3031, Block 3032, Block 3033, Block 3034, Block 3035, Block 3036, Block 3037, Block 3038, Block 3039, Block 3040, Block 3041, Block 3042, Block 3043, Block 3044, Block 3045, Block 3046, Block 3047, Block 3048, Block 3049, Block 3050, Block 3051, Block 3052, Block 3053, Block 3054, Block 3055, Block 3056, Block 3057, Block 3058, Block 3059, Block 3060, Block 3061, Block 3062, Block 3063, Block 3064, Block 3065, Block 3066, Block 3067, Block 3068, Block 3069, Block 3070, Block 3071, Block 3072, Block 3073, Block 3074, Block 3075, Block 3076; Block Group 4: Block 4000, Block 4001, Block 4002, Block 4003, Block 4004, Block 4005, Block 4006, Block 4007, Block 4008, Block 4009, Block 4010, Block 4011, Block 4012, Block 4013, Block 4014, Block 4015, Block 4016, Block 4017, Block 4018, Block 4019, Block 4020, Block 4021, Block 4022, Block 4023, Block 4024, Block 4025, Block 4026, Block 4027, Block 4028, Block 4029, Block 4030, Block 4031, Block 4032, Block 4033, Block 4034, Block 4035, Block 4036, Block 4037, Block 4038, Block 4039, Block 4040, Block 4041, Block 4042, Block 4043, Block 4044, Block 4045, Block 4046, Block 4047, Block 4048, Block 4049, Block 4050, Block 4051, Block 4052, Block 4053, Block 4054, Block 4055, Block 4056, Block 4057, Block 4058, Block 4059, Block 4060; Block Group 5: Block 5000, Block 5023, Block 5024; Precinct CALYPSO, Precinct CEDAR FORK, Precinct CHINQUAPIN, Precinct GLISSON, Precinct WOLFSCRAPE; Jones County: Precinct BEAVER CREEK, Precinct CYPRESS CREEK, Precinct CHINQUAPIN, Precinct POLLOCKSVILLE: Tract 9801: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1008, Block 1009, Block 1010, Block 1011, Block 1015, Block 1999; Precinct TUCKAHOE; Lenoir County: Precinct INSTITUTE, Precinct NEUSE, Precinct WOODINGTON, Precinct FALLING CREEK, Precinct KINSTON 4, Precinct KINSTON 9, Precinct SOUTHWEST, Precinct TRENT 1, Precinct TRENT 2, Precinct PINK HILL 1, Precinct PINK HILL 2; Nash County: Precinct STONY CREEK: Tract 105.02: Block Group 1: Block 1003, Block 1004; Tract 105.03: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1011; Tract 107: Block Group 3: Block 3039, Block 3046, Block 3048, Block 3049, Block 3050, Block 3051, Block 3052, Block 3053, Block 3054, Block 3056, Block 3057, Block 3058; Tract 108: Block Group 4: Block 4038, Block 4040, Block 4045, Block 4046, Block 4048, Block 4049, Block 4052, Block 4053, Block 4054, Block 4055, Block 4056, Block 4057, Block 4058, Block 4061, Block 4062, Block 4063, Block 4064, Block 4065, Block 4067, Block 4068, Block 4088, Block 4089, Block 4090, Block 4091, Block 4092, Block 4102, Block 4103; Precinct ROCKY MOUNT 5, Precinct ROCKY MOUNT 6, Precinct ROCKY

MOUNT 7, Precinct ROCKY MOUNT 9, Precinct COOPERS, Precinct OAK LEVEL, Precinct RED OAK; Pitt County: Precinct 1.01, Precinct 6.01, Precinct 7.01, Precinct 9.01: Tract 18: Block Group 3: Block 3001; Tract 19: Block Group 1: Block 1044; Block Group 2: Block 2001, Block 2027, Block 2028, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037, Block 2038, Block 2047; Precinct 13.01, Precinct 14.02, Precinct 15.09, Precinct 2.00A, Precinct 8.00A, Precinct 11.02A, Precinct 11.02B, Precinct 14.03A, Precinct 14.03B, Precinct 15.07A, Precinct 15.07B, Precinct 15.07C, Precinct 15.08A, Precinct 15.08B, Precinct 15.10A, Precinct 15.10B, Precinct 15.11A, Precinct 15.11B, Precinct 15.12A, Precinct 15.12B; Wayne County: Precinct Precinct 1, Precinct Precinct 2, Precinct Precinct 3, Precinct Precinct 4, Precinct Precinct 5, Precinct Precinct 6, Precinct Precinct 8, Precinct Precinct 9, Precinct Precinct 14, Precinct Precinct 15, Precinct Precinct 16, Precinct Precinct 24, Precinct Precinct 25, Precinct Precinct 28, Precinct Precinct 30; Wilson County: Precinct BLACK CREEK, Precinct CROSSROADS, Precinct OLD FIELDS, Precinct SPRINGHILL, Precinct STANTONSBURG, Precinct TAYLORS, Precinct WILSON D, Precinct WILSON J, Precinct WILSON K, Precinct WILSON L, Precinct WILSON M, Precinct WILSON P.

District 4: Durham County, Orange County, Chatham County: Precinct BYNUM, Precinct HADLEY: Tract 202: Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3007, Block 3008, Block 3009, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023, Block 3024, Block 3036, Block 3037, Block 3038, Block 3039, Block 3040, Block 3041, Block 3050, Block 3051, Block 3055, Block 3056, Block 3057, Block 3058, Block 3059, Block 3060, Block 3996, Block 3999; Precinct EAST MANNS CHAPEL, Precinct WEST MANNS CHAPEL, Precinct NEW HOPE, Precinct WEST PITTSBORO: Tract 202: Block Group 3: Block 3025, Block 3026, Block 3027, Block 3034, Block 3035; Precinct EAST WILLIAMS, Precinct NORTH WILLIAMS, Precinct WEST WILLIAMS, Precinct NORTH WILLIAMS 2, Precinct EAST WILLIAMS 2; Wake County: Precinct 01-47, Precinct 02-01, Precinct 02-02, Precinct 02-03, Precinct 02-04, Precinct 02-05, Precinct 02-06, Precinct 03-00, Precinct 04-01, Precinct 04-03, Precinct 04-05, Precinct 04-06, Precinct 04-07, Precinct 04-08, Precinct 04-09, Precinct 04-10, Precinct 04-11, Precinct 04-12, Precinct 04-13, Precinct 04-14, Precinct 04-15, Precinct 04-17, Precinct 04-18, Precinct 04-19, Precinct 05-00, Precinct 06-01, Precinct 06-02, Precinct 06-03, Precinct 07-03, Precinct 07-06, Precinct 07-07, Precinct 08-01, Precinct 08-02, Precinct 08-03, Precinct 08-04, Precinct 08-05, Precinct 08-06, Precinct 08-08, Precinct 11-01, Precinct 11-02: Tract 515.01: Block Group 1: Block 1004, Block 1005; Tract 525.03: Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024; Tract 525.04: Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2022, Block 2023, Block 2026, Block 2028, Block 2029, Block 2038, Block 2039, Block 2040, Block 2042, Block 2043, Block 2044, Block 2045, Block 2046, Block 2993, Block 2994, Block 2995, Block 2996, Block 2997, Block 2998, Block 2999; Precinct 12-01, Precinct 12-02, Precinct 12-03, Precinct 12-04, Precinct 12-06, Precinct 15-01, Precinct 15-02, Precinct 18-02, Precinct 18-03, Precinct 18-04, Precinct 18-05, Precinct 18-08, Precinct 20-01, Precinct 20-02, Precinct 20-03, Precinct 20-04, Precinct 20-05, Precinct 20-06, Precinct 20-10.

District 5: Alexander County, Alleghany County, Ashe County, Davie County, Stokes County, Surry County, Watauga County, Wilkes County, Yadkin County, Forsyth County: Precinct 011,Precinct 012, Precinct 013, Precinct 014, Precinct 015, Precinct 021, Precinct 031, Precinct 032, Precinct 034, Precinct 051, Precinct 052, Precinct 053, Precinct 054, Precinct 055, Precinct 061, Precinct 062, Precinct 063, Precinct 064, Precinct 065, Precinct 066, Precinct 067, Precinct 068, Precinct 071, Precinct 072, Precinct 073, Precinct 074, Precinct 075, Precinct 091, Precinct 092, Precinct 111, Precinct 112, Precinct 122, Precinct 123, Precinct 131, Precinct 132, Precinct 133, Precinct 602, Precinct 607, Precinct 701, Precinct 702, Precinct 703, Precinct 704, Precinct 705, Precinct 706, Precinct 707, Precinct 708, Precinct 709, Precinct 801, Precinct 802, Precinct 803, Precinct 804, Precinct 805, Precinct 806, Precinct 807, Precinct 808, Precinct 809, Precinct 901, Precinct 906, Precinct 907, Precinct 908, Precinct 909; Iredell County: Precinct Barringer, Precinct Bethany, Precinct Concord, Precinct Chambersburg, Precinct Cool Springs, Precinct Eagle Mills, Precinct New Hope, Precinct Olin, Precinct Sharpesburg, Precinct Statesville 1, Precinct Statesville 2, Precinct Statesville 3, Precinct Statesville 4, Precinct Statesville 5, Precinct Statesville 6, Precinct Turnersburg, Precinct Union Grove; Rockingham County: Precinct HOGANS: Tract 410.01: Block Group 3: Block 3011; Tract 410.02: Block Group 1: Block 1012, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1022, Block 1024,Block 1025, Block 1026, Block 1027, Block 1028, Block 1029,Block 1998; Block Group 2: Block 2011, Block 2012, Block 2013, Block 2014, Block 2043, Block 2044, Block 2045, Block 2046; Precinct HUNTSVILLE, Precinct NEW BETHEL.

District 6: Moore County, Randolph County, Alamance County: Precinct PATTERSON, Precinct COBLE, Precinct MORTON, Precinct FAUCETTE, Precinct ALBRIGHT, Precinct BOONE 5, Precinct CENTRAL BOONE, Precinct NORTH BOONE, Precinct SOUTH BOONE, Precinct WEST BOONE, Precinct GRAHAM 4, Precinct EAST GRAHAM, Precinct SOUTH GRAHAM, Precinct WEST GRAHAM, Precinct NORTH NEWLIN, Precinct SOUTH NEWLIN, Precinct NORTH THOMPSON, Precinct SOUTH THOMPSON, Precinct MELVILLE 3, Precinct NORTH MELVILLE, Precinct SOUTH MELVILLE, Precinct BURLINGTON 4, Precinct BURLINGTON 5, Precinct BURLINGTON 6, Precinct BURLINGTON 9, Precinct WEST BURLINGTON, Precinct BURLINGTON 10; Davidson County: Precinct COTTON GROVE, Precinct DENTON, Precinct EMMONS, Precinct HEALING SPRINGS, Precinct HOLLY GROVE, Precinct LEXINGTON 1, Precinct LEXINGTON 2, Precinct LEXINGTON 3, Precinct LIBERTY, Precinct MIDWAY, Precinct NORTH DAVIDSON, Precinct SILVER HILL, Precinct SILVER VALLEY, Precinct SOUTH DAVIDSON, Precinct SOUTHMONT, Precinct THOMASVILLE 1, Precinct THOMASVILLE 4, Precinct THOMASVILLE 5, Precinct THOMASVILLE 7, Precinct THOMASVILLE 9, Precinct THOMASVILLE 10, Precinct WELCOME; Guilford County: Precinct Greene, Precinct Center Grove 1, Precinct Center Grove 2, Precinct Friendship 1, Precinct Friendship 2, Precinct Friendship 3, Precinct Friendship 4, Precinct Friendship 5, Precinct Greensboro 16, Precinct Greensboro 18, Precinct Greensboro 19, Precinct Greensboro 20, Precinct Greensboro 21, Precinct Greensboro 22, Precinct Greensboro 27, Precinct Greensboro 30, Precinct Greensboro 31, Precinct Greensboro 32, Precinct Greensboro 33, Precinct Greensboro 34, Precinct Greensboro 35, Precinct Greensboro 41, Precinct Greensboro 42, Precinct Greensboro 43, Precinct Greensboro 63, Precinct Greensboro 64: Tract 160.04: Block Group 4: Block 4048,Block 4049, Block 4050, Block 4051, Block 4052; Block Group 5: Block 5000, Block 5001, Block 5002, Block 5003, Block 5004, Block 5005, Block 5006, Block 5007, Block 5012, Block 5013, Block 5014, Block 5015, Block 5016; Tract 164.03: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1006; Tract 165.03: Block Group 1: Block 1000, Block 1001, Block 1010; Precinct Gibsonville, Precinct High Point 4, Precinct High Point 14, Precinct High Point 15, Precinct High Point 16, Precinct High Point 20, Precinct High Point 21, Precinct High Point 22, Precinct High Point 23, Precinct High Point 24, Precinct High Point 25, Precinct High Point 26, Precinct High Point 27, Precinct Oak Ridge 1, Precinct Oak Ridge 2, Precinct Pleasant Garden 1, Precinct Pleasant Garden 2, Precinct Rock Creek 1, Precinct Rock Creek 2, Precinct Summerfield 1, Precinct Summerfield 2, Precinct Summerfield 3, Precinct Summerfield 4, Precinct Fentress 2, Precinct Greensboro 40A, Precinct Greensboro 40B, Precinct Jamestown 4, Precinct Jamestown 5, Precinct Jefferson 1, Precinct Jefferson 2: Tract 153: Block Group 3: Block 3006, Block 3007, Block 3008, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3019, Block 3020, Block 3022, Block 3023, Block 3024, Block 3025, Block 3026; Precinct Jefferson 4, Precinct Monroe 1, Precinct Monroe 3, Precinct North Center Grove, Precinct North Deep River, Precinct South Deep River, Precinct South Madison, Precinct Stokesdale, Precinct Sumner 3, Precinct Sumner 4, Precinct North Clay, Precinct North Washington, Precinct South Clay, Precinct South Washington; Rowan County: Precinct Barnhardt Mill, Precinct Blackwelder Park, Precinct Bostian Crossroads, Precinct North China Grove, Precinct South China Grove, Precinct South Locke, Precinct Faith, Precinct Rock Grove, Precinct Granite Quarry, Precinct Hatters Shop, Precinct West Kannapolis, Precinct East Kannapolis, Precinct West Landis, Precinct East Landis, Precinct North Locke, Precinct Morgan I, Precinct Morgan II, Precinct Rockwell, Precinct Gold Knob, Precinct Steele, Precinct Sumner, Precinct Trading Ford, Precinct Bostian School.

District 7: Bladen County, Brunswick County, Columbus County, New Hanover County, Pender County, Robeson County, Cumberland County: Precinct CROSS CREEK 1, Precinct CROSS CREEK 2, Precinct HOPE MILLS 2, Precinct PEARCES MILL 3, Precinct ALDERMAN, Precinct BEAVER DAM, Precinct BLACK RIVER, Precinct CROSS CREEK 11, Precinct CROSS CREEK 15, Precinct CROSS CREEK 23, Precinct CEDAR CREEK, Precinct EASTOVER, Precinct JUDSON/VANDER, Precinct LINDEN, Precinct LONG HILL, Precinct MANCHESTER: Tract 34: Block Group 2: Block 2000, Block 2001, Block 2002, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2010, Block 2013, Block 2999; Tract 35: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1009, Block 1013; Tract 36: Block Group 1: Block 1000, Block 1001, Block 1008, Block 1009, Block 1031, Block 1032, Block 1999; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2037, Block 2038, Block 2047, Block 2048, Block 2049, Block 2054, Block 2055, Block 2056, Block 2057, Block 2058, Block 2059, Block 2060, Block 2061, Block 2062, Block 2999; Tract 37: Block Group 2: Block 2021, Block 2022, Block 2023, Block 2025, Block 2026, Block 2043, Block 2995; Precinct SHERWOOD, Precinct STONEY POINT: Tract 16.01: Block Group 3: Block 3022, Block 3024; Tract 31: Block Group 1: Block 1009, Block 1010, Block 1047, Block 1048, Block 1049, Block 1052, Block 1053, Block 1054, Block 1055, Block 1056, Block 1057, Block 1065, Block 1995, Block 1996, Block 1997; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2018, Block 2019, Block 2021, Block 2999; Block Group 3: Block 3995, Block 3996; Tract 32.01: Block Group 3: Block 3027, Block 3028; Precinct STEDMAN, Precinct WADE; Duplin County: Precinct BEULAVILLE: Tract 9905: Block Group 5: Block 5001, Block 5002, Block 5003, Block 5021, Block 5022; Precinct CYPRESS CREEK, Precinct CHARITY, Precinct FAISON, Precinct HALLSVILLE, Precinct KENANSVILLE, Precinct LOCKLIN, Precinct MAGNOLIA, Precinct ROCKFISH, Precinct ROSE HILL, Precinct SMITH CABIN, Precinct WALLACE, Precinct WARSAW; Sampson County: Precinct AUTRYVILLE, Precinct CLEMENT, Precinct NORTHEAST CLINTON: Tract 9706: Block Group 1: Block 1014, Block 1015, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1038, Block 1039, Block 1040, Block 1041, Block 1042, Block 1043, Block 1044, Block 1045, Block 1046; Block Group 4: Block 4000, Block 4001, Block 4002, Block 4003, Block 4004, Block 4005, Block 4026, Block 4027, Block 4028; Tract 9707: Block Group 2: Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022; Block Group 4: Block 4005, Block 4006; Precinct WEST CLINTON, Precinct HERRING, Precinct KITTY FORK, Precinct MINGO, Precinct PLAINVIEW, Precinct ROSEBORO, Precinct SALEMBURG, Precinct WESTBROOK; Scotland County: Precinct 2: Tract 104: BlockGroup 1: Block 1103, Block 1106, Block 1108, Block 1109, Block 1110, Block 1113; Precinct 6: Tract 104: Block Group 1: Block 1094, Block 1095, Block 1101, Block 1102, Block 1107, Block 1111, Block 1112, Block 1121, Block 1122.

District 8: Anson County, Hoke County, Montgomery County, Richmond County, Stanly County, Cabarrus County: Precinct 0101, Precinct 0102, Precinct 0103, Precinct 0104, Precinct 0201, Precinct 0202, Precinct 0203, Precinct 0205, Precinct 0206, Precinct 0207, Precinct 0401, Precinct 0402, Precinct 0403, Precinct 0404, Precinct 0405, Precinct 0406, Precinct 0407, Precinct 0408, Precinct 0409, Precinct 0410, Precinct 0500, Precinct 0600, Precinct 0700, Precinct 0800, Precinct 0900, Precinct 1000, Precinct 1101, Precinct 1102, Precinct 1201, Precinct 1202, Precinct 1203, Precinct 1204, Precinct 1205, Precinct 1206, Precinct 1207, Precinct 1208, Precinct 1209, Precinct 1210, Precinct 1211, Precinct 1212; Cumberland County: Precinct CROSS CREEK 4, Precinct CROSS CREEK 6, Precinct CROSS CREEK 7, Precinct CROSS CREEK 8, Precinct CUMBERLAND 1, Precinct CUMBERLAND 2, Precinct CUMBERLAND 3, Precinct HOPE MILLS 1, Precinct HOPE MILLS 3, Precinct MORGANTON ROAD, Precinct PEARCES MILL 2, Precinct PEARCES MILL 4, Precinct ARRAN HILLS, Precinct AUMAN, Precinct BRENTWOOD, Precinct CROSS CREEK 10, Precinct CROSS CREEK 12, Precinct CROSS CREEK 14, Precinct CROSS CREEK 18, Precinct CROSS CREEK 20, Precinct CROSS CREEK 24, Precinct CROSS CREEK 25,Precinct CROSS CREEK 27, Precinct CROSS CREEK 28, Precinct CROSS CREEK 29, Precinct CROSS CREEK 30, Precinct CROSS CREEK 31, Precinct CROSS CREEK 34, Precinct LAKE RIM, Precinct MONTIBELLO, Precinct STONEY POINT: Tract 16.01: Block Group 2: Block 2043; Block Group 3: Block 3010, Block 3011, Block 3015, Block 3018; Tract 31: Block Group 1: Block 1005, Block 1031, Block 1032, Block 1998, Block 1999; Block Group 2: Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2020, Block 2022, Block 2023, Block 2998; Tract 32.01: Block Group 1: Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1028, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1045, Block 1046, Block 1047, Block 1048, Block 1049, Block 1050, Block 1051, Block 1998, Block 1999; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022; Block Group 3: Block 3003, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023, Block 3024, Block 3025, Block 3026, Block 3029, Block 3030, Block 3031, Block 3032, Block 3034; Mecklenburg County: Precinct 002, Precinct 004, Precinct 005, Precinct 006, Precinct 007, Precinct 015, Precinct 017, Precinct 029, Precinct 033, Precinct 034, Precinct 045, Precinct 046, Precinct 061, Precinct 062, Precinct 063, Precinct 064, Precinct 084, Precinct 095, Precinct 108, Precinct 109, Precinct 117, Precinct 123, Precinct 124, Precinct 237, Precinct 130, Precinct 141, Precinct 204, Precinct 205; Scotland County: Precinct 1, Precinct 2: Tract 103: Block Group 1: Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1023, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1041, Block 1042, Block 1043, Block 1044, Block 1045, Block 1046, Block 1047, Block 1048, Block 1049, Block 1050, Block 1051, Block 1052, Block 1053, Block 1054, Block 1075, Block 1076, Block 1077, Block 1078, Block 1079, Block 1080, Block 1081, Block 1082, Block 1083, Block 1084, Block 1085, Block 1086, Block 1087, Block 1088, Block 1089, Block 1090, Block 1100, Block 1999; Block Group 2: Block 2037, Block 2038, Block 2039; Block Group 3: Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023, Block 3027, Block 3028, Block 3029, Block 3030, Block 3031, Block 3032, Block 3033, Block 3034, Block 3035, Block 3036; Block Group 4: Block 4000, Block 4001, Block 4002, Block 4003, Block 4004, Block 4005, Block 4006, Block 4007, Block 4008, Block 4009, Block 4010, Block 4011, Block 4012, Block 4013, Block 4014, Block 4015, Block 4016, Block 4017, Block 4018, Block 4019, Block 4020, Block 4021, Block 4022, Block 4023, Block 4024, Block 4025, Block 4026, Block 4027, Block 4028, Block 4029, Block 4030, Block 4031, Block 4032, Block 4033; Block Group 5: Block 5000, Block 5001, Block 5002, Block 5003, Block 5004, Block 5005, Block 5006, Block 5007, Block 5008, Block 5009, Block 5010, Block 5011, Block 5012, Block 5013, Block 5014, Block 5015, Block 5016, Block 5017, Block 5018, Block 5019, Block 5020, Block 5021, Block 5022, Block 5023, Block 5024, Block 5025, Block 5026, Block 5027, Block 5028, Block 5029; Tract 104: Block Group 1: Block 1072, Block 1073, Block 1076, Block 1077, Block 1104, Block 1105, Block 1114, Block 1115, Block 1116, Block 1117, Block 1118, Block 1119, Block 1120, Block 1996; Precinct 3, Precinct 4, Precinct 5, Precinct 6: Tract 103: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1020, Block 1021, Block 1022, Block 1024, Block 1025, Block 1026, Block 1027; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036, Block 2040, Block 2041; Tract 104: Block Group 1: Block 1003, Block 1004, Block 1005, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1041, Block 1042, Block 1043, Block 1044, Block 1045, Block 1046, Block 1047, Block 1048, Block 1049, Block 1050, Block 1051, Block 1052, Block 1053, Block 1054, Block 1055, Block 1056, Block 1057, Block 1058, Block 1059, Block 1060, Block 1061, Block 1062, Block 1063, Block 1064, Block 1065, Block 1066, Block 1067, Block 1068, Block 1069, Block 1070, Block 1071, Block 1074, Block 1075, Block 1078, Block 1079, Block 1080, Block 1081, Block 1082, Block 1083, Block 1084, Block 1085, Block 1086, Block 1087, Block 1088, Block 1089, Block 1090, Block 1091, Block 1092, Block 1093, Block 1096, Block 1097, Block 1098, Block 1099, Block 1100, Block 1123, Block 1124, Block 1125, Block 1126, Block 1127, Block 1128, Block 1129, Block 1130, Block 1131, Block 1132, Block 1133, Block 1134, Block 1135, Block 1136, Block 1137, Block 1997, Block 1998, Block 1999; Precinct 7, Precinct 8, Precinct 9, Precinct 10; Union County: Precinct 01, Precinct 02, Precinct 03, Precinct 04, Precinct 08, Precinct 09, Precinct 10, Precinct 11, Precinct 25, Precinct 26, Precinct 27, Precinct 36, Precinct 43.

District 9: Gaston County: Precinct York Chester, Precinct Victory, Precinct Pleasant Ridge, Precinct Health Center, Precinct Myrtle, Precinct Highland, Precinct Wood Hill, Precinct Grier, Precinct Sherwood, Precinct Armstrong, Precinct Flint Grove, Precinct Ranlo, Precinct Gardner Park, Precinct Robinson 1, Precinct Gaston Day, Precinct Robinson 2, Precinct Ashbrook, Precinct South Gastonia, Precinct Bessemer City 1, Precinct Bessemer City 2, Precinct Belmont 1, Precinct Belmont 2, Precinct Belmont 3, Precinct Catawba Heights, Precinct Southpoint, Precinct Cramerton, Precinct New Hope, Precinct McAdenville, Precinct Union, Precinct Lowell, Precinct Landers Chapel: Tract 303: Block Group 1: Block 1011, Block 1012, Block 1013, Block 1014, Block 1995; Tract 304: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011; Block Group 2: Block 2005, Block 2015, Block 2016, Block 2048, Block 2050, Block 2995, Block 2996; Tract 305: Block Group 1: Block 1000, Block 1001, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1034, Block 1036, Block 1037, Block 1038, Block 1999; Precinct High Shoals, Precinct Alexis, Precinct Dallas 1, Precinct Dallas 2, Precinct Lucia, Precinct Stanley 1, Precinct Stanley 2, Precinct Mt Holly 1, Precinct Mt Holly 2; Mecklenburg County: Precinct 001, Precinct 008, Precinct 009, Precinct 010, Precinct 018, Precinct 019, Precinct 020, Precinct 021, Precinct 032, Precinct 035, Precinct 036, Precinct 037, Precinct 038, Precinct 047, Precinct 048, Precinct 049, Precinct 050, Precinct 051, Precinct 057, Precinct 058, Precinct 059, Precinct 065, Precinct 066, Precinct 067, Precinct 068, Precinct 069, Precinct 070, Precinct 071, Precinct 072, Precinct 073, Precinct 074, Precinct 075, Precinct 076, Precinct 077: Tract 59.05: Block Group 2: Block 2008, Block 2040, Block 2041, Block 2042, Block 2043, Block 2044, Block 2045, Block 2046, Block 2047, Block 2048, Block 2049, Block 2050; Precinct 083, Precinct 085, Precinct 086, Precinct 087, Precinct 088, Precinct 089, Precinct 090, Precinct 091, Precinct 092, Precinct 093, Precinct 094, Precinct 096, Precinct 097, Precinct 099, Precinct 100, Precinct 101, Precinct 102, Precinct 103, Precinct 106, Precinct 110, Precinct 111, Precinct 112, Precinct 113, Precinct 114, Precinct 115, Precinct 116, Precinct 118, Precinct 119, Precinct 120, Precinct 121, Precinct 122, Precinct 125, Precinct 128, Precinct 225, Precinct 226, Precinct 227, Precinct 229, Precinct 230, Precinct 231, Precinct 232, Precinct 233, Precinct 234, Precinct 235, Precinct 236, Precinct 238, Precinct 240, Precinct 241, Precinct 242, Precinct 243, Precinct 129, Precinct 131, Precinct 133, Precinct 134, Precinct 136, Precinct 137, Precinct 139, Precinct 140, Precinct 142, Precinct 143, Precinct 144, Precinct 200: Tract 59.01: Block Group 3: Block 3013, Block 3023, Block 3030, Block 3031, Block 3032, Block 3033, Block 3993, Block 3996, Block 3997; Block Group 4: Block 4005, Block 4006, Block 4007, Block 4010, Block 4011, Block 4999; Precinct 201, Precinct 202, Precinct 203, Precinct 207, Precinct 208, Precinct 209, Precinct 214, Precinct 215, Precinct 216, Precinct 217, Precinct 218, Precinct 219, Precinct 220, Precinct 221, Precinct 222, Precinct 223, Precinct 224; Union County: Precinct 05, Precinct 06, Precinct 07, Precinct 12, Precinct 13, Precinct 14, Precinct 15, Precinct 16, Precinct 17, Precinct 18, Precinct 19, Precinct 20, Precinct 21, Precinct 22, Precinct 23, Precinct 24, Precinct 28, Precinct 29, Precinct 30, Precinct 31, Precinct 32, Precinct 33, Precinct 34, Precinct 35, Precinct 37, Precinct 38, Precinct 39, Precinct 40, Precinct 41, Precinct 42.

District 10: Avery County, Burke County, Caldwell County, Catawba County, Cleveland County, Lincoln County, Mitchell County, Gaston County: Precinct

Forest Heights, Precinct Crowders Mountain, Precinct Tryon, Precinct Landers Chapel: Tract 305: Block Group 1: Block 1002, Block 1011, Block 1015, Block 1016, Block 1022, Block 1023, Block 1024, Block 1033, Block 1035; Precinct Cherryville 1, Precinct Cherryville 2, Precinct Cherryville 3; Iredell County: Precinct Coddle Creek 1, Precinct Coddle Creek 2, Precinct Coddle Creek 3, Precinct Coddle Creek 4, Precinct Davidson 1,Precinct Davidson 2, Precinct Fallstown, Precinct Shiloh; Rutherford County: Precinct Bostic, Precinct Camp Creek, Precinct Caroleen, Precinct Chimney Rock 1, Precinct Chimney Rock 2, Precinct Cliffside, Precinct Duncans Creek, Precinct Ellenboro, Precinct Forest City 2, Precinct Gilkey, Precinct Golden Valley, Precinct Green Hill: Tract 9602: Block Group 1: Block 1084, Block 1085; Block Group 2: Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2024, Block 2025, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2036, Block 2037, Block 2038, Block 2039, Block 2040, Block 2041, Block 2042, Block 2043; Block Group 3: Block 3046, Block 3048, Block 3052, Block 3053, Block 3054, Block 3055; Block Group 4: Block 4001, Block 4002, Block 4003, Block 4007, Block 4008, Block 4009, Block 4010, Block 4011, Block 4012, Block 4013, Block 4014, Block 4018, Block 4019, Block 4020, Block 4021, Block 4022, Block 4023, Block 4025, Block 4030, Block 4999; Precinct Haynes, Precinct Morgan, Precinct Mount Vernon, Precinct Sandy Mush, Precinct Sunshine.

District 11: Buncombe County, Cherokee County, Clay County, Graham County, Haywood County, Henderson County, Jackson County, McDowell County, Macon County, Madison County, Polk County, Swain County, Transylvania County, Yancey County, Rutherford County: Precinct Danieltown, Precinct Forest City 1, Precinct Green Hill: Tract 9602: Block Group 3: Block 3044, Block 3045, Block 3051; Block Group 4: Block 4017, Block 4024, Block 4026, Block 4027, Block 4028, Block 4029, Block 4031, Block 4032, Block 4033, Block 4035, Block 4036, Block 4037, Block 4038, Block 4039, Block 4040, Block 4041, Block 4042, Block 4043, Block 4044, Block 4045, Block 4046; Tract 9603: Block Group 2: Block 2162; Tract 9604: Block Group 1: Block 1049; Block Group 2: Block 2006, Block 2007; Tract 9605: Block Group 1: Block 1006, Block 1007, Block 1008, Block 1009, Block 1012, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1048, Block 1052, Block 1053, Block 1055, Block 1056, Block 1057, Block 1999; Precinct Rutherfordton 1, Precinct Rutherfordton 2, Precinct Spindale, Precinct Sulpher Springs, Precinct Union.

District 12: Cabarrus County: Precinct 0204, Precinct 0300; Davidson County: Precinct ABBOTTS CREEK, Precinct ARCADIA, Precinct BOONE, Precinct CENTRAL, Precinct GUMTREE, Precinct LEXINGTON 4, Precinct WARD 1, Precinct WARD 2, Precinct WARD 3, Precinct WARD 4, Precinct WARD 5, Precinct WARD 6, Precinct REEDS YADKIN COLLEGE, Precinct REEDY CREEK, Precinct THOMASVILLE 2, Precinct THOMASVILLE 3, Precinct THOMASVILLE 8, Precinct TYRO, Precinct WALLBURG, Precinct WEST ARCADIA; Forsyth County: Precinct 033, Precinct 042, Precinct 043, Precinct 081, Precinct 082, Precinct 083, Precinct 101, Precinct 201, Precinct 203, Precinct 204, Precinct 205, Precinct 206, Precinct 207, Precinct 301, Precinct 302, Precinct 303, Precinct 304, Precinct 305, Precinct 306, Precinct 401, Precinct 402, Precinct 403, Precinct 404, Precinct 405, Precinct 501, Precinct 502, Precinct 503, Precinct 504, Precinct 505, Precinct 506, Precinct 507, Precinct 601, Precinct 603, Precinct 604, Precinct 605, Precinct 606, Precinct 902, Precinct 903, Precinct 904, Precinct 905; Guilford County: Precinct HP, Precinct Greensboro 4, Precinct Greensboro 46, Precinct Greensboro 52, Precinct Greensboro 53, Precinct Greensboro 54, Precinct Greensboro

55, Precinct Greensboro 57, Precinct Greensboro 59: Tract 126.09: Block Group 1: Block 1030, Block 1031, Block 1035, Block 1036, Block 1037; Block Group 2: Block 2053, Block 2054, Block 2055; Tract 165.02: Block Group 2: Block 2000, Block 2001, Block 2004, Block 2005, Block 2006; Precinct Greensboro 61, Precinct Greensboro 62, Precinct Greensboro 64: Tract 160.04: Block Group 4: Block 4038, Block 4044, Block 4045, Block 4046, Block 4047, Block 4053, Block 4054, Block 4055, Block 4056, Block 4057, Block 4058, Block 4059, Block 4060, Block 4061, Block 4062, Block 4063, Block 4064, Block 4065, Block 4066, Block 4067, Block 4068, Block 4069, Block 4071; Tract 162.01: Block Group 2: Block 2043, Block 2058, Block 2059, Block 2060, Block 2062, Block 2063, Block 2064, Block 2065, Block 2066, Block 2067, Block 2068, Block 2069, Block 2070, Block 2077, Block 2078; Tract 162.02: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1133, Block 1147, Block 1148; Tract 164.03: Block Group 1: Block 1003, Block 1004, Block 1005, Block 1010, Block 1011, Block 1012, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1029; Precinct Greensboro 65, Precinct Greensboro 66, Precinct Greensboro 67, Precinct Greensboro 68, Precinct Greensboro 69, Precinct Greensboro 70, Precinct Greensboro 71, Precinct Greensboro 73, Precinct Greensboro 74, Precinct Greensboro 75, Precinct High Point 1, Precinct High Point 2, Precinct High Point 3, Precinct High Point 5, Precinct High Point 6, Precinct High Point 7, Precinct High Point 8, Precinct High Point 9, Precinct High Point 10, Precinct High Point 11, Precinct High Point 12, Precinct High Point 13, Precinct High Point 17, Precinct High Point 18, Precinct High Point 19, Precinct Fentress 1, Precinct Jamestown 1, Precinct Jamestown 2, Precinct Jamestown 3, Precinct Jefferson 3, Precinct Sumner 1, Precinct Sumner 2; Mecklenburg County: Precinct 003, Precinct 011, Precinct 012, Precinct 013, Precinct 014, Precinct 016, Precinct 022, Precinct 023, Precinct 024, Precinct 025, Precinct 026, Precinct 027, Precinct 028, Precinct 030, Precinct 031, Precinct 039, Precinct 040, Precinct 041, Precinct 042, Precinct 043, Precinct 044, Precinct 052, Precinct 053, Precinct 054, Precinct 055, Precinct 056, Precinct 060, Precinct 077: Tract 38.04: Block Group 1: Block 1022; Block Group 2: Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2012; Tract 58.06: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1068, Block 1069, Block 1071, Block 1072, Block 1073, Block 1074, Block 1077, Block 1079, Block 1999; Tract 59.05: Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007; Precinct 078, Precinct 079, Precinct 080, Precinct 081, Precinct 082, Precinct 098, Precinct 104, Precinct 105, Precinct 107, Precinct 126, Precinct 127, Precinct 228, Precinct 239, Precinct 132, Precinct 135, Precinct 138, Precinct 200: Tract 59.01: Block Group 2: Block 2012, Block 2013, Block 2030, Block 2031, Block 2035, Block 2036; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3024, Block 3025, Block 3026, Block 3027, Block 3028, Block 3029, Block 3036, Block 3037, Block 3038, Block 3994, Block 3995, Block 3998, Block 3999; Block Group 4: Block 4000, Block 4001, Block 4002, Block 4003, Block 4004, Block 4008, Block 4009; Precinct 206, Precinct 210, Precinct 211, Precinct 212, Precinct 213; Rowan County: Precinct Bradshaw, Precinct Cleveland, Precinct East Enochville, Precinct Franklin, Precinct Milford Hills County, Precinct East Spencer, Precinct Mount Ulla, Precinct Scotch Irish, Precinct Spencer, Precinct Unity, Precinct West Ward II, Precinct West Ward I, Precinct South Ward, Precinct North Ward I, Precinct East Ward I, Precinct West Innes, Precinct North Ward II, Precinct Milford Hills City, Precinct West Ward III, Precinct East Ward II, Precinct West Enochville.

District 13: Caswell County, Person County, Alamance County: Precinct PLEASANT GROVE, Precinct HAW RIVER, Precinct GRAHAM 3, Precinct NORTH GRAHAM, Precinct BURLINGTON 7, Precinct BURLINGTON 8, Precinct EAST BURLINGTON, Precinct NORTH BURLINGTON, Precinct SOUTH BURLINGTON; Granville County: Precinct ANTIOCH, Precinct BEREA, Precinct BRASSFIELD, Precinct BUTNER, Precinct CORINTH, Precinct CREEDMOOR, Precinct OAK HILL, Precinct SASSAFRAS FORK, Precinct TALLY HO; Guilford County: Precinct Center Grove 3, Precinct Greensboro 1, Precinct Greensboro 2, Precinct Greensboro 3, Precinct Greensboro 5, Precinct Greensboro 6, Precinct Greensboro 7, Precinct Greensboro 9, Precinct Greensboro 10, Precinct Greensboro 11, Precinct Greensboro 12, Precinct Greensboro 13, Precinct Greensboro 14, Precinct Greensboro 15, Precinct Greensboro 17, Precinct Greensboro 23, Precinct Greensboro 24, Precinct Greensboro 25, Precinct Greensboro 26, Precinct Greensboro 28, Precinct Greensboro 29, Precinct Greensboro 36, Precinct Greensboro 37, Precinct Greensboro 38, Precinct Greensboro 39, Precinct Greensboro 44, Precinct Greensboro 45, Precinct Greensboro 47, Precinct Greensboro 48, Precinct Greensboro 49, Precinct Greensboro 50, Precinct Greensboro 51, Precinct Greensboro 56, Precinct Greensboro 58, Precinct Greensboro 59: Tract 126.09: Block Group 1: Block 1024, Block 1025, Block 1027, Block 1028, Block 1029, Block 1032, Block 1033, Block 1034, Block 1038, Block 1039; Block Group 2: Block 2048, Block 2049, Block 2050, Block 2051, Block 2052; Precinct Greensboro 60, Precinct Greensboro 72, Precinct Greensboro 8, Precinct Jefferson 2: Tract 111.02: Block Group 2: Block 2000; Tract 127.07: Block Group 1: Block 1000, Block 1001; Tract 128.03: Block Group 1: Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1028, Block 1029, Block 1030, Block 1032, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1042, Block 1049, Block 1051, Block 1055, Block 1066, Block 1067, Block 1069, Block 1070, Block 1074, Block 1075, Block 1076, Block 1077; Block Group 2: Block 2000, Block 2001, Block 2007, Block 2012, Block 2013, Block 2038; Tract 153: Block Group 3: Block 3018, Block 3021, Block 3027, Block 3028, Block 3029, Block 3030, Block 3031, Block3032, Block 3033, Block 3034, Block 3035, Block 3036; Precinct Monroe 2, Precinct North Madison; Rockingham County: Precinct BETHLEHEM, Precinct CENTRAL AREA, Precinct DRAPER, Precinct DAN VALLEY, Precinct HOGANS: Tract 410.02: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1010, Block 1011, Block 1013, Block 1019, Block 1020, Block 1021, Block 1023, Block 1999; Block Group 2: Block 2001, Block 2008; Tract 411: Block Group 4: Block 4026, Block 4027; Precinct IRONWORKS, Precinct MAYFIELD, Precinct MAYODAN, Precinct MARTINS, Precinct OREGON HILL, Precinct PRICE, Precinct RUFFIN, Precinct SHILOH, Precinct SIMPSONVILLE, Precinct STONEVILLE, Precinct WENTWORTH, Precinct WILLIAMSBURG, Precinct LEAKSVILLE 1, Precinct LEAKSVILLE 2, Precinct LEAKSVILLE 3, Precinct MADISON 1, Precinct MADISON 2, Precinct REIDSVILLE 1, Precinct REIDSVILLE 2, Precinct REIDSVILLE 3, Precinct REIDSVILLE 4, Precinct REIDSVILLE 5, Precinct REIDSVILLE 6, Precinct SPRAY 1; Wake County: Precinct 01-01, Precinct 01-02, Precinct 01-03, Precinct 01-04, Precinct 01-05, Precinct 01-06, Precinct 01-07, Precinct 01-09, Precinct 01-10, Precinct 01-11, Precinct 01-12, Precinct 01-13, Precinct 01-14, Precinct 01-15, Precinct 01-16, Precinct 01-17, Precinct 01-18, Precinct 01-25, Precinct 01-27: Tract 501: Block Group 1: Block 1067, Block 1068, Block 1069, Block 1071, Block 1072, Block 1073, Block 1074, Block 1075, Block 1076, Block 1077, Block 1078, Block 1103, Block 1104, Block 1105, Block 1106, Block 1107, Block 1108, Block 1109, Block 1110, Block 1111, Block 1118, Block 1119, Block 1120; Tract 510: Block Group 1: Block 1000, Block 1001; Block Group 2: Block 2000, Block 2001, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037, Block 2038, Block 2039, Block 2040, Block 2041, Block 2042; Tract 522.01: Block Group 1: Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1022; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014; Tract 522.02: Block Group 1: Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010; Tract 523.02: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1027, Block 1028, Block 1029; Precinct 01-28, Precinct 01-29, Precinct 01-30, Precinct 01-31, Precinct 01-32, Precinct 01-33, Precinct 01-34, Precinct 01-36, Precinct 01-37, Precinct 01-38, Precinct 01-39, Precinct 01-40, Precinct 01-41, Precinct 01-42, Precinct 01-43, Precinct 01-44, Precinct 01-45, Precinct 01-46, Precinct 01-48, Precinct01-49, Precinct 01-51, Precinct 04-02, Precinct 04-04,Precinct 04-16, Precinct 07-01, Precinct 07-02, Precinct 07-04, Precinct 07-05, Precinct 07-09, Precinct 07-10,Precinct 07-11, Precinct 07-12, Precinct 09-01, Precinct 09-02, Precinct 10-01, Precinct 10-02, Precinct 10-03, Precinct 10-04, Precinct 11-02: Tract 525.04: Block Group 2: Block 2021, Block 2027, Block 2030, Block 2041; Precinct 13-01, Precinct 13-02, Precinct 13-03, Precinct 14-01, Precinct 14-02, Precinct 17-01, Precinct 17-02, Precinct 17-03, Precinct 17-04, Precinct 17-05, Precinct 17-06, Precinct 17-07, Precinct 19-01, Precinct 19-02, Precinct 19-03, Precinct 19-04, Precinct 19-05, Precinct 19-06, Precinct 19-07, Precinct 19-08.

(b) The names and boundaries of precincts (voting tabulation districts), tracts, block groups, and blocks specified in this section are as they were legally defined and recognized in the 2000 United States Census. Boundaries are as shown on the Redistricting Census 2000 TIGER Files, with modifications made by the Legislative Services Office on its computer database as of May 1, 2001, to reflect precincts divided or renamed as outlined in subsection (c) of this section. However, in Robeson County PHILADEPLUS is, in fact, PHILADELPHUS, and in Vance County SANDY SCREEK is, in fact, SANDY CREEK. If the boundary line between Iredell and Mecklenburg Counties in the Redistricting Census 2000 TIGER Files conflicts with that provided by Section 1 of Session Law 1998-15 as rewritten by Session Law 2001-429, Section 1 of Session Law 1998-15 as rewritten by Session Law 2001-429 prevails to the extent of the conflict.

(c) The Legislative Services Office modified on its computer database some of the precincts shown on the Redistricting Census 2000 TIGER Files to reflect precincts divided or renamed by county boards of elections after the TIGER Files were completed. As a result, precincts are shown differently on the Legislative Services Office computer database from the TIGER Files in the following counties:

(1) Buncombe County:
   a. Precinct Asheville 4 in TIGER is shown as Precincts Asheville 4 and Asheville 28.
   b. Precinct Asheville 22 in TIGER is shown as Precincts Asheville 22 and Asheville 27.

c. Precinct Asheville 19 in TIGER is shown as Precincts Asheville 19 and Asheville 29.
d. Precinct Riceville Swannanoa 2 CRU in TIGER is shown as Precincts Riceville Swannanoa 2 CRU and Riceville Swannanoa CRU 2.
e. Precinct Black Mountain 3 in TIGER is shown as Precincts Black Mountain 3 and Black Mountain 4.

(2) Cabarrus County:
a. Precinct 0202 in TIGER is shown as Precincts 0202 and 0207.
b. Precinct 1209 in TIGER is shown as Precincts 1209 and 1212.

(3) Caldwell County: Precinct Lovelady in TIGER is shown as Precincts Lovelady 1 and Lovelady 2.

(4) Chatham County:
a. Precinct North Williams in TIGER is shown as Precincts North Williams and North Williams 2.
b. Precinct East Williams in TIGER is shown as Precincts East Williams and East Williams 2.

(5) Craven County: Precinct Havelock in TIGER is shown as Precincts Havelock East and Havelock West.

(6) Franklin County: Precinct Harris in TIGER is shown as Precincts East Harris and West Harris.

(7) Guilford County: Precinct Greensboro 40 in TIGER is shown as Precincts Greensboro 40A and Greensboro 40B.

(8) Johnston County: Precinct East Clayton in TIGER is shown as Precincts East Clayton and South Clayton.

(9) Orange County:
a. Precinct Frank Porter Graham in TIGER is renamed Precinct Damascus 1.
b. Precinct Dogwood Acres in TIGER is shown as Precincts Dogwood Acres and Damascus 2.

(10) Rowan County:
a. Precinct Bostian Crossroads in TIGER is shown as Precincts Bostian Crossroads and Rock Grove.
b. Precinct Enochville in TIGER is shown as Precincts Enochville and West Enochville.

(11) Wake County:
a. Precinct 01-32 in TIGER is shown as Precincts 01-32 and 01-49.
b. Precinct 07-06 in TIGER is shown as Precincts 07-06 and 07-11.
c. Precinct 10-01 in TIGER is shown as Precincts 10-01 and 10-04.
d. Precinct 10-02 in TIGER is shown as Precincts 10-02 and 10-03.
e. Precinct 01-43 in TIGER is shown as Precincts 01-43 and 01-51.
f. Precinct 07-02 in TIGER is shown as Precincts 07-02 and 07-12.
g. Precinct 08-04 in TIGER is shown as Precincts 08-04 and 08-08.
h. Precinct 12-02 in TIGER is shown as Precincts 12-02 and 12-06.
i. Precinct 18-03 in TIGER is shown as Precincts 18-03 and 18-08.
j. Precinct 19-02 in TIGER is shown as Precincts 19-02 and 19-06.
k. Precinct 19-03 in TIGER is shown as Precincts 19-03 and 19-07.
l. Precinct 19-04 in TIGER is shown as Precincts 19-04 and 19-08.
m. Precinct 20-04 in TIGER is shown as Precincts 20-04 and 20-10.
n. Precinct 01-32 in TIGER is shown as Precincts 01-32 and 01-49.

(d) If any precinct boundary is changed, that change shall not change the boundary of a congressional district, which shall remain the same.

(e) If this section does not specifically assign any area within North Carolina to a district, and the area is:

(1) Entirely surrounded by a single district, the area shall be deemed to have been assigned to that district.

(2) Contiguous to two or more districts, the area shall be deemed to have been assigned to that district which contains the least population according to the 2000 United States Census.

(3) Contiguous to only one district and to another state or the Atlantic Ocean, the area shall be deemed to have been assigned to that district. (Rev., s. 4366; 1911, c. 97; C.S., s. 6004; 1931, c. 216; 1941, c. 3; 1961, c. 864; 1966, Ex. Sess., c. 7, s. 1; 1967, c. 775, s. 1; c. 1109; 1971, c. 257; 1981, c. 894; 1982, Ex. Sess., c. 7; 1991, c. 601, s. 1; c. 761, s. 33(a), (b); 1991, Ex. Sess., c. 7, s. 1; 1993, c. 553, s. 66; 1997-11, ss. 1, 2; 1997-456, ss. 27, 52; 1998-2, ss. 1, 1.1; 2001-471, s. 1; 2001-479, ss. 1, 2.)

Editor's Note. — Subsection (a) of this section is set out as amended by Session Laws 1997-11, s. 2, because of the decision in Hunt v. Cromartie, 526 U.S. 541, 119 S. Ct. 1545, 143 L. Ed. 2d 731 (1999), and because of Session Laws 1998-2, s. 1.1. Session Laws 1991, Ex. Sess., c. 7, which rewrote subsection (a), which was submitted to the Attorney General of the United States pursuant to Section 5 of the Voting Rights Act of 1965, as amended (42 U.S.C. 1973c), and which received preclearance from the United States Department of Justice was held unconstitutional in Shaw v. Hunt, 517 U.S. 899, 116 S. Ct. 1894, 135 L. Ed. 2d 207 (1996).

Session Laws 1997-11, s. 1, as amended by Session Laws 1997-456, s. 52, effective August 29, 1997, repealed Session Laws 1991, Ex. Sess., c. 7, s. 1.

Cromartie v. Hunt, 34 F. Supp. 2d 1029 (E.D.N.C. 1998, held that G.S. 163-201(a), as amended by Session Laws 1997-11, s. 1, was unconstitutional. Session Laws 1998-2, s. 1, adopted a redistricting plan in response, but s. 1.1 provided that the plan adopted in s. 1 was effective for elections in years 1998 and 2000 unless the United States Supreme Court reversed the decision of the District Court holding G.S. 163-201(a) unconstitutional. The decision of the District Court was reversed by the United States Supreme Court in Hunt v. Cromartie, 526 U.S. 541, 119 S. Ct. 1545, 143 L. Ed. 2d 731 (1999).

Subsection (c) of this section was renumbered as subdivisions (c)(1) through (c)(6) pursuant to Session Laws 1997-456, s. 27, which authorized the Revisor of Statutes to renumber or reletter sections and parts of sections having a number or letter designation that is incompatible with the General Assembly's computer database.

Session Laws 1998-164, s. 1(a), established a special reserve fund, "Reserve for Attorneys Fees in the Case of Pope v. Hunt," in the Office of State Budget and Management to compensate the law firm of Maupin Taylor & Ellis, P.A., for its representation of Art Pope and others in the case of Pope v. Hunt, (see Shaw v. Hunt, 154 F.3d 161 (4th Cir. 1998)), which challenged the congressional redistricting plan adopted by the 1991 General Assembly. Section 1(b) appropriated $550,000 from the General Fund to the Office of State Budget and Management for fiscal year 1998-99, and provided that the Director of the Budget allocate the funds pursuant to the order entered in that case. Section 1(c) provided that any funds remaining in the reserve after the firm of Maupin Taylor & Ellis, P.A., has been compensated are to revert to the General Fund.

Session Laws 2001-479, which amended this section and which was submitted to the Attorney General of the United States pursuant to Section 5 of the Voting Rights Act of 1965, as amended (42 U.S.C. 1973c), received preclearance from the United States Department of Justice on February 15, 2002.

Legal Periodicals. — For article, "Political Gerrymandering After Davis v. Bandemer," see 9 Campbell L. Rev. 207 (1987).

For article, "Racial Gerrymandering and the Voting Rights Act in North Carolina," see 9 Campbell L. Rev. 255 (1987).

For 1997 legislative survey, see 20 Campbell L. Rev. 409.

CASE NOTES

Editor's Note. *— See the editor's note regarding Hunt v. Cromartie, 526 U.S. 541, 119 S. Ct. 1545, 143 L. Ed. 2d 731 (1999).*

Constitutionality. — The General Assembly's motivation in drawing the boundaries of a congressional district was a disputed question of fact, and summary judgement in favor of plaintiffs who challenged its motivation as unconstitutional racial gerrymandering was not appropriate, where the congressional districting plan was race-neutral on its face, and the State succeeded in showing that other reasonable inferences could be drawn from the undisputed facts than the plan was based upon racial motivation. Hunt v. Cromartie, 526 U.S. 541, 119 S. Ct. 1545, 143 L. Ed. 2d 731 (1999).

Redistricting plan revised to include a second majority-black district after the United States Attorney General objected to the original plan submitted by the General Assembly for preclearance under G.S. 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c, violated the equal protection clause of the U.S. Const., Amend. XIV, because race was the legislature's predominant consideration in determining the second majority-black district's shape and placement; and because the plan was not narrowly tailored to serve a compelling state interest, i.e., avoiding liability for minority vote dilution Shaw v. Hunt, 517 U.S. 899, 116 S. Ct. 1894, 135 L. Ed. 2d 207 (1996).

Voters who sought injunctive relief against implementation of reapportionment plan had stated a claim under the equal protection clause of the U.S. Const. Amend. XIV, by alleging that the reapportionment plan was so irrational on its face that the plan could be understood only as an effort to segregate voters into separate voting districts because of their race, and that the separation lacked sufficient justification. Shaw v. Reno, 509 U.S. 630, 113 S. Ct. 2816, 125 L. Ed. 2d 511 (1993).

As the variance between the enacted legislative plan and a rejected alternative plan was insubstantial and de minimis, and the legislature made a good faith effort to equitably reapportion, this section was constitutional and not in violation of the equal protection clause of U.S. Const., Amend. XIV. Drum v. Scott, 337 F. Supp. 588 (M.D.N.C. 1972).

The Act of the 1967 session of the legislature reapportioning congressional districts met minimum federal constitutional standards. Drum v. Seawell, 271 F. Supp. 193 (M.D.N.C. 1967).

For case holding former apportionment unconstitutional, see Drum v. Seawell, 249 F. Supp. 877 (M.D.N.C. 1965), aff'd, 383 U.S. 831, 86 S. Ct. 1237, 16 L. Ed. 2d 298 (1966).

Practical and Rational Equality Required. — While rigid mathematical standards are not the sine qua non of constitutional validity, practical and rational equality is required. Such equality recognizes only minor deviations which may occur in the recognition of rational and legitimate factors, free from the taint of arbitrariness, irrationality and discrimination. Drum v. Seawell, 250 F. Supp. 922 (M.D.N.C. 1966).

Stricter adherence to equality of population between districts may more logically be required in congressional than in state legislative representation. Drum v. Seawell, 250 F. Supp. 922 (M.D.N.C. 1966), aff'd, 383 U.S. 831, 86 S. Ct. 1237, 16 L. Ed. 2d 298 (1966).

§ 163-201.1. Severability of congressional apportionment acts.

If any provision of any act of the General Assembly that apportions congressional districts is held invalid by any court of competent jurisdiction, the invalidity shall not affect other provisions that can be given effect without the invalid provision; and to this end the provisions of any said act are severable. (1981, c. 771, s. 2.)

§ 163-201.2. Dividing precincts in congressional apportionment acts restricted.

(a) An act of the General Assembly that apportions congressional districts after the return of a census may not divide precincts unless an act that apportioned congressional districts after the return of that same census has been rejected by the United States Department of Justice or the District Court for the District of Columbia under section 5 of the Voting Rights Act of 1965.

(b) If an act that apportioned congressional districts has been rejected by the United States Department of Justice or the District Court for the District of Columbia under section 5 of the Voting Rights Act of 1965, then a subsequent act may only divide the minimum number of precincts necessary to obtain approval of the act under section 5 of the Voting Rights Act of 1965.

(c) This section does not prevent the General Assembly from taking any action to comply with federal law or the Constitution of the United States. (1995, c. 355, s. 2.)

Editor's Note. — The United States Department of Justice interposed objection to Session Laws 1995, c. 355, which enacted this section.

§ 163-202. Election after reapportionment of members of House of Representatives.

Whenever, by a new apportionment of members of the United States House of Representatives, the number of Representatives from North Carolina shall be changed, and neither the Congress nor the General Assembly shall provide for electing them, the following procedures shall apply:

(1) If the number of Representatives is increased, the Representative from each of the existing congressional districts shall be elected by the qualified voters of his district, and the additional Representatives apportioned to North Carolina shall be elected on a single ballot by the qualified voters of the whole State.

(2) If the number of Representatives is decreased, existing congressional district lines shall be ignored, and all Representatives apportioned to North Carolina shall be elected on a single ballot by the qualified voters of the whole State. (1901, c. 89, s. 58; Rev., s. 4368; C.S., s. 6006; 1967, c. 775, s. 1.)

§§ 163-203 through 163-207: Reserved for future codification purposes.

Article 18.

Presidential Electors.

§ 163-208. Conduct of presidential election.

Unless otherwise provided, the election of presidential electors shall be conducted and the returns made in the manner prescribed by this Chapter for the election of State officers. (1901, c. 89, s. 79; Rev., s. 4371; C.S., s. 6009; 1933, c. 165, s. 11; 1967, c. 775, s. 1.)

CASE NOTES

Cited in Greaves v. State Bd. of Elections, 508 F. Supp. 78 (E.D.N.C. 1980).

§ 163-209. Names of presidential electors not printed on ballots; notification.

(a) The names of candidates for electors of President and Vice-President nominated by any political party recognized in this State under G.S. 163-96, or nominated under G.S. 163-1(c) by a candidate for President of the United States who has qualified to have his or her name printed on the general election ballot as an unaffiliated candidate under G.S. 163-122, shall be filed with the Secretary of State but shall not be printed on the ballot. In the case of the unaffiliated candidate, the names of candidates for electors must be filed with the Secretary of State no later than 12:00 noon on the first Friday in August. In place of their names, there shall be printed on the ballot the names of the candidates for President and Vice-President of each political party recognized in this State, and the name of any candidate for President who has qualified to have his or her name printed on the general election ballot under G.S. 163-122. A candidate for President who has qualified for the general election ballot as an unaffiliated candidate under G.S. 163-122 shall, no later than 12:00 noon on the first Friday in August, file with the State Board of

Elections the name of a candidate for Vice-President, whose name shall also be printed on the ballot. A vote for the candidates named on the ballot shall be a vote for the electors of the party or unaffiliated candidate by which those candidates were nominated and whose names have been filed with the Secretary of State.

(b) Upon receiving the filing of a name as a candidate for elector under this section, the Secretary of State shall notify that candidate of the dual-office holding requirements of the North Carolina Constitution and the General Statutes, including specifically that if a person elected as elector holds another elective office at the time of taking the oath of office as elector, that other office is vacated upon taking the oath of office. (1901, c. 89, s. 78; Rev., s. 4372; C.S., s. 6010; 1933, c. 165, s. 11; 1949, c. 672, s. 2; 1967, c. 775, s. 1; 1991 (Reg. Sess., 1992), c. 782, s. 2; 2001-460, s. 5; 2009-96, s. 2.)

Effect of Amendments. — Session Laws 2009-96, s. 2, effective June 11, 2009, added "notification" in the section catchline; designated the previously existing provisions as subsection (a); and added subsection (b).

CASE NOTES

Cited in Greaves v. State Bd. of Elections, 508 F. Supp. 78 (E.D.N.C. 1980).

§ 163-209.1. Notification of political parties of dual-office holding rules.

During January of each year in which electors are elected, the Secretary of State shall notify each political party authorized to nominate electors of (i) the requirement under G.S. 163-1(c) to nominate first and second alternate electors, and (ii) the dual-office holding requirements of the North Carolina Constitution and the General Statutes, including specifically that if a person elected as elector holds another elective office at the time of taking the oath of office as elector, that other office is vacated upon taking the oath of office. (2009-96, s. 3.)

Editor's Note. — Session Laws 2009-96, s. 4, made this section effective June 11, 2009.

§ 163-209.2. Elector may be held in addition to other appointive offices.

The office of elector may be held in addition to the maximum number of appointive offices allowed by G.S. 128-1.1. (2009-96, s. 1.)

Editor's Note. — Session Laws 2009-96, s. 4, made this section effective June 11, 2009.

§ 163-210. Governor to proclaim results; casting State's vote for President and Vice-President.

Upon receipt of the certifications prepared by the State Board of Elections and delivered in accordance with G.S. 163-182.15, the Secretary of State, under seal of the office, shall notify the Governor of the names of the persons elected to the office of elector for President and Vice-President of the United States as stated in the abstracts of the State Board of Elections. Thereupon, the Governor shall immediately issue a proclamation setting forth the names of the electors and instructing them to be present in the old Hall of the House of Representatives in the State Capitol in the City of Raleigh at noon on the first Monday after the second Wednesday in December next after their election, at which time the electors shall meet and vote on behalf of the State for President and Vice-President of the United States. The Governor shall cause this proclamation to be published in the daily newspapers published in the City of Raleigh. Notice may additionally be made on a radio or television station or both, but such notice shall be in addition to the newspaper and other required notice. The Secretary of State is responsible for making the actual arrangements for the meeting, preparing the agenda, and inviting guests.

Before the date fixed for the meeting of the electors, the Governor shall send by registered mail to the Archivist of the United States, either three duplicate original certificates, or one original certificate and two authenticated copies of the Certificates of Ascertainment, under the great seal of the State setting forth the names of the persons chosen as presidential electors for this State and the number of votes cast for each. These Certificates of Ascertainment should be sent as soon as possible after the election, but must be received before the Electoral College meeting. At the same time the Governor shall deliver to the electors six duplicate originals of the same certificate, each bearing the great seal of the State. At any time prior to receipt of the certificate of the Governor or within 48 hours thereafter, any person elected to the office of elector may resign by submitting his resignation, written and duly verified, to the Governor. Failure to so resign shall signify consent to serve and to cast his vote for the candidate of the political party which nominated such elector.

In case of the absence, ineligibility or resignation of any elector chosen, or if the proper number of electors shall for any cause be deficient, the first and second alternates, respectively, who were nominated under G.S. 163-1(c), shall fill the first two vacancies. If the alternates are absent, ineligible, resign, or were not chosen, or if there are more than two vacancies, then the electors present at the required meeting shall forthwith elect from the citizens of the State a sufficient number of persons to fill the deficiency, and the persons chosen shall be deemed qualified electors to vote for President and Vice-President of the United States. (1901, c. 89, s. 81; Rev., s. 4374; 1917, c. 176, s. 2; C.S., ss. 5916, 6012; 1923, c. 111, s. 12; 1927, c. 260, s. 17; 1933, c. 165, s. 11; 1935, c. 143, s. 2; 1967, c. 775, s. 1; 1969, c. 949, ss. 1, 2; 1981, c. 35, s. 1; 1989, c. 93, s. 5; 1993 (Reg. Sess., 1994), c. 738, s. 1; 2001-398, s. 8.)

CASE NOTES

Cited in Greaves v. State Bd. of Elections, 508 F. Supp. 78 (E.D.N.C. 1980).

§ 163-211. Compensation of presidential electors.

Presidential electors shall be paid, for attending the meeting held in the City of Raleigh on the first Monday after the second Wednesday in December next after their election, the sum of forty-four dollars ($44.00) per day and traveling expenses at the rate of seventeen cents (17¢) per mile in going to and returning home from the required meeting. (1901, c. 89, s. 84; Rev., s. 2761; C.S., s. 3878; 1933, c. 5; 1967, c. 775, s. 1; 1979, c. 1008.)

CASE NOTES

Cited in Greaves v. State Bd. of Elections, 508 F. Supp. 78 (E.D.N.C. 1980).

§ 163-212. Penalty for failure of presidential elector to attend and vote.

Any presidential elector having previously signified his consent to serve as such, who fails to attend and vote for the candidate of the political party which nominated such elector, for President and Vice-President of the United States at the time and place directed in G.S. 163-210 (except in case of sickness or other unavoidable accident) shall forfeit and pay to the State five hundred dollars ($500.00), to be recovered by the Attorney General in the Superior Court of Wake County. In addition to such forfeiture, refusal or failure to vote for the candidates of the political party which nominated such elector shall constitute a resignation from the office of elector, his vote shall not be recorded, and the remaining electors shall forthwith fill such vacancy as hereinbefore provided.

The clear proceeds of forfeitures provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (1901, c. 89, s. 83; Rev., s. 4375; C.S., s. 6013; 1933, c. 165, s. 11; 1967, c. 775, s. 1; 1969, c. 949, s. 3; 1998-215, s. 131.)

CASE NOTES

Cited in Greaves v. State Bd. of Elections, 508 F. Supp. 78 (E.D.N.C. 1980).

§ 163-213. Appointment of Presidential Electors by General Assembly in certain circumstances, by the Governor in certain other circumstances.

(a) Appointment by General Assembly if No Proclamation by Six Days Before Electors' Meeting Day. — As permitted by 3 U.S.C. § 2, whenever the appointment of any Presidential Elector has not been proclaimed under G.S. 163-210 before noon on the date for settling controversies specified by 3 U.S.C. § 5, and upon the call of an extra session pursuant to the North Carolina Constitution for the purposes of this section, the General Assembly may fill the position of any Presidential Electors whose election is not yet proclaimed.

(b) Appointment by Governor if No Appointment by the Day Before Electors' Meeting Day. — If the appointment of any Presidential Elector has not been proclaimed under G.S. 163-210 before noon on the date for settling controversies specified by 3 U.S.C. § 5, nor appointed by the General Assembly by noon on the day before the day set for the meeting of Presidential Electors by 3 U.S.C. § 7, then the Governor shall appoint that Elector.

(c) Standard for Decision by General Assembly and Governor. — In exercising their authority under subsections (a) and (b) of this section, the General Assembly and the Governor shall designate Electors in accord with their best judgment of the will of the electorate. The decisions of the General Assembly or Governor under subsections (a) and (b) of this section are not subject to judicial review, except to ensure that applicable statutory and constitutional procedures were followed. The judgment itself of what was the will of the electorate is not subject to judicial review.

(d) Proclamation Before Electors' Meeting Day Controls. — If the proclamation of any Presidential Elector under G.S. 163-210 is made any time before noon on the day set for the meeting of Presidential Electors by 3 U.S.C. § 7, then that proclamation shall control over an appointment made by the General Assembly or the Governor. This section does not preclude litigation otherwise provided by law to challenge the validity of the proclamation or the procedures that resulted in that proclamation. (2001-289, s. 2.)

ARTICLE 18A.

Presidential Preference Primary Act.

§ 163-213.1. Short title.

This Article may be cited as the "Presidential Preference Primary Act." (1971, c. 225; 1975, c. 744.)

§ 163-213.2. Primary to be held; date; qualifications and registration of voters.

On the Tuesday after the first Monday in May, 1992, and every four years thereafter, the voters of this State shall be given an opportunity to express their preference for the person to be the presidential candidate of their political party.

Any person otherwise qualified who will become qualified by age to vote in the general election held in the same year of the presidential preference primary shall be entitled to register and vote in the presidential preference primary. Such persons may register not earlier than 60 days nor later than the last day for making application to register under G.S. 163-82.6 prior to the said primary. In addition, persons who will become qualified by age to register and vote in the general election for which the primary is held, who do not register during the special period may register to vote after such period as if they were qualified on the basis of age, but until they are qualified by age to vote, they may vote only in primary elections. (1971, c. 225; 1975, c. 744; c. 844, s. 18; 1977, c. 19; c. 661, s. 7; 1983, c. 331, s. 5; 1985 (Reg. Sess., 1986), c. 927, s. 1; 1987, c. 457, s. 3; 1991, c. 689, s. 15(a); 1991 (Reg. Sess., 1992), c. 1032, s. 6; 1999-424, s. 7(j).)

Legal Periodicals. — For survey of 1977 administrative law affecting state government, see 56 N.C.L. Rev. 867 (1978).

§ 163-213.3. Conduct of election.

The presidential preference primary election shall be conducted and canvassed by the same authority and in the manner provided by law for the conduct and canvassing of the primary election for the office of Governor and all other offices enumerated in G.S. 163-182.4(b) and under the same provisions stipulated in G.S. 163-182.5(c). The State Board of Elections shall have authority to promulgate reasonable rules and regulations, not inconsistent with provisions contained herein, pursuant to the administration of this Article. (1971, c. 225; 1975, c. 744; 1987, c. 81, s. 2; 1991, c. 689, s. 15(b); 2001-398, s. 9.)

OPINIONS OF ATTORNEY GENERAL

Seventeen-year-olds whose 18th birthdays would be reached prior to the presidential general election in November, 1976, could vote in the North Carolina presidential preference primary election. See opinion of Attorney General to The Honorable Patricia S. Hunt, Member, House of Representatives, N.C. General Assembly, 45 N.C.A.G. 205 (1976).

§ 163-213.4. Nomination by State Board of Elections.

By the first Tuesday in February of the year preceding the North Carolina presidential preference primary, the chair of each political party shall submit to the State Board of Elections a list of its presidential candidates to be placed on the presidential preference primary ballot. The list must be comprised of candidates whose candidacy is generally advocated and recognized in the news media throughout the United States or in North Carolina, unless any such candidate executes and files with the chair of the political party an affidavit stating without qualification that the candidate is not and does not intend to become a candidate for nomination in the North Carolina Presidential Preference Primary Election. The State Board of Elections shall prepare and publish a list of the names of the presidential candidates submitted. The State Board of Elections shall convene in Raleigh on the first Tuesday in March preceding the presidential preference primary election. At the meeting required by this section, the State Board of Elections shall nominate as presidential primary candidates all candidates affiliated with a political party, recognized pursuant to the provisions of Article 9 of Chapter 163 of the General Statutes, who have been submitted to the State Board of Elections. Immediately upon completion of these requirements, the Board shall release to the news media all such nominees selected. Provided, however, nothing shall prohibit the partial selection of nominees prior to the meeting required by this section, if all provisions herein have been complied with. (1971, c. 225; 1975, c. 744; 1983, c. 729; 1987, c. 81, s. 1; c. 549, s. 6.1; 1991, c. 689, s. 15(c); 2003-278, s. 9(a); 2007-391, s. 33; 2008-187, s. 33(a).)

Editor's Note. — Session Laws 2007-391, s. 1(c), was amended by Session Laws 2008-198, s. 33(a), to eliminate any confusion as to effective dates of the 2007 act. Session Laws 2007-391, s. 33, which rewrote this section, is effective August 19, 2007.

CASE NOTES

Adoption of Federal Criteria for Ensuring That Presidential Candidates Are Qualified. — Where the state determines that its resources do not permit the full investigation of the qualifications of national presidential candidates, the adoption of the federal criteria is a permissible means for furthering the valid state interest of insuring that only viable candidates compete in the State's presidential primary elections. LaRouche v. State Bd. of Elections, 758 F.2d 998 (4th Cir. 1985).

§ 163-213.5. Nomination by petition.

Any person seeking the endorsement by the national political party for the office of President of the United States, or any group organized in this State on behalf of, and with the consent of, such person, may file with the State Board of Elections petitions signed by 10,000 persons who, at the time they signed are registered and qualified voters in this State and are affiliated, by such registration, with the same political party as the candidate for whom the petitions are filed. Such petitions shall be presented to the county board of elections 10 days before the filing deadline and shall be certified promptly by the chairman of the board of elections of the county in which the signatures were obtained and shall be filed by the petitioners with the State Board of Elections no later than 5:00 P.M. on the Monday prior to the date the State Board of Elections is required to meet as directed by G.S. 163-213.4.

The petitions must state the name of the candidate for nomination, along with a letter of approval signed by such candidate. Said petitions must also state the name and address of the chairman of any such group organized to circulate petitions authorized under this section. The requirement for signers of such petitions shall be the same as now required under provisions of G.S. 163-96(b)(1) and (2). The requirement of the respective chairmen of county boards of elections shall be the same as now required under the provisions of G.S. 163-96 as they relate to the chairman of the county board of elections.

The State Board of Elections shall forthwith determine the sufficiency of petitions filed with it and shall immediately communicate its determination to the chairman of such group organized to circulate petitions. The form and style of petition shall be as prescribed by the State Board of Elections. (1971, c. 225; 1975, c. 744; 2002-159, s. 55(e); 2003-278, s. 9(b); 2004-127, s. 6.)

Editor's Note. — Section 163-96(b)(1) and (2), referred to in this section, has been repealed.

CASE NOTES

Discrimination Against Independent Candidates Unconstitutional. — North Carolina grossly discriminated against those who chose to pursue their candidacies as independent rather than by forming a new political party in requiring a group of voters seeking a place on the ballot as a new party to submit petitions signed by only 10,000 voters, less than one-sixteenth the number required of an independent candidate, and furthermore, in requiring a candidate desiring to run in the North Carolina presidential preference primary to submit only 10,000 signatures; since the State asserted no compelling interest for such disparate treatment, that portion of G.S. 163-122 which required an independent candidate for president to file written petitions signed by qualified voters equal in number to 10 percent of those who voted for Governor in the last gubernatorial election was an unconstitutional infringement upon the rights of such candidate and his supporters to associate for the advancement of political beliefs, to cast their votes effectively, and to enjoy equal protection under the law. Greaves v. State Bd. of Elections, 508 F. Supp. 78 (E.D.N.C. 1980), decided prior to 1981 amendment to § 163-122.

§ 163-213.6. Notification to candidates.

The State Board of Elections shall forthwith contact each person who has been nominated by the Board or by petition and notify him in writing that his name will be printed as a candidate of a specified political party on the North Carolina presidential preference primary ballot. A candidate who participates in the North Carolina presidential preference primary of a particular party shall have his name placed on the general election ballot only as a nominee of that political party. The board shall send a copy of the "Presidential Preference Primary Act" to each candidate with the notice specified above. (1971, c. 225; 1975, c. 744; 1987, c. 549, s. 6.2.)

CASE NOTES

Phrase "participates in the North Carolina presidential preference primary" might reasonably be interpreted as meaning (1) notifying the board, as required by the statute, of one's desire to have one's name placed on the primary ballot, (2) actively seeking election in the primary election itself, or (3) engaging in other activity falling somewhere between those two extremes. Anderson v. Babb, 632 F.2d 300 (4th Cir. 1980).

§ 163-213.7. Voting in presidential preference primary; ballots.

The names of all candidates in the presidential preference primary shall appear at an appropriate place on the ballot or voting machine. In addition the State Board of Elections shall provide a category on the ballot or voting machine allowing voters in each political party to vote an "uncommitted" or "no preference" status. The voter shall be able to cast his ballot for one of the presidential candidates of a political party or for an "uncommitted" or "no preference" status, but shall not be permitted to vote for candidates or "uncommitted" status of a political party different from his registration. Persons registered as "Unaffiliated" shall not participate in the presidential primary except as provided in G.S. 163-119. (1971, c. 225; 1975, c. 744; 1993 (Reg. Sess., 1994), c. 762, s. 52; 2004-127, s. 11.)

§ 163-213.8. Allocation of delegate positions to reflect division of votes in the primary.

(a) Upon completion and certification of the primary results by the State Board of Elections, the Secretary of State shall certify the results to the State chairman of each political party.

Each political party shall allocate delegate positions in a manner which reflects the division of votes of the party primary consistent with the national party rules of that political party.

(b) In case of conflict between subsection (a) of this section and the national rules of a political party, the State executive committee of that party has the authority to resolve the conflict by adopting for that party the national rules, which shall then supercede any provision in subsection (a) of this section with which it conflicts, provided that the executive committee shall take only such action under this subsection necessary to resolve the conflict. (1971, c. 225; 1975, c. 744; 1979, c. 800; 1983, c. 216, ss. 1, 2.)

§ 163-213.9. National committee to be notified of provisions under this Article.

It shall be the responsibility of the State chairman of each political party, qualified under the laws of this State, to notify his party's national committee no later than January 30 of each year in which such presidential preference primary shall be conducted of the provisions contained under this Article. (1971, c. 225; 1975, c. 744.)

Editor's Note. — This section was formerly G.S. 163-213.10. It was redesignated G.S. 163-213.9 by Session Laws 1975, c. 744, which act repealed former G.S. 163-213.9.

§ 163-213.10: Transferred to G.S. 163-213.9 by Session Laws 1975, c. 744.

Editor's Note. — Session Laws 1975, c. 744, redesignated former G.S. 163-213.10 as present G.S. 163-213.9 and repealed former G.S. 163-213.9.

§ 163-213.11: Repealed by Session Laws 1991, c. 689, s. 15.

§§ 163-214 through 163-217: Reserved for future codification purposes.

Article 19.

Petitions for Elections and Referenda.

§ 163-218. Registration of notice of circulation of petition.

From and after July 1, 1957, notice of circulation of a petition calling for any election or referendum shall be registered with the county board of elections with which the petition is to be filed, and the date of registration of the notice shall be the date of issuance and commencement of circulation of the petition. (1957, c. 1239, s. 1; 1967, c. 775, s. 1.)

§ 163-219. Petition void after one year from registration.

Petitions calling for elections and referenda shall be and become void and of no further effect one year after the date the notice of circulation is registered with the county board of elections with which it is required to be filed; and notwithstanding any public, special, local, or private act to the contrary, no election or referendum shall thereafter be called or held pursuant to or based upon any such void petition. (1957, c. 1239, s. 2; 1967, c. 775, s. 1.)

§ 163-220. Limitation on petitions circulated prior to July 1, 1957.

Petitions calling for elections or referenda which were circulated prior to July 1, 1957, shall be and become void and of no further force and effect one year after the date of issuance of such petitions for circulation; and notwithstanding any public, special, local, or private act to the contrary, no election or referendum shall be called or held pursuant to or based upon any such void petition from and after July 1, 1957. (1957, c. 1239, s. 3; 1967, c. 775, s. 1.)

§ 163-221. Persons may not sign name of another to petition.

(a) No person may sign the name of another person to any of the following:
  (1) Any petition calling for an election or referendum.
  (2) Any petition under G.S. 163-96 for the formulation of a new political party.
  (3) Any petition under G.S. 163-107.1 requesting a person to be a candidate.
  (4) Any petition under G.S. 163-122 to have the name of an unaffiliated candidate placed on the general election ballot, or under G.S. 163-296 to have the name of an unaffiliated or nonpartisan candidate placed on the regular municipal election ballot.
  (5) Any petition under G.S. 163-213.5 to place a name on the ballot under the Presidential Preference Primary Act.
  (6) Any petition under G.S. 163-123 to qualify as a write-in candidate.

(b) Any name signed on a petition, in violation of this section, shall be void.

(c) Any person who willfully violates this section is guilty of a Class 2 misdemeanor. (1977, c. 218, s. 1; 1979, c. 534, s. 1; 1987, c. 565, s. 6; 1993, c. 539, s. 1104; 1994, Ex. Sess., c. 24, s. 14(c); 2003-278, s. 7.)

§§ 163-222 through 163-225: Reserved for future codification purposes.

SUBCHAPTER VII. ABSENTEE VOTING.

Article 20.

Absentee Ballot.

§ 163-226. Who may vote an absentee ballot.

(a) Who May Vote Absentee Ballot; Generally. — Any qualified voter of the State may vote by absentee ballot in a statewide primary, general, or special election on constitutional amendments, referenda or bond proposals, and any qualified voter of a county is authorized to vote by absentee ballot in any primary or election conducted by the county board of elections, in the manner provided in this Article.

(a1) Repealed by Session Laws 2001-337, s. 1, effective January 1, 2002.

(a2) Annual Request by Person With Sickness or Physical Disability. — If the applicant so requests and reports in the application that the voter has a sickness or physical disability that is expected to last the remainder of the calendar year, the application shall constitute a request for an absentee ballot for all of the primaries and elections held during the calendar year when the application is received.

(b) Absentee Ballots; Exceptions. — Notwithstanding the authority contained in G.S. 163-226(a), absentee ballots shall not be permitted in fire district elections.

(c) The Term "Election". — As used in this Subchapter, unless the context clearly requires otherwise, the term "election" includes a general, primary, second primary, runoff election, bond election, referendum, or special election. (1939, c. 159, s. 1; 1963, c. 457, s. 1; 1967, c. 775, s. 1; c. 952, s. 1; 1973, c. 536, s. 1; c. 1018; 1977, c. 469, s. 1; 1979, c. 140, s. 1; 1995 (Reg. Sess., 1996), c. 561, s. 1; c. 734, s. 5; 1999-455, s. 1; 2001-337, s. 1; 2001-507, s. 1.)

Local Modification to Former §§ 163-54 to 163-69.1. — Graham: 1959, c. 780, s. 1; Jackson: 1939, c. 309; Sampson: 1941, c. 167; 1963, c. 882.

Cross References. — For present provisions covering the subject matter of former subsection (d) of this section as it existed prior to the 1977 amendment, see G.S. 163-226.1.

Editor's Note. — Session Laws 1991, Ex. Sess., c. 1, which was submitted to the Attorney General of the United States pursuant to Section 5 of the Voting Rights Act of 1965, as amended (42 U.S.C. 1973c), received preclearance from the United States Department of Justice on January 3, 1992.

Legal Periodicals. — As to abuses under prior law and respects in which this enactment seeks to remedy those evils, see 17 N.C.L. Rev. 355 (1939).

For survey of 1977 administrative law affecting state government, see 56 N.C.L. Rev. 867 (1978).

CASE NOTES

Effect of Mistake or Misconduct of Election Officials. — Persons in all respects qualified to cast absentee ballots will not be disfranchised for the mistake or even willful misconduct of election officials in performing their duties, when the mistake or misconduct does not amount to coercion, fraud or imposition and it appears that the ballots expressed only the free choices of the electors themselves. State ex rel. Owens v. Chaplin, 228 N.C. 705, 47 S.E.2d 12, rehearing denied, 229 N.C. 797, 48 S.E.2d 37 (1948).

Provision of former law that election laws be construed in favor of right to vote did not apply when the elector desired to avail himself of a special privilege and did not, of his own volition, comply with the conditions precedent prescribed by the statute, which gave him the right to do so. Davis v. County Bd. of Educ., 186 N.C. 227, 119 S.E. 372 (1923).

As to validity of former law, see Jenkins v. State Bd. of Elections, 180 N.C. 169, 104 S.E. 346 (1920).

As to applicability of former law to municipal elections, see Phillips v. Slaughter, 209 N.C. 543, 183 S.E. 897 (1935).

As to nonentitlement of persons within county to vote as absentees under former law, see State ex rel. Robertson v. Jackson, 183 N.C. 695, 110 S.E. 593 (1922).

As to mandatory nature of certificate or affidavit under former law, see Davis v. County Bd. of Educ., 186 N.C. 227, 119 S.E. 372 (1923).

As to jurat being prima facie evidence that ballots had been sworn to under former law, see Bouldin v. Davis, 200 N.C. 24, 156 S.E. 103 (1931).

Cited in Hall v. Wake County Bd. of Elections, 280 N.C. 600, 187 S.E.2d 52 (1972).

§ 163-226.1. Absentee voting in primary.

A qualified voter may vote by absentee ballot in a partisan primary provided the qualified voter is affiliated, at the time the qualified voter makes application for absentee ballots, with the political party in whose primary the qualified voter wishes to vote, except that an unaffiliated voter may vote in a party primary if permitted under G.S. 163-119. The official registration records of the county in which the voter is registered shall be proof of whether the qualified voter is affiliated with a political party and of the party, if any, with which the qualified voter is affiliated. (1977, c. 469, s. 1; 1999-455, s. 2.)

§ 163-226.2. Absentee voting in municipal elections.

Absentee voting by qualified voters residing in a municipality shall be in accordance with the authorization specified in G.S. 163-302. (1977, c. 469, s. 1.)

§ 163-226.3. Certain acts declared felonies.

(a) Any person who shall, in connection with absentee voting in any election held in this State, do any of the acts or things declared in this section to be unlawful, shall be guilty of a Class I felony. It shall be unlawful:

(1) For any person except the voter's near relative or the voter's verifiable legal guardian to assist the voter to vote an absentee ballot when the voter is voting an absentee ballot other than under the procedure described in G.S. 163-227.2; provided that if there is not a near relative or legal guardian available to assist the voter, the voter may request some other person to give assistance;

(2) For any person to assist a voter to vote an absentee ballot under the absentee voting procedure authorized by G.S. 163-227.2 except as provided in that section;

(3) For a voter who votes an absentee ballot under the procedures authorized by G.S. 163-227.2 to vote that voter's absentee ballot outside of the voting booth or private room provided to the voter for that purpose in or adjacent to the office of the county board of elections or at the additional site provided by G.S. 163-227.2(f1), or to receive assistance except as provided in G.S. 163-227.2;

(4) For any owner, manager, director, employee, or other person, other than the voter's near relative or verifiable legal guardian, to make a written request pursuant to G.S. 163-230.1 or an application on behalf of a registered voter who is a patient in any hospital, clinic, nursing home or rest home in this State or for any owner, manager, director, employee, or other person other than the voter's near relative or verifiable legal guardian, to mark the voter's absentee ballot or assist such a voter in marking an absentee ballot. This subdivision does not apply to members, employees, or volunteers of the county board of elections, if those members, employees, or volunteers are working as part of a multipartisan team trained and authorized by the county board of elections to assist voters with absentee ballots. Each county board of elections shall train and authorize such teams, pursuant to procedures which shall be adopted by the State Board of Elections.

(5) Repealed by Session Laws 1987, c. 583, s. 8.

(6) For any person to take into that person's possession for delivery to a voter or for return to a county board of elections the absentee ballot of any voter, provided, however, that this prohibition shall not apply to a voter's near relative or the voter's verifiable legal guardian;

(7) Except as provided in subsections (1), (2), (3) and (4) of this section, G.S. 163-231(a), G.S. 163-250(a), and G.S. 163-227.2(e), for any voter to permit another person to assist the voter in marking that voter's absentee ballot, to be in the voter's presence when a voter votes an

absentee ballot, or to observe the voter mark that voter's absentee ballot.

(b) The State Board of Elections or a county board of elections, upon receipt of a sworn affidavit from any qualified voter of the State or the county, as the case may be, attesting to first-person knowledge of any violation of subsection (a) of this section, shall transmit that affidavit to the appropriate district attorney, who shall investigate and prosecute any person violating subsection (a). (1979, c. 799, s. 4; 1983, c. 331, s. 2; 1985, c. 563, s. 4; 1987, c. 565, s. 7; c. 583, ss. 8, 10; 1995, c. 243, s. 1; 1999-455, s. 3; 2005-428, s. 5(b); 2007-391, s. 29(a).)

Effect of Amendments. — Session Laws 2007-391, s. 29(a), effective January 1, 2008, added the last two sentences and made a minor stylistic change in subdivision (a)(4).

§ 163-227: Repealed by Session Laws 1999-455, s. 4, effective January 1, 2000.

§ 163-227.1. Second primary; applications for absentee ballots for voting in second primary.

A voter applying for an absentee ballot for a primary election who will be eligible to vote under this Article on the day of the primary and second primary shall be permitted by the county board of elections to indicate that fact on that voter's application and that voter shall automatically be issued an application and absentee ballot for the second primary if one is called. The county board of elections shall consider that indication a separate request for application for the second primary and, at the proper time, shall enter that voter's name in the absentee register along with the listing of other applicants for absentee ballots for the second primary.

In addition, a voter entitled to absentee ballots under the provisions of this Article who did not make application for the primary or who failed to apply for a second primary ballot at the time of application for a first primary ballot may make a written request for absentee ballots for a second primary not earlier than the day a second primary is called and not later than the date and time provided by G.S. 163-230.1.

All procedures with respect to absentee ballots in a second primary shall be the same as with respect to absentee ballots in a first primary except as otherwise provided by this section. (1973, c. 536, s. 1; 1977, c. 469, s. 1; 1981, c. 560, s. 1; 1985, c. 600, s. 3; 1999-455, s. 5.)

§ 163-227.2. Alternate procedures for requesting application for absentee ballot; "one-stop" voting procedure in board office.

(a) Any voter eligible to vote by absentee ballot under G.S. 163-226 may request an application for absentee ballots, complete the application, and vote under the provisions of this section and of G.S. 163-82.6A, as applicable.

(a1) Repealed by Session Laws 2001-337, s. 2, effective January 1, 2002.

(b) Not earlier than the third Thursday before an election, in which absentee ballots are authorized, in which a voter seeks to vote and not later than 1:00 P.M. on the last Saturday before that election, the voter shall appear in person only at the office of the county board of elections, except as provided in subsection (g) of this section. A county board of elections shall conduct one-stop voting on the last Saturday before the election until 1:00 P.M. and may conduct it until 5:00 P.M. on that Saturday. That voter shall enter the voting enclosure at the board office through the appropriate entrance and shall at once state his or her name and place of residence to an authorized member or employee of the board. In a primary election, the voter shall also state the political party with which the voter affiliates and in whose primary the voter desires to vote, or if the voter is an unaffiliated voter permitted to vote in the primary of a particular party under G.S. 163-119, the voter shall state the name of the authorizing political party in whose primary he wishes to vote. The board member or employee to whom the voter gives this information shall announce the name and residence of the voter in a distinct tone of voice. After examining the registration records, an employee of the board shall state whether the person seeking to vote is duly registered. If the voter is found to be registered that voter may request that the authorized member or employee of the board furnish the voter with an application form as specified in G.S. 163-227. The voter shall complete the application in the presence of the authorized member or employee of the board, and shall deliver the application to that person.

(c) If the application is properly filled out, the authorized member or employee shall enter the voter's name in the register of absentee requests, applications, and ballots issued and shall furnish the voter with the ballots to which the application for absentee ballots applies. The voter thereupon shall vote in accordance with subsection (e) of this section.

All actions required by this subsection shall be performed in the office of the board of elections, except that the voting may take place in an adjacent room as provided by subsection (e) of this section. The application under this subsection shall be signed in the presence of the chair, member, director of elections of the board, or full-time employee, authorized by the board who shall sign the application and certificate as the witness and indicate the official title held by him or her. Notwithstanding G.S. 163-231(a), in the case of this subsection, only one witness shall be required on the certificate.

(d) Only the chairman, member, employee, or director of elections of the board shall keep the voter's application for absentee ballots in a safe place, separate and apart from other applications and container-return envelopes. If the voter's application for absentee ballots is disapproved by the board, the board shall so notify the voter stating the reason for disapproval by first-class mail addressed to the voter at that voter's residence address and at the address shown in the application for absentee ballots; and the board shall enter a challenge under G.S. 163-89.

(e) The voter shall vote that voter's absentee ballot in a voting booth in the office of the county board of elections, and the county board of elections shall provide a voting booth for that purpose, provided however, that the county board of elections may in the alternative provide a private room for the voter adjacent to the office of the board, in which case the voter shall vote that voter's absentee ballot in that room. A voter at a one-stop site shall be entitled to the same assistance as a voter at a voting place on election day under G.S. 163-166.8. The State Board of Elections shall, where appropriate, adapt the rules it adopts under G.S. 163-166.8 to one-stop voting.

(e1) If a county uses a voting system with retrievable ballots, that county's board of elections may by resolution elect to conduct one-stop absentee voting according to the provisions of this subsection. In a county in which the board has opted to do so, a one-stop voter shall cast the ballot and then shall deposit the ballot in the ballot box or voting system in the same manner as if such box or system was in use in a precinct on election day. At the end of each business day, or at any time when there will be no employee or officer of the board of elections on the premises, the ballot box or system shall be secured in accordance with a plan approved by the State Board of Elections, which shall include that no additional ballots have been placed in the box or system. Any county board desiring to conduct one-stop voting according to this subsection shall submit a plan for doing so to the State Board of Elections. The State Board shall adopt standards for conducting one-stop voting under this subsection and shall approve any county plan that adheres to its standards. The county board shall adhere to its State Board-approved plan. The plan shall provide that each one-stop ballot shall have a ballot number on it in accordance with G.S. 163-230.1(a2), or shall have an equivalent identifier to allow for retrievability. The standards shall address retrievability in one-stop voting on direct record electronic equipment where no paper ballot is used.

(e2) A voter who has moved within the county more than 30 days before election day but has not reported the move to the board of elections shall not be required on that account to vote a provisional ballot at the one-stop site, as long as the one-stop site has available all the information necessary to determine whether a voter is registered to vote in the county and which ballot the voter is eligible to vote based on the voter's proper residence address. The voter with that kind of unreported move shall be allowed to vote the same kind of absentee ballot as other one-stop voters.

(f) Notwithstanding the exception specified in G.S. 163-36, counties which operate a modified full-time office shall remain open five days each week during regular business hours consistent with daily hours presently observed by the county board of elections, commencing with the date prescribed in G.S. 163-227.2(b) and continuing until 5:00 P.M. on the Friday prior to that election and shall also be open on the last Saturday before the election. A county board may conduct one-stop absentee voting during evenings or on weekends, as long as the hours are part of a plan submitted and approved according to subsection (g) of this section. The boards of county commissioners shall provide necessary funds for the additional operation of the office during that time.

(g) Notwithstanding any other provision of this section, a county board of elections by unanimous vote of all its members may provide for one or more sites in that county for absentee ballots to be applied for and cast under this section. Every individual staffing any of those sites shall be a member or full-time employee of the county board of elections or an employee of the county board of elections whom the board has given training equivalent to that given a full-time employee. Those sites must be approved by the State Board of Elections as part of a Plan for Implementation approved by both the county board of elections and by the State Board of Elections which shall also provide adequate security of the ballots and provisions to avoid allowing persons to vote who have already voted. The Plan for Implementation shall include a provision for the presence of political party observers at each one-stop site equivalent to the provisions in G.S. 163-45 for party observers at voting places on election day. A county board of elections may propose in its Plan not to offer one-stop voting at the county board of elections office; the State Board may approve that proposal in a Plan only if the Plan includes at least one site reasonably proximate to the county board of elections office and the State Board finds that the sites in the Plan as a whole provide adequate coverage of the county's electorate. If a county board of elections has considered a proposed Plan or Plans for Implementation and has been unable to reach unanimity in favor of a Plan, a member or members of that county board of elections may petition the State Board of Elections to adopt a plan for it. If petitioned, the State Board may also receive and consider alternative petitions from another member or members of that county board. The State Board of Elections may adopt a Plan for that county. The State Board, in that plan, shall take into consideration factors including geographic, demographic, and partisan interests of that county.

(g1) The State Board of Elections shall not approve, either in a Plan approved unanimously by a county board of elections or in an alternative Plan proposed by a member or members of that board, a one-stop site in a building that the county board of elections is not entitled under G.S. 163-129 to demand and use as an election-day voting place, unless the State Board of Elections finds that other equally suitable sites were not available and that the use of the sites chosen will not unfairly advantage or disadvantage geographic, demographic, or partisan interests of that county. In providing the site or sites for one-stop absentee voting under this section, the county board of elections shall make a request to the State, county, city, local school board, or other entity in control of the building that is supported or maintained, in whole or in part, by or through tax revenues at least 90 days prior to the start of one-stop absentee voting under this section. The request shall clearly identify the building, or any specific portion thereof, requested the dates and times for which that building or specific portion thereof is requested and the requirement of an area for election related activity. If the State, local governing board, or other entity in control of the building does not respond to the request within 20 days, the building or specific portion thereof may be used for one-stop absentee voting as stated in the request. If the State, local governing board, or other entity in control of the building or specific portion thereof responds negatively to the request within 20 days, that entity and the county board of elections shall, in good faith, work to identify a building or specific portion thereof in which to conduct one-stop absentee voting under this section. If no building or specific portion thereof has been agreed upon within 45 days from the date the county board of elections received a response to the request, the matter shall be resolved by the State Board of Elections.

(h) Notwithstanding the provisions of G.S. 163-89(a) and (b), a challenge may be entered against a voter at a one-stop site under subsection (g) of this section or during one-stop voting at the county board office. The challenge may be entered by a person conducting one-stop voting under this section or by another registered voter who resides in the same precinct as the voter being challenged. If challenged at the place where one-stop voting occurs, the voter shall be allowed to cast a ballot in the same way as other voters. The challenge shall be made on forms prescribed by the State Board of Elections. The challenge shall be heard by the county board of elections in accordance with the procedures set forth in G.S. 163-89(e).

(i) At any site where one-stop absentee voting is conducted, there shall be a curtained or otherwise private area where the voter may mark the ballot unobserved. (1973, c. 536, s. 1; 1975, c. 844, s. 12; 1977, c. 469, s. 1; c. 626, s. 1; 1979, c. 107, s. 14; c. 799, ss. 1-3; 1981, c. 305, s. 2; 1985, c. 600, s. 4; 1987, c. 583, s. 4; 1989, c. 520; 1989 (Reg. Sess., 1990), c. 991, s. 2; 1993 (Reg. Sess., 1994), c. 762, s. 53; 1995, c. 243, s. 1; c. 509, ss. 117, 118; 1995 (Reg. Sess., 1996), c. 561, s. 4; 1997-510, s. 2; 1999-455, s. 6; 2000-136, s. 2; 2001-319, s. 5(a)-(c); 2001-337, s. 2; 2001-353, s. 9; 2003-278, s. 11; 2005-428, ss. 5(a), 6(a), 7; 2007-253, s. 3; 2007-391, s. 34(a); 2009-541, s. 23.)

Local Modification. — Durham: 1995 (Reg. Sess., 1996), c. 717, s. 1; Gaston: 1995, c. 197, s. 1; Guilford: 1995, c. 197, s. 1; Mecklenburg: 1995, c. 197, s. 1; Orange: 1983, c. 192; 1983 (Reg. Sess., 1984), c. 978; Pasquotank: 1995 (Reg. Sess., 1996), c. 568, s. 1; Randolph: 1995 (Reg. Sess., 1996), c. 717, s. 1; Union County: 1995, c. 197, s. 1; Wake: 1995 (Reg. Sess., 1996), c. 717, s. 1; Watauga: 1995 (Reg. Sess., 1996), c. 717, s. 1; Wilson: 1995 (Reg. Sess. 1996), c. 599, s. 1; Anson County Board of Commissioners: 1991 (Reg. Sess., 1992), c. 781, s. 9 (but shall only be enforced as provided by Section 5 of the Voting Rights Act of 1965).

Cross References. — As to in-person registration and voting at one-stop absentee voting sites, see G.S. 163-82.6A.

Editor's Note. — Subsections (g) and (h) were designated as such at the direction of the Revisor of Statutes, the designations in Session Laws 1999-455, s. 6 having been (f1) and (f2).

Session Laws 2005-256, s. 1, as amended by Session Laws 2005-305, s. 4.1, provides: "With the approval of the State Board of Elections, the Orange County Board of Elections may conduct a pilot program in Chapel Hill Township for any or all primaries or elections occurring prior to January 1, 2007, where the requirements of this section prevail over any other requirement concerning voting at one-stop sites or on election day. The pilot program shall consist of continuing one-stop voting as provided in G.S. 163-227.2 on election day as the method of voting. Voting places, whether during the one-stop period or on election day, shall be known as voting centers. The pilot program consists of the following elements:

"(1) Any voter properly registered in Chapel Hill Township may vote at any voting center during the one-stop period established in G.S. 163-227.2 or on election day.

"(2) On election day, the only places open to vote in Chapel Hill Township are those designated as voting centers.

"(3) All voting centers shall have a Web-based or online connection to the voter registration system so that voter registration information and voting history can be checked in a timely manner to ensure against any voter voting more than once.

"(4) Notwithstanding G.S. 163-227.2(e1), the State Board of Elections shall determine which ballots must be made retrievable and identifiable to the county board of elections in order to ensure that the vote count by eligible voters is accurate. If any vote need not be identifiable, it shall not be made so, notwithstanding G.S. 163-227.2(e1).

"(5) The Plan of Implementation may provide a different system for voter sign-in than the regular one-stop process which requires completion of an absentee ballot application, but the process must be auditable. As required by G.S. 163-166.7, the voter, before voting, shall sign that voter's name on the pollbook, other voting record, or voter authorization document. As provided by G.S. 163-166.7, if the voter is unable to sign, a voting center official shall enter the person's name on the same document before the voter votes. A voter at a voting center shall be entitled to the same assistance as a voter at a voting place on election day under G.S. 163-166.8.

"(6) A larger number of voting centers may be open on election day than during the earlier part of the one-stop period.

"(7) Election returns shall be reported by regular precinct as well as by voting center. Notwithstanding G.S. 163-132.5G, for primary elections in 2006, those returns by regular precinct shall be reported by May 1, 2007, and for the 2006 general election those returns by regular precinct shall be reported by March 1, 2007. G.S. 163-132.5G shall not apply to elections held in 2005 under this act.

"(8) Notwithstanding G.S. 163-227.2(g), the State Board of Elections may allow the county board of elections during the regular one-stop voting period to designate voting centers in commercial buildings that are not public buildings.

"(9) Notwithstanding G.S. 163-227.2(g), on election day any building may be designated as a voting center, but the office of the county board of elections does not have to be designated as a voting center.

"(10) Notwithstanding G.S. 163-227.2(g), officials appointed pursuant to G.S. 163-41, 163-42, and 163-42.1 may be assigned to staff the voting centers. The Plan of Implementation shall provide for appointment of election officials at voting centers so that political parties have a similar opportunity to recommend officials as if there were precinct polling places.

"(11) The Plan of Implementation may for administrative purposes treat the entire township as one precinct with multiple voting places on election day, but a voter must, when appearing to vote, report any change of address.

"(12) Before voting centers may be used under this section, a Plan of Implementation must be approved unanimously by the county board of elections and then approved by the Executive Director of the State Board of Elections. Prior to adoption, the county board of elections shall conduct a public hearing and notify the county chair of each political party under Article 9 of Chapter 163 of the General Statutes. The county board of elections shall develop an outreach and education campaign to inform voters about the changes in voting locations.

"(13) If any polling place that had been a satellite voting place in 2004 under G.S. 163-130 is designated as a voting center, the county board of elections may provide in its Plan of Implementation that only voters assigned to the satellite voting place may vote at the voting center there, and that such voters may not vote at any other voting center on election day."

Session Laws 2005-256, s. 1.1, as added by Session Laws 2005-305, s. 4.2, provides: "If no elections are conducted under this act in 2005, then any or all elections occurring in 2007 may also be held under this act in addition to those in 2006."

Session Laws 2005-256, s. 2, provides: "The State Board of Elections shall closely monitor the pilot program and report its findings and recommendations to the General Assembly at its 2005 Regular Session in 2006, and to the 2007 Regular Session of the General Assembly."

Session Laws 2005-323, s. 9, provides: "The State Board of Elections may conduct, for primaries and elections in 2006 only, experiments with voting systems that use a means in addition to paper to fulfill the backup record and voter verification requirements of G.S. 163-165.7(a)(4) and G.S. 163-165.7(a)(5), as enacted by this act. The pilot program may be conducted in no more than nine counties. The county boards of elections shall cooperate in conducting the pilot program. The pilot program shall be conducted according to the following requirements:

"(1) The experiment may be conducted in no more than two voting sites per county. The voting sites may include election-day voting places or one-stop sites.

"(2) At each voting site in which the experiment is conducted, voters must have a choice of voting on the experimental voting system or on a voting system that is not part of the experiment.

"(3) Each experimental voting system shall include an additional means for the voter to verify the choices that the voter makes in the electronically cast ballot, which means shall also provide for an additional count. That additional means may utilize audio technology, digital scanners, or some other material or technology that shall record the voters' choices but shall not record any image of any part of the voter.

"(4) On each voting machine or unit used in the experiment, the voting system shall comply with all the applicable requirements of G.S. 163-165.7, including the requirement in G.S. 163-165.7(a)(4) that a DRE system must generate a paper backup record of each individual vote cast electronically and the requirement in G.S. 163-165.7(a)(5) that the paper record generated by the DRE system must be viewable by the voter before the vote is cast electronically and that the system allow the voter to correct any discrepancy between the electronic vote and the paper record before the vote is cast. On every machine or unit, the experimental means to fulfill those functions shall be used in addition to, rather than instead of, the required paper means.

"(5) For all votes cast on an experimental voting system under the pilot, there shall be, in addition to an electronic count, a full hand-to-eye paper count and a full comparison count of the experimental verification technology.

"The State Board of Elections shall report the results of the pilot program, together with its recommendations, to the 2007 General Assembly and to the Joint Legislative Commission on Governmental Operations by February 1, 2007."

Session Laws 2007-253, s. 3, which amended this section by adding "and of G.S. 163-82.6A, as applicable" at the end of subsection (a), is effective with regard to registration and voting for any primary or election held on or after October 9, 2007. For effective date and applicability, see the following note.

Session Laws 2007-253, s. 5, provides: "Sections 1, 2, and 3 of this act become effective as follows:

"(1) If preclearance under Section 5 of the Voting Rights Act of 1965 is obtained before September 1, 2007, those sections are effective with regard to registration and voting for any primary or election held on or after October 9, 2007.

"(2) If preclearance is obtained during September 2007, those sections are effective with regard to registration and voting for any primary or election held on or after November 6, 2007.

"(3) If preclearance is obtained on or after October 1, 2007, those sections are effective with regard to registration and voting for any primary or election held on or after the 60th day after preclearance is obtained.

"The remainder of this act is effective when it becomes law. The State Board of Elections may adopt any necessary procedures to implement this act at any time after this act becomes law."

Session Laws 2007-253 received preclearance from the U.S. Department of Justice by letter dated August 16, 2007.

Effect of Amendments. — Session Laws 2007-391, s. 34(a), effective January 1, 2008, in subsection (g), deleted the former second sentence, which read "Any site other than the county board of elections office shall be in any building or part of a building that the county board of elections is entitled under G.S. 163-129 to demand and use as a voting place," and added the last sentence.

Session Laws 2009-541, s. 23, effective August 28, 2009, designated the former last sentence of subsection (g) as subsection (g1); and added the second through last sentences in subsection (g1).

CASE NOTES

Cited in James v. Bartlett, 359 N.C. 260, 607 S.E.2d 638, 2005 N.C. LEXIS 146 (2005).

§ 163-227.3. Date by which absentee ballots must be available for voting.

(a) A board of elections shall provide absentee ballots of the kinds needed 60 days prior to the statewide general election in even-numbered years and 50 days prior to the date on which any other election shall be conducted, unless 45 days is authorized by the State Board of Elections under G.S. 163-22(k) or there shall exist an appeal before the State Board or the courts not concluded, in which case the board shall provide the ballots as quickly as possible upon the conclusion of such an appeal. However, in the case of municipal elections, absentee ballots shall be made available no later than 30 days before an election. In every instance the board of elections shall exert every effort to provide absentee ballots, of the kinds needed by the date on which absentee voting is authorized to commence.

(b) Second Primary. — The board of elections shall provide absentee ballots, of the kinds needed, as quickly as possible after the ballot information for a second primary has been determined. (1973, c. 1275; 1977, c. 469, s. 1; 1985 (Reg. Sess., 1986), c. 986, s. 2; 1987, c. 485, ss. 2, 5; c. 509, s. 9; 1989, c. 635, s. 5; 2001-353, s. 4; 2002-159, s. 55(i); 2009-537, s. 2.)

Editor's Note. — Section 4 of Session Laws 1985 (Reg. Sess., 1986), c. 986, provided that s. 2 thereof, which amended subsection (a), would expire with respect to primaries and elections held on or after December 31, 1986.

Session Laws 1985 (Reg. Sess., 1986), c. 987, made the same changes to this section as Session Laws 1985 (Reg. Sess., 1986), c. 986, but was only to become effective if the Attorney General of the United States interposed objection to Session Laws 1985 (Reg. Sess., 1986), c. 986 as to the fact that such bill provided for designating vacancies for all unexpired terms separately from full terms. Chapter 987 also provided that the act would expire with respect to primaries and elections held on or after December 31, 1986. Objection to c. 986 was not made. Moreover, Session Laws 1987, c. 509, s. 9 repealed Sessions Laws 1985 (Reg. Sess., 1986), c. 987. Therefore, c. 987 never went into effect.

Effect of Amendments. — Session Laws 2009-537, s. 2, effective January 1, 2010, and applicable with respect to elections held on or after that date, in the first sentence of subsection (a), inserted "60 days prior to the statewide general election in even-numbered years and", and substituted "any other election shall be conducted, unless" for "the election shall be conducted unless."

§ 163-228. Register of absentee requests, applications, and ballots issued; a public record.

The State Board of Elections shall approve an official register in which the county board of elections in each county of the State shall record the following information:

(1) Name of voter for whom application and ballots are being requested, and, if applicable, the name and address of the voter's near relative or verifiable legal guardian who requested the application and ballots for the voter.
(2) Number of assigned voter's application when issued.
(3) Precinct in which applicant is registered.
(4) Address to which ballots are to be mailed, or, if the voter voted pursuant to G.S. 163-227.2, a notation of that fact.
(5) Repealed by Session Laws 2009-537, s. 3, effective January 1, 2010, and applicable with respect to elections held on or after that date.
(6) Date request for application for ballots is received by the county board of elections.
(7) The voter's party affiliation.
(8) The date the ballots were mailed or delivered to the voter.
(9) Whatever additional information and official action may be required by this Article.

The State Board of Elections may provide for the register to be kept by electronic data processing equipment, and a copy shall be printed out each business day or a supplement printed out each business day of new information.

The register of absentee requests, applications and ballots issued shall constitute a public record and shall be opened to the inspection of any registered voter of the county within 60 days before and 30 days after an election in which absentee ballots were authorized, or at any other time when good and sufficient reason may be assigned for its inspection. (1939, c. 159, ss. 3, 9; 1945, c. 758, s. 8; 1953, c. 1114; 1963, c. 457, s. 3; 1965, c. 1208; 1967, c. 775, s. 1; c. 952, s. 4; 1973, c. 536, s. 1; 1977, c. 469, s. 1; 1991, c. 636, s. 21; 1999-455, s. 7; 2009-537, s. 3.)

Effect of Amendments. — Session Laws 2009-537, s. 3, effective January 1, 2010, and applicable with respect to elections held on or after that date, deleted former subdivision (5), which read: "Reason assigned for requesting absentee ballots."; and substituted "within 60 days before" for "at any time within 50 days before" in the last paragraph of the section.

§ 163-229. Absentee ballots, applications on container-return envelopes, and instruction sheets.

(a) Absentee Ballot Form. — In accordance with the provisions of G.S. 163-230.1, persons entitled to vote by absentee ballot shall be furnished with official ballots.

(b) Application on Container-Return Envelope. — In time for use not later than 60 days before a statewide general election in an even-numbered year, and not later than 50 days before a statewide primary, other general election or county bond election, the county board of elections shall print a sufficient number of envelopes in which persons casting absentee ballots may transmit their marked ballots to the county board of elections. However, in the case of municipal elections, sufficient container-return envelopes shall be made available no later than 30 days before an election. Each container-return envelope shall have printed on it an application which shall be designed and prescribed by the State Board of Elections, the voter's certification of eligibility to vote the enclosed ballot and of having voted the enclosed ballot in accordance with this Article, a space for identification of the envelope with the voter, and a space for approval by the county board of elections. The envelope shall allow reporting of a change of name as provided by G.S. 163-82.16. The container-return envelope shall be printed in accordance with the instructions of the State Board of Elections.

(c) Instruction Sheets. — In time for use not later than 60 days before a statewide general election in an even-numbered year, and not later than 50 days before a statewide primary, other general or county bond election, the county board of elections shall prepare and print a sufficient number of sheets of instructions on how voters are to prepare absentee ballots and return them to the county board of elections. However, in the case of municipal elections, instruction sheets shall be made available no later than 30 days before an election. (1929, c. 164, s. 39; 1939, c. 159, ss. 3, 4; 1943, c. 751, s. 2; 1963, c. 457, ss. 3, 4; 1965, c. 1208; 1967, c. 775, s. 1; c. 851, s. 1; c. 952, s. 5; 1973, c. 536, s. 1; 1975, c. 844, s. 13; 1977, c. 469, s. 1; 1985, c. 562, ss. 3, 4; 1985 (Reg. Sess., 1986), c. 986, s. 2; 1987, c. 485, ss. 2, 5; c. 509, s. 9; c. 583, s. 3; 1989, c. 635, s. 5; 1995 (Reg. Sess., 1996), c. 561, s. 5; 1999-455, s. 8; 2009-537, s. 4.)

Editor's Note. — Section 4 of Session Laws 1985 (Reg. Sess., 1986), c. 986, provided that s. 2 thereof, which amended subsections (b) and (c), would expire with respect to primaries and elections held on or after December 31, 1986.

Session Laws 1985 (Reg. Sess., 1986), c. 987, s. 2 made the same changes to this section as Session Laws 1985 (Reg. Sess., 1986), c. 986, but was only to become effective if the Attorney General of the United States interposed objection to Session Laws 1985 (Reg. Sess., 1986), c. 986 as to the fact that such bill provided for designating vacancies for all unexpired terms separately from full terms. Chapter 987 also provided that the act would expire with respect to primaries and elections held on or after December 31, 1986. Objection to c. 986 was never made. Moreover, Session Laws 1987, c. 509, s. 9 repealed Session Laws 1985 (Reg. Sess., 1986), c. 987. Therefore, c. 987 never went into effect.

Effect of Amendments. — Session Laws 2009-537, s. 4, effective January 1, 2010, and applicable with respect to elections held on or after that date, in subsections (b) and (c), inserted "60 days before a statewide general election in an even-numbered year, and not later than" and substituted "other general election" for "general election" in the first sentence of both subsections, and added the present second sentence of both subsections.

§ 163-230: Repealed by Session Laws 1999-455, s. 9, effective January 1, 2000.

Cross References. — For approval of applications and delivery of absentee ballots generally, see G.S. 163-227.1 through 163-231.

§ 163-230.1. Simultaneous issuance of absentee ballots with application.

(a) A qualified voter who is eligible to vote by absentee ballot under G.S. 163-226(a) or that voter's near relative or verifiable legal guardian, shall request in writing an application for absentee ballots, so that the county board of elections receives the request not later than 5:00 P.M. on the Tuesday before the election. That written request shall be signed by the voter, the voter's near relative, or the voter's verifiable legal guardian. The county board of elections shall enter in the register of absentee requests, applications, and ballots issued the information required in G.S. 163-228 as soon as each item of that information becomes available. Upon receiving the application, the county board of elections shall cause to be mailed to that voter in a single package:

(1) The official ballots the voter is entitled to vote;

(2) A container-return envelope for the ballots, printed in accordance with G.S. 163-229; and

(a2) Delivery of Absentee Ballots and Container-Return Envelope to Applicant. — When the county board of elections receives a request for applications and absentee ballots, the board shall promptly issue and transmit them to the voter in accordance with the following instructions:

(1) On the top margin of each ballot the applicant is entitled to vote, the chair, a member, officer, or employee of the board of elections shall write or type the words "Absentee Ballot No. ____" or an abbreviation approved by the State Board of Elections and insert in the blank space the number assigned the applicant's application in the register of absentee requests, applications, and ballots issued. That person shall not write, type, or print any other matter upon the ballots transmitted to the absentee voter. Alternatively, the board of elections may cause to be barcoded on the ballot the voter's application number, if that barcoding system is approved by the State Board of Elections.

(2) The chair, member, officer, or employee of the board of elections shall fold and place the ballots (identified in accordance with the preceding instruction) in a container-return envelope and write or type in the appropriate blanks thereon, in accordance with the terms of G.S. 163-229(b), the absentee voter's name, the absentee voter's application number, and the designation of the precinct in which the voter is registered. If the ballot is barcoded under this section, the envelope may be barcoded rather than having the actual number appear. The person placing the ballots in the envelopes shall leave the container-return envelope holding the ballots unsealed.

(3) The chair, member, officer, or employee of the board of elections shall then place the unsealed container-return envelope holding the ballots together with printed instructions for voting and returning the ballots, in an envelope addressed to the voter at the post office address stated in the request, seal the envelope, and mail it at the expense of

the county board of elections: Provided, that in case of a request received after 5:00 p.m. on the Tuesday before the election under the provisions of subsection (a1) of this section, in lieu of transmitting the ballots to the voter in person or by mail, the chair, member, officer, or employee of the board of elections may deliver the sealed envelope containing the instruction sheet and the container-return envelope holding the ballots to a near relative or verifiable legal guardian of the voter.

The county board of elections may receive written requests for applications at any time prior to the election but shall not mail applications and ballots to the voter or issue applications and ballots in person earlier than 60 days prior to the statewide general election in an even-numbered year, or earlier than 50 days prior to any other election, except as provided in G.S. 163-227.2. No election official shall issue applications for absentee ballots except in compliance with this Article.

(3) Repealed by Session Laws 1999-455, s. 10.

(4) An instruction sheet.

The ballots, envelope, and instructions shall be mailed to the voter by the county board's chairman, member, officer, or employee as determined by the board and entered in the register as provided by this Article.

(a1) Absence for Sickness or Physical Disability. — Notwithstanding the provisions of subsection (a) of this section, if a voter expects to be unable to go to the voting place to vote in person on election day because of that voter's sickness or other physical disability, that voter or that voter's near relative or verifiable legal guardian may make written request in person for absentee ballots to the board of elections of the county in which the voter is registered after 5:00 p.m. on the Tuesday before the election but not later than 5:00 p.m. on the day before the election. The county board of elections shall enter in the register of absentee requests, applications, and ballots issued the information required in G.S. 163-228 as soon as each item of that information becomes available. The county board of elections shall personally deliver to the requester in a single package:

(1) The official ballots the voter is entitled to vote;

(2) A container-return envelope for the ballots, printed in accordance with G.S. 163-229; and

(3) An instruction sheet.

(a2) Delivery of Absentee Ballots and Container-Return Envelope to Applicant. — When the county board of elections receives a request for applications and absentee ballots, the board shall promptly issue and transmit them to the voter in accordance with the following instructions:

(1) On the top margin of each ballot the applicant is entitled to vote, the chair, a member, officer, or employee of the board of elections shall write or type the words "Absentee Ballot No. ______" or an abbreviation approved by the State Board of Elections and insert in the blank space the number assigned the applicant's application in the register of absentee requests, applications, and ballots issued. That person shall not write, type, or print any other matter upon the ballots transmitted to the absentee voter. Alternatively, the board of elections may cause to be barcoded on the ballot the voter's application number, if that barcoding system is approved by the State Board of Elections.

(2) The chair, member, officer, or employee of the board of elections shall fold and place the ballots (identified in accordance with the preceding instruction) in a container-return envelope and write or type in the appropriate blanks thereon, in accordance with the terms of G.S. 163-229(b), the absentee voter's name, the absentee voter's application number, and the designation of the precinct in which the voter is

registered. If the ballot is barcoded under this section, the envelope may be barcoded rather than having the actual number appear. The person placing the ballots in the envelopes shall leave the container-return envelope holding the ballots unsealed.

(3) The chair, member, officer, or employee of the board of elections shall then place the unsealed container-return envelope holding the ballots together with printed instructions for voting and returning the ballots, in an envelope addressed to the voter at the post office address stated in the request, seal the envelope, and mail it at the expense of the county board of elections: Provided, that in case of a request received after 5:00 p.m. on the Tuesday before the election under the provisions of subsection (a1) of this section, in lieu of transmitting the ballots to the voter in person or by mail, the chair, member, officer, or employee of the board of elections may deliver the sealed envelope containing the instruction sheet and the container-return envelope holding the ballots to a near relative or verifiable legal guardian of the voter.

The county board of elections may receive written requests for applications earlier than 50 days prior to the election but shall not mail applications and ballots to the voter or issue applications and ballots in person earlier than 50 days prior to the election, except as provided in G.S. 163-227.2. No election official shall issue applications for absentee ballots except in compliance with this Article.

(b) The application shall be completed and signed by the voter personally, the ballots marked, the ballots sealed in the container-return envelope, and the certificate completed as provided in G.S. 163-231.

(c) At its next official meeting after return of the completed container-return envelope with the voter's ballots, the county board of elections shall determine whether the container-return envelope has been properly executed. If the board determines that the container-return envelope has been properly executed, it shall approve the application and deposit the container-return envelope with other container-return envelopes for the envelope to be opened and the ballots counted at the same time as all other container-return envelopes and absentee ballots.

(c1) Required Meeting of County Board of Elections. — During the period commencing on the third Tuesday before an election, in which absentee ballots are authorized, the county board of elections shall hold one or more public meetings each Tuesday at 5:00 p.m. for the purpose of action on applications for absentee ballots. At these meetings, the county board of elections shall pass upon applications for absentee ballots.

If the county board of elections changes the time of holding its meetings or provides for additional meetings in accordance with the terms of this subsection, notice of the change in hour and notice of the schedule of additional meetings, if any, shall be published in a newspaper circulated in the county at least 30 days prior to the election.

At the time the county board of elections makes its decision on an application for absentee ballots, the board shall enter in the appropriate column in the register of absentee requests, applications, and ballots issued opposite the name of the applicant a notation of whether the applicant's application was "Approved" or "Disapproved".

The decision of the board on the validity of an application for absentee ballots shall be final subject only to such review as may be necessary in the event of an election contest. The county board of elections shall constitute the proper official body to pass upon the validity of all applications for absentee ballots received in the county; this function shall not be performed by the chairman or any other member of the board individually.

(d) Repealed by Session Laws 1999-455, s. 10.

(e) The State Board of Elections, by rule or by instruction to the county board of elections, shall establish procedures to provide appropriate safeguards in the implementation of this section.

(f) For the purpose of this Article, "near relative" means spouse, brother, sister, parent, grandparent, child, grandchild, mother-in-law, father-in-law, daughter-in-law, son-in-law, stepparent, or stepchild. (1983, c. 304, s. 1; 1985, c. 759, ss. 5.1-5.5; 1991, c. 727, s. 6.3; 1993, c. 553, s. 67; 1995, c. 243, s. 1; 1999-455, s. 10; 2001-337, s. 3; 2002-159, s. 55(m); 2009-537, s. 5.)

Effect of Amendments. — Session Laws 2009-537, s. 5, effective January 1, 2010, and applicable with respect to elections held on or after that date, in the first sentence of the last paragraph of subdivision (a)(2), substituted "at any time" for "earlier than 50 days" and substituted "in person earlier than 60 days prior to the statewide general election in an even-numbered year, or earlier than 50 days prior to any other election" for "in person earlier than 50 days prior to the election".

CASE NOTES

Election Held Not Vitiated by Irregular Delivery of Ballots. — The fact that the chairman of the county board of elections, in company with candidates in the election, personally delivered absentee ballots to absentee voters at their temporary residence in another state or county was insufficient, under former G.S. 163-230, of itself, to vitiate their votes, there being no evidence remotely suggesting coercion, fraud or imposition. State ex rel. Owens v. Chaplin, 228 N.C. 705, 47 S.E.2d 12, rehearing denied, 229 N.C. 797, 48 S.E.2d 37 (1948).

§ 163-230.2. Method of requesting absentee ballots.

(a) Valid Types of Written Requests. — A written request for an absentee ballot as required by G.S. 163-230.1 is valid only if it is written entirely by the requester personally, or is on a form generated by the county board of elections and signed by the requester. The county board of elections shall issue a request form only to the voter seeking to vote by absentee ballot or to a person authorized by G.S. 163-230.1 to make a request for the voter. If a requester, due to disability or illiteracy, is unable to complete a written request, that requester may receive assistance in writing that request from an individual of that requester's choice.

(b) Invalid Types of Written Requests. — A request is not valid if it does not comply with subsection (a) of this section. If a county board of elections receives a request for an absentee ballot that does not comply with subsection (a) of this section, the board shall not issue an application and ballot under G.S. 163-230.1.

(c) Rules by State Board. — The State Board of Elections shall adopt rules for the enforcement of this section. (2002-159, s. 57(a).)

§ 163-231. Voting absentee ballots and transmitting them to the county board of elections.

(a) Procedure for Voting Absentee Ballots. — In the presence of a person who is at least 18 years of age, and who is not disqualified by G.S. 163-226.3(a)(4) or G.S. 163-237(b1), the voter shall:

(1) Mark the voter's ballots, or cause them to be marked by that person in the voter's presence according to the voter's instruction;

(2) Fold each ballot separately, or cause each of them to be folded in the voter's presence;

(3) Place the folded ballots in the container-return envelope and securely seal it, or have this done in the voter's presence;

(4) Make the application printed on the container-return envelope according to the provisions of G.S. 163-229(b) and make the certificate printed on the container-return envelope according to the provisions of G.S. 163-229(b).

The person in whose presence the ballot is marked shall at all times respect the secrecy of the ballot and the privacy of the absentee voter, unless the voter requests the person's assistance and the person is otherwise authorized by law to give assistance. The person in whose presence the ballot was marked shall sign the application and certificate as a witness and shall indicate that person's address. When thus executed, the sealed container-return envelope, with the ballots enclosed, shall be transmitted in accordance with the provisions of subsection (b) of this section to the county board of elections which issued the ballots.

(a1) Repealed by Session Laws 1987, c. 583, s. 1.

(b) Transmitting Executed Absentee Ballots to County Board of Elections. — The sealed container-return envelope in which executed absentee ballots have been placed shall be transmitted to the county board of elections who issued them as follows: All ballots issued under the provisions of Articles 20 and 21 of this Chapter shall be transmitted by mail or by commercial courier service, at the voter's expense, or delivered in person, or by the voter's near relative or verifiable legal guardian not later than 5:00 p.m. on the day before the statewide primary or general election or county bond election. If ballots are received later than that hour, they shall not be accepted unless (i) federal law so requires, (ii) if ballots issued under Article 20 of this Chapter are postmarked by the day of the statewide primary or general election or county bond election and are received by the county board of elections not later than three days after the election by 5:00 p.m., or (iii) if ballots issued under Article 21 of this Chapter are received by the county board of elections not later than three days after the election by 5:00 p.m. Ballots issued under Article 20 of this Chapter not postmarked by the day of the election shall not be accepted by the county board of elections. (1939, c. 159, ss. 2, 5; 1941, c. 248; 1943, c. 736; c. 751, s. 1; 1945, c. 758, s. 5; 1963, c. 457, ss. 2, 5; 1967, c. 775, s. 1; 1971, c. 1247, s. 3; 1973, c. 536, s. 1; 1977, c. 469, s. 1; 1979, c. 799, s. 5; 1985, c. 562, ss. 1, 2; 1987, c. 583, ss. 1, 2; 1989 (Reg. Sess., 1990), c. 991, s. 4; 1999-455, s. 11; 2009-537, ss. 6, 8(a).)

Effect of Amendments. — Session Laws 2009-537, ss. 6, 8(a), effective January 1, 2010, and applicable with respect to elections held on or after that date, in subsection (a), substituted "a person who is at least" for "two other persons who are at least" in the introductory language, and made related stylistic and gender neutral changes throughout the subsection; and in the last sentence of subsection (b), substituted "If ballots" for "If such ballots," inserted the clause (i) designation, added clauses (ii) and (iii), and made a minor stylistic change.

CASE NOTES

Voters Must Be Sworn. — Where the evidence supports the findings that certain absentee voters were not sworn, the rejection of their ballots is proper. State ex rel. Owens v. Chaplin, 228 N.C. 705, 47 S.E.2d 12, rehearing denied, 229 N.C. 797, 48 S.E.2d 37 (1948).

Oaths Need Not Be Taken upon the Bible. — The fact that the oaths of absentee voters were not taken by them upon the Bible, but were taken with uplifted hands, does not invalidate their votes. State ex rel. Owens v. Chaplin, 228 N.C. 705, 47 S.E.2d 12, rehearing denied, 229 N.C. 797, 48 S.E.2d 37 (1948).

Interest of superior court clerk in reelection, standing alone, does not disqualify him from administering oaths to absentee voters, administering the oaths being ministerial and not judicial. State ex rel. Owens v. Chaplin, 228 N.C. 705, 47 S.E.2d 12, rehearing denied, 229 N.C. 797, 48 S.E.2d 37 (1948).

Cited in James v. Bartlett, 359 N.C. 260, 607 S.E.2d 638, 2005 N.C. LEXIS 146 (2005).

§ 163-232. Certified list of executed absentee ballots; distribution of list.

The county board of elections shall prepare, or cause to be prepared, a list in at least quadruplicate, of all absentee ballots returned to the county board of elections to be counted, which have been approved by the county board of elections, and which have been received as of 5:00 p.m. on the day before the election. At the end of the list, the chairman shall execute the following certificate under oath:

"State of North Carolina
County of ______________
I, ______________, chairman of the ______________ County board of elections, do hereby certify that the foregoing is a list of all executed absentee ballots to be voted in the election to be conducted on the ____________ day of ______________, __________, which have been approved by the county board of elections and which have been returned no later than 5:00 p.m. on the day before the election. I certify that the chairman, member, officer, or employee of the board of elections has not delivered ballots for absentee voting to any person other than the voter, by mail or by commercial courier service or in person, except as provided by law, and have not mailed or delivered ballots when the request for the ballot was received after the deadline provided by law.

This the ______________ day of ______________, __________

____
(Signature of chairman of
county board of elections)

Sworn to and subscribed before me this ____________ day of __________, __________. Witness my hand and official seal.

____
(Signature of officer
administering oath)

____
(Title of officer)"

No later than 10:00 a.m. on election day, the county board of elections shall cause one copy of the list of executed absentee ballots, which may be a continuing countywide list or a separate list for each precinct, to be immediately deposited as "first-class" mail to the State Board of Elections. The board shall retain one copy in the board office for public inspection and the board shall cause two copies of the appropriate precinct list to be delivered to the chief judge of each precinct in the county. The county board of elections shall be authorized to call upon the sheriff of the county to distribute the list to the precincts. In addition the county board of elections shall, upon request, provide a copy of the complete list to the chairman of each political party, recognized under the provisions of G.S. 163-96, represented in the county.

The chief judge shall post one copy of the list immediately in a conspicuous location in the voting place and retain one copy until all challenges of absentee ballots have been heard by the county board of elections. Challenges shall be made to absentee ballots as provided in G.S. 163-89.

After receipt of the list of absentee voters required by this section the chief judge shall call the name of each person recorded on the list and enter an "A" in the appropriate voting square on the voter's permanent registration record, or a similar entry on the computer list used at the polls. If such person is already recorded as having voted in that election, the chief judge shall enter a challenge which shall be presented to the county board of elections for resolution by the board of elections prior to certification of results by the board.

All lists required by this section shall be retained by the county board of elections for a period of 22 months after which they may then be destroyed.

(1939, c. 159, s. 6; 1943, c. 751, s. 3; 1963, c. 457, s. 6; 1967, c. 775, s. 1; 1973, c. 536, s. 1; 1977, c. 469, s. 1; 1981, c. 155, s. 1; c. 305, s. 4; 1985, c. 600, s. 7; 1993 (Reg. Sess., 1994), c. 762, s. 54; 1999-455, s. 12; 1999-456, s. 59.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 61, effective January 1, 1995, provides: "Any person who on December 31, 1994, was a registrar under G.S. 163-41 shall be a chief judge under G.S. 163-41."

§ 163-232.1. Certified list of executed absentee ballots received on or after election day; publication of list.

(a) The county board of elections shall prepare, or cause to be prepared, a list in at least triplicate, of all absentee ballots issued under Article 20 of this Chapter returned to the county board of elections to be counted, which have been approved by the county board of elections, have not been included on the certified list prepared pursuant to G.S. 163-232, and which have been postmarked by the day of the statewide primary or general election or county bond election and received by the county board of elections not later than three days after the election by 5:00 p.m. The list shall be supplemented with new information each business day following the day of the election until the deadline for receipt of such absentee ballots. At the end of the list, the chairman shall execute the following certificate under oath:

"State of North Carolina
County of ______

I, ______, chairman of the ______ County Board of Elections, do hereby certify that the foregoing is a list of all executed absentee ballots to be voted in the election to be conducted on the ______ day of ______, which have been approved by the county board of elections and which have been postmarked by the day of the statewide primary or general election or county bond election and received by the county board of elections not later than three days after the election by 5:00 p.m. I certify that the chairman, member, officer, or employee of the board of elections has not delivered ballots for absentee voting to any person other than the voter, by mail or by commercial courier service or in person, except as provided by law, and have not mailed or delivered ballots when the request for the ballot was received after the deadline provided by law.

This the ______ day of ______, ______

______
(Signature of chairman of
county board of elections)

Sworn to and subscribed before me this ______ day of ______, ______.
Witness my hand and official seal.

______
(Signature of officer
administering oath)

______
(Title of officer)"

(b) The county board of elections shall prepare, or cause to be prepared, a list in at least triplicate, of all military absentee ballots issued under Article 21 of this Chapter and returned to the county board of elections to be counted, which have been approved by the county board of elections, have not been included on the certified list prepared pursuant to G.S. 163-232, and which have been received by the county board of elections not later than three days after the election by 5:00 p.m. The list shall be supplemented with new information each business day following the day of the election until the deadline for receipt of such absentee ballots. At the end of the list, the chairman shall execute the following certificate under oath:

"State of North Carolina
County of ______
I, ______, chairman of the ______ County Board of Elections, do hereby certify that the foregoing is a list of all executed military absentee ballots to be voted in the election to be conducted on the ______ day of ______, ______, which have been approved by the county board of elections, and which have been postmarked by the day of the statewide primary or general election or county bond election and received by the county board of elections not later than three days after the election by 5:00 p.m. I further certify that I have issued ballots to no other persons than those listed herein and further that I have not delivered military absentee ballots to persons other than those listed herein; that this list constitutes the only precinct registration of military absentee voters whose names have not heretofore been entered on the regular registration of the appropriate precinct.
This the ______ day of ______, ______

______
(Signature of chairman of
county board of elections)

Sworn to and subscribed before me this ______ day of ______, ______.
Witness my hand and official seal.

______
(Signature of officer
administering oath)

______
(Title of officer)"

(c) The board shall post one copy of the most current version of each list in the board office in a conspicuous location for public inspection and shall retain one copy until all challenges of absentee ballots have been heard by the county board of elections. The county board of elections shall cause one copy of each of the final lists of executed absentee ballots required under subsection (a) and subsection (b) of this section to be deposited as "first-class" mail to the State Board of Elections no later than 10:00 a.m. of the next business day following the deadline for receipt of such absentee ballots. Challenges shall be made to absentee ballots as provided in G.S. 163-89. In addition the county board of elections shall, upon request, provide a copy of each of the lists to the chairman of each political party, recognized under the provisions of G.S. 163-96, represented in the county.

(d) All lists required by this section shall be retained by the county board of elections for a period of 22 months after which they may then be destroyed. (2009-537, s. 8(b).)

Editor's Note. — Session Laws 2009-537, s. 11, made this section effective January 1, 2010, and applicable to elections held on or after that date.

§ 163-233. Applications for absentee ballots; how retained.

The county board of elections shall retain, in a safe place, the original of all applications made for absentee ballots and shall make them available to inspection by the State Board of Elections or to any person upon the directive of the State Board of Elections.

All applications for absentee ballots shall be retained by the county board of elections for a period of one year after which they may be destroyed. (1939, c. 159, s. 7; 1943, c. 751, s. 4; 1963, c. 457, s. 7; 1967, c. 775, s. 1; 1973, c. 536, s. 1; c. 1075, s. 5; 1977, c. 469, s. 1; 1999-455, s. 13.)

Cross References. — For present provisions covering the subject matter of this section as it existed prior to the 1977 amendment, see G.S. 163-232.

§ 163-233.1. Withdrawal of absentee ballots not allowed.

No person shall be permitted to withdraw an absentee ballot after such ballot has been mailed to or returned to the county board of elections. (1973, c. 536, s. 1; 1977, c. 469, s. 1.)

§ 163-234. Counting absentee ballots by county board of elections.

All absentee ballots returned to the county board of elections in the container-return envelopes shall be retained by the board to be counted by the county board of elections as herein provided.

(1) Only those absentee ballots returned to the county board of elections no later than 5:00 p.m. on the day before election day in a properly executed container-return envelope or absentee ballots received pursuant to G.S. 163-231(b)(ii) or (iii) shall be counted, except to the extent federal law requires otherwise.

(2) The county board of elections shall meet at 5:00 p.m. on election day in the board office or other public location in the county courthouse for the purpose of counting all absentee ballots except those which have been challenged before 5:00 p.m. on election day and those received pursuant to G.S. 163-231(b)(ii) or (iii). Any elector of the county shall be permitted to attend the meeting and allowed to observe the counting process, provided the elector shall not in any manner interfere with the election officials in the discharge of their duties.

Provided, that the county board of elections is authorized to begin counting absentee ballots between the hours of 2:00 p.m. and 5:00 p.m. upon the adoption of a resolution at least two weeks prior to the election wherein the hour and place of counting absentee ballots shall be stated. Such resolution also may provide for an additional meeting following the day of the election and prior to the day of canvass to count absentee ballots received pursuant to G.S. 163-231(b)(ii) or (iii) as provided in subdivision (10) of this section. A copy of the resolutions shall be published once a week for two weeks prior to the election, in a newspaper having general circulation in the county. Notice may additionally be made on a radio or television station or both, but such notice shall be in addition to the newspaper and other required notice. The count shall be continuous until completed and the members shall not separate or leave the counting place except for unavoidable necessity, except that if the count has been completed prior to the time the polls close, it shall be suspended until that time pending receipt of any additional ballots. Nothing in this section shall prohibit a county board of elections from taking preparatory steps for the count earlier than the times specified in this section, as long as the preparatory steps do not reveal to any individual not engaged in the actual count election results before the times specified in this subdivision for the count to begin. By way of illustration and not limitation, a preparatory step for the count would be the entry of tally cards from direct record electronic voting units into a computer for processing. The board shall not announce the result of the count before 7:30 p.m.

(2a) Notwithstanding the provisions of subdivision (2) of this section, a county board of elections may, at each meeting at which it approves absentee ballot applications pursuant to G.S. 163-230.1(c) and (c1), remove those ballots from their envelopes and have them read by an optical scanning machine, without printing the totals on the scanner. The board shall complete the counting of these ballots at the times provided in subdivision (2) of this section. The State Board of Elections shall provide instructions to county boards of elections for executing this procedure, and the instructions shall be designed to ensure the accuracy of the count, the participation of board members of both parties, and the secrecy of the results before election day. This subdivision applies only in counties that use optical scan devices to count absentee ballots.

(3) The counting of absentee ballots shall not commence until a majority and at least one board member of each political party represented on the board is present and that fact is publicly declared and entered in the official minutes of the county board.

(4) The county board of elections may employ such assistants as deemed necessary to count the absentee ballots, but each board member present shall be responsible for and observe and supervise the opening and tallying of the ballots.

(5) As each ballot envelope is opened, the board shall cause to be entered into a pollbook designated "Pollbook of Absentee Voters" the name of the absentee voter, or if the pollbook is computer-generated, the board shall check off the name. Preserving secrecy, the ballots shall be placed in the appropriate ballot boxes, at least one of which shall be provided for each type of ballot. The "Pollbook of Absentee Voters" shall also contain the names of all persons who voted under G.S. 163-227.2, but those names may be printed by computer for inclusion in the pollbook.

After all ballots have been placed in the boxes, the counting process shall begin.

If one-stop ballots under G.S. 163-227.2 are counted electronically, that count shall commence at the time the polls close. If one-stop ballots are paper ballots counted manually, that count shall commence at the same time as other absentee ballots are counted.

If a challenge transmitted to the board on canvass day by a chief judge is sustained, the ballots challenged and sustained shall be withdrawn from the appropriate boxes, as provided in G.S. 163-89(e).

As soon as the absentee ballots have been counted and the names of the absentee voters entered in the pollbook as required herein, the board members and assistants employed to count the absentee ballots shall each sign the pollbook immediately beneath the last absentee voter's name entered therein. The county board of elections shall be responsible for the safekeeping of the pollbook of absentee voters.

(6) Upon completion of the counting process the board members shall cause the results of the tally to be entered on the absentee abstract prescribed by the State Board of Elections. The abstract shall be signed by the members of the board in attendance and the original mailed immediately to the State Board of Elections. The county board of elections may have a separate count on the abstract for one-stop absentee ballots under G.S. 163-227.2.

(7) One copy of the absentee abstract shall be retained by the county board of elections and the totals appearing thereon shall be added to the final totals of all votes cast in the county for each office as determined on the official canvass.

(8) In the event a political party does not have a member of the county board of elections present at the meeting to count absentee ballots due to illness or other cause of the member, the counting shall not

commence until the county party chairman of said absent member, or a member of the party's county executive committee, is in attendance. Such person shall act as an official witness to the counting and shall sign the absentee ballot abstract as an "observer.

(9) The county board of elections shall retain all container-return envelopes and absentee ballots, in a safe place, for at least four months, and longer if any contest is pending concerning the validity of any ballot.

(10) The county board of elections shall meet after election day and prior to the date of canvass to determine where the container-return envelopes for absentee ballots received pursuant to G.S. 163-231(b)(ii) or (iii) has been properly executed. The county board of elections shall comply with the requirements of G.S. 163-230.1 for approval of applications. Any absentee ballots received pursuant to G.S. 163-231(b)(ii) or (iii) shall be counted by the county board of elections on the day of canvass. The county board of elections is also authorized to meet following the day of the election and prior to the day of canvass to count absentee ballots received pursuant to G.S. 163-231(b)(ii) or (iii) upon the adoption of a resolution pursuant to subdivision (2) of this section. The county board of elections shall comply with all other requirements of this section for the counting of such absentee ballots. (1939, c. 159, ss. 8, 9; 1945, c. 758, s. 8; 1953, c. 1114; 1963, c. 547, s. 8; 1967, c. 775, s. 1; c. 851, s. 2; 1973, c. 536, s. 1; 1975, c. 798, s. 3; 1977, c. 469, s. 1; c. 626, s. 1; 1989, c. 93, s. 7; 1993 (Reg. Sess., 1994), c. 762, s. 55; 1995, c. 243, s. 1; 1999-455, s. 14; 2005-159, s. 1; 2006-262, s. 1; 2009-537, s. 8(d).)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 61, effective January 1, 1995, provides: "Any person who on December 31, 1994, was a registrar under G.S. 163-41 shall be a chief judge under G.S. 163-41."

Session Laws 2006-262, s. 5, provides that s. 1 of this act, which added subdivision (2a), is effective when it becomes law, except that any criminal penalty resulting from Session Laws 2006-262 becomes effective October 1, 2006. Prosecutions for offenses committed before October 1, 2006, are not abated or affected by Session Laws 2006-262, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 2009-537, s. 8(d), effective January 1, 2010, and applicable with respect to elections held on or after that date, inserted "or absentee ballots received pursuant to G.S. 163-231(b)(ii) or (iii)" in subdivision (1); in subdivision (2), added "and those received pursuant to G.S. 163-231(b)(ii) or (iii)" at the end of the first sentence in the first paragraph, and added the present second sentence in the second paragraph; and added subdivision (10).

§ 163-235: Repealed by Session Laws 1973, c. 536, s. 5.

§ 163-236. Violations by county board of elections.

The county board of elections shall be sole custodian of blank applications for absentee ballots, official ballots, and container-return envelopes for absentee ballots. The board shall issue and deliver blank applications for absentee ballots in strict accordance with the provisions of G.S. 163-230.1. The issuance of ballots to persons whose requests for absentee ballots have been received by the county board of elections under the provisions of G.S. 163-230.1 is the responsibility and duty of the county board of elections.

It shall be the duty of the county board of elections to keep current all records required by this Article and to make promptly all reports required by this Article. If that duty has been assigned to the chair, member, officer, or employee of the board of elections, that person shall carry out the duty.

The willful violation of this section shall constitute a Class 2 misdemeanor. (1939, c. 159, s. 14; 1963, c. 457, s. 10; 1967, c. 775, s. 1; 1977, c. 469, s. 1; 1987, c. 565, s. 9; 1993, c. 539, s. 1105; 1994, Ex. Sess., c. 24, s. 14(c); 1999-455, s. 15.)

§ 163-237. Certain violations of absentee ballot law made criminal offenses.

(a) False Statements under Oath Made Class 2 Misdemeanor. — If any person shall willfully and falsely make any affidavit or statement, under oath, which affidavit or statement under oath, is required to be made by the provisions of this Article, he shall be guilty of a Class 2 misdemeanor.

(b) False Statements Not under Oath Made Class 2 Misdemeanor. — Except as provided by G.S. 163-275(16), if any person, for the purpose of obtaining or voting any official ballot under the provisions of this Article, shall willfully sign any printed or written false statement which does not purport to be under oath, or which, if it purports to be under oath, was not duly sworn to, he shall be guilty of a Class 2 misdemeanor.

(b1) Candidate Witnessing Absentee Ballots of Nonrelative Made Class 2 Misdemeanor. — A person is guilty of a Class 2 misdemeanor if that person acts as a witness under G.S. 163-231(a) or G.S. 163-250(a) in any primary or election in which the person is a candidate for nomination or election, unless the voter is the candidate's near relative as defined in G.S. 163-230.1(f).

(c) Fraud in Connection with Absentee Vote; Forgery. — Any person attempting to aid and abet fraud in connection with any absentee vote cast or to be cast, under the provisions of this Article, shall be guilty of a misdemeanor. Attempting to vote by fraudulently signing the name of a regularly qualified voter is a Class I felony.

(d) Violations Not Otherwise Provided for Made Class 2 Misdemeanors. — If any person shall willfully violate any of the provisions of this Article, or willfully fail to comply with any of the provisions thereof, for which no other punishment is herein provided, he shall be guilty of a Class 2 misdemeanor. (1929, c. 164, s. 40; 1939, c. 159, ss. 12, 13, 15; 1967, c. 775, s. 1; 1977, c. 469, s. 1, 1985, c. 562, s. 6; 1987, c. 565, s. 8; 1993, c. 539, ss. 1106, 1324; 1994, Ex. Sess., c. 24, s. 14(c); 1999-455, s. 22.)

§ 163-238. Reports of violations to district attorneys.

It shall be the duty of the State Board of Elections to report to the district attorney of the appropriate prosecutorial district, any violation of this Article, or the failure of any person charged with a duty under its provisions to comply with and perform that duty, and it shall be the duty of the district attorney to cause such a person to be prosecuted therefor. (1939, c. 159, s. 16; 1967, c. 775, s. 1; 1977, c. 469, s. 1.)

§ 163-239. Article 21 relating to absentee voting by servicemen and certain civilians not applicable.

Except as otherwise provided therein, Article 21 of this Chapter, relating to absentee registration and voting by servicemen and certain civilians, shall not apply to or modify the provisions of this Article. (1963, c. 457, s. 11; 1967, c. 775, s. 1; 1977, c. 469, s. 1.)

§§ 163-240 through 163-240.5: Expired July 1, 1972.

§§ 163-241 through 163-244: Reserved for future codification purposes.

Article 21.

Military Absentee Registration and Voting in Primary and General Elections.

§ 163-245. Persons in armed forces, their spouses, certain veterans, civilians working with armed forces, and members of Peace Corps may register and vote by mail.

(a) Any individual who is eligible to register and who is qualified to vote in any statewide primary or election held under the laws of this State, and who is absent from the county of his residence in any of the capacities specified in subsection (b) of this section, shall be entitled to register by mail or to vote by absentee ballot or both in the manner provided in this Article.

(b) The provisions of this Article shall apply to the following persons:

(1) Individuals serving in the armed forces of the United States, including, but not limited to, the Army, the Navy, the Air Force, the Marine Corps, the Coast Guard, the Merchant Marine, the National Oceanic and Atmospheric Administration, the commissioned corps of the Public Health Service, and members of the National Guard and military reserve.

(2) Spouses of persons serving in the armed forces of the United States residing outside the counties of their spouses' voting residence.

(3) Disabled war veterans in United States government hospitals.

(4) Civilians attached to and serving outside the United States with the armed forces of the United States.

(5) Members of the Peace Corps.

(6) Other individuals meeting the definitions of "absent uniformed services voter" and "overseas voter" in the federal Uniformed and Overseas Citizens Absentee Voting Act.

(c) An otherwise valid voter registration or absentee ballot application submitted by an absent uniformed services voter during a year shall not be refused or prohibited on the grounds that the voter submitted the application before the first date on which the county board of elections otherwise accepts those applications submitted by absentee voters who are not members of the uniformed services for that year.

(d) If any absent uniformed services or overseas voter submits a voter registration application or absentee ballot request, and the request is rejected, the board of elections that makes the rejection shall notify the voter of the reasons for the rejection.

(e) The requirement for any oath or affirmation to accompany any document as to voter registration or absentee ballots under this Article may be met by use of the standard oath prescribed by the Presidential designee under section 101(b)(7) of the Uniformed and Overseas Citizens Absentee Voting Act. (1941, c. 346, ss. 1, 1a; 1943, c. 503, s. 1; 1945, c. 758, s. 4; 1953, c. 908; 1963, c. 457, s. 16; 1967, c. 775, s. 1; 1973, c. 793, s. 71; 2001-466, s. 4(a); 2003-226, s. 19; 2006-192, s. 6; 2009-281, s. 1.)

Editor's Note. — Session Laws 2003-226, s. 1, provides: "The purpose of this act is to ensure that the State of North Carolina has a system for all North Carolina elections that complies with the requirements for federal elections set forth in the federal Help America Vote Act of 2002, Public Law 107-252, 116 Stat. 1666 (2002), codified at 42 U.S.C. §§ 15481-15485.

"The General Assembly finds that the education and training of election officials as required by G.S. 163-82.34 has met and continues to meet the mandate for the education and training of precinct officials and other election officials in section 254(a)(3) of the Help America Vote Act of 2002. The General Assembly further finds that the establishment, development, and continued operation of the statewide list maintenance program for voter registration set forth in G.S. 163-82.14 has met and continues to meet the mandates of section 303(a)(2) of the Help America Vote Act of 2002.

"In certain other areas of the election statutes and other laws, the General Assembly finds that the statutes must be amended to comply with the Help America Vote Act."

Effect of Amendments. — Session Laws 2009-281, s. 1, effective July 10, 2009, substituted "National Guard" for "national guard" in subdivision (b)(1).

Legal Periodicals. — For comment on former G.S. 163-70 to 163-77, relating to absentee voting in primaries by voters in military and naval service, see 19 N.C.L. Rev. 480 (1941).

§ 163-246. Provisions of Article 20 applicable except as otherwise provided; State Board of Elections to adopt regulations.

Except as otherwise provided in this Article, registration by mail and absentee voting by individuals to whom this Article is applicable shall be governed by the provisions of Article 20 of this Chapter. By way of illustration rather than limitation, the provisions of this paragraph shall apply to the form of absentee ballots, certificates and container-return envelopes; the manner of depositing and voting military absentee ballots; the counting and certifying of results; the hearing of challenges; and the preservation of container-return envelopes in which executed military absentee ballots are transmitted. The intent of this Article is that each uniformed services voter receives the utmost consideration and cooperation when voting, that each valid ballot cast by that voter is duly counted, and that all qualified uniformed and overseas voters have equal opportunity to cast a vote and have it counted if it conforms with the law. For purposes of this Article, "uniformed services voter" means those individuals set forth as such in The Uniformed and Overseas Citizens Absentee Voting Act of 1986 (UOCAVA).

The State Board of Elections is authorized to adopt and promulgate whatever rules and regulations (not in conflict with other provisions of this Chapter) it may deem necessary to carry out the true intent and purpose of this Article. (1941, c. 346, ss. 7-10; 1943, c. 503, ss. 7, 8; 1963, c. 457, s. 15; 1967, c. 775, s. 1; 2001-466, s. 4(b).)

§ 163-247. Methods of applying for absentee ballots.

An individual entitled to exercise the rights conferred by this Article and who is absent from the county of his residence may apply for absentee ballots in either of the ways provided in this section.

(1) Federal Postcard Application Form. — At any time prior to the statewide primary or general election in which he seeks to vote, the applicant may make and sign a written application to the County Board of Election[s] in County of Voter's Residence for absentee ballots on the postcard form specified in or promulgated by regulation under The Uniformed and Overseas Citizens Absentee Voting Act of 1986 (UOCAVA), 42 U.S.C. § 1973ff(b) and § 1973ff-3.

(2) Application to Chairman of County Board of Elections. — In lieu of applying on the federal postcard as provided in the preceding subdivision, at any time prior to the statewide primary or general election in which he seeks to vote the applicant may make and sign a written application to the chairman of the board of elections of the county of his residence upon a form prepared and furnished him upon request by the county board of elections. This form shall require the applicant's signature and shall elicit from him:

a. A request for absentee ballots to be voted in a specified statewide primary or general election.
b. A statement of his political party affiliation if he seeks to vote by absentee ballot in a primary election.
c. A statement of his membership in the armed forces of the United States, or his membership in one of the other categories to which this Article is made applicable in G.S. 163-245.
d. A statement of the precinct in which he is registered to vote, or, if the applicant is not registered, a statement of his address before entering military or other qualifying service and the period of time he resided at that address.
e. A statement of the address to which the absentee ballots should be mailed.

In lieu of using a form prepared and furnished by the county board of elections, the voter may apply in an informal writing. If the written application is signed by the voter and if it contains all the information required by this subdivision, it shall be regarded as sufficient to permit the chairman of the county board of elections to act upon it.

(3) If a single application from an absentee uniformed voter is received by an election official, it shall be considered a valid absentee ballot request with respect to all general, primary, and runoff elections for federal, State, county, or those municipal offices in which absentee ballots are allowed under the provisions of G.S. 163-302, held through the next two regularly scheduled general elections for federal office. This subdivision does not apply to a special election not involving the election of candidates, unless that special election is being held on the same day as a general or primary election. (1941, c. 346, ss. 2, 3; 1943, c. 503, s. 2; 1963, c. 457, s. 12; 1967, c. 775, s. 1; 1977, c. 265, s. 16; 1987, c. 415, s. 1; 2001-466, s. 4(c), (d); 2003-226, s. 20.)

Editor's Note. — Session Laws 2003-226, s. 1, provides: "The purpose of this act is to ensure that the State of North Carolina has a system for all North Carolina elections that complies with the requirements for federal elections set forth in the federal Help America Vote Act of 2002, Public Law 107-252, 116 Stat. 1666 (2002), codified at 42 U.S.C. §§ 15481-15485.

"The General Assembly finds that the education and training of election officials as required by G.S. 163-82.34 has met and continues to meet the mandate for the education and training of precinct officials and other election officials in section 254(a)(3) of the Help America Vote Act of 2002. The General Assembly further finds that the establishment, development, and continued operation of the statewide list maintenance program for voter registration set forth in G.S. 163-82.14 has met and continues to meet the mandates of section 303(a)(2) of the Help America Vote Act of 2002.

"In certain other areas of the election statutes and other laws, the General Assembly finds that the statutes must be amended to comply with the Help America Vote Act."

§ 163-248. Register, ballots, container-return envelopes, and instruction sheets.

(a) Register of Military Absentee Ballot Applications and Ballots Issued. — The State Board of Elections shall approve an official register of military absentee ballot applications and ballots issued in which shall be recorded whatever information and official action may be required by this Article. The State Board of Elections may provide for the register to be kept by electronic data processing equipment, and a copy or a supplement of new information shall be printed each business day.

The register of military absentee ballot applications and ballots issued shall constitute a public record.

(b) Absentee Ballot Form. — Persons entitled to vote by absentee ballot under the terms of this Article shall be furnished with regular official ballots;

separate or distinctly marked absentee ballots shall not be used. The State Board of Elections and the county boards of elections shall have all necessary absentee ballots printed and in the hands of the proper election officials not later than 60 days before the statewide general election in even-numbered years and not later than 50 days before the primary or any other election. However, in the case of municipal elections, absentee ballots shall be made available no later than 30 days before an election.

(c) Container-Return Envelope. — The county board of elections shall print a sufficient number of envelopes in which persons casting military absentee ballots may transmit their marked ballots to the chairman of the county board of elections. The container-return envelopes shall be printed and available for use not later than 60 days before the statewide general election in even-numbered years and not later than 50 days before the primary or any other election. However, in the case of municipal elections, container-return envelopes shall be made available no later than 30 days before an election. Each container-return envelope shall be printed in accordance with the following instructions:

(1) On one side shall be arranged identified spaces in which the chairman of the county board of elections may insert the name of the applicant, the number assigned his application, and the designation of the precinct in which the applicant is registered.

(2) On the other side shall be printed the return address of the chairman of the county board of elections and the following certificate:

"Certificate of Absentee Voter

I, ______________________, do hereby certify that I am a resident and qualified voter in ______________ precinct, ____________ County, North Carolina, and that I am [check whichever of the following statements is correct]

[ ] Serving in the armed forces of the United States

[ ] The spouse of a member of the armed forces of the United States residing outside the county of my spouse's residence

[ ] A disabled war veteran in a United States government hospital

[ ] A civilian attached to and serving outside the United States with the armed forces of the United States

[ ] A member of the Peace Corps

[ ] A United States citizen currently outside the United States

I further certify that I am affiliated with the __________ Party. [To be completed only if applicant seeks to vote in the primary of the political party to which he belongs.]

I further certify that the following is my official address:

____

[Unit (Co., Sq., Trp., Bn., etc.), Governmental Agency, or Office]

____

[Military Base, Station, Camp, Fort, Ship, Airfield, etc.]

____

[Street number, APO, or FPO number]

____

[City, postal zone, State, and zip code]

____

[E-mail address]

I further certify that I made application for absentee ballots and that I marked the ballots enclosed herein, or that they were marked for me in my presence and according to my instruction. I understand it is a felony to falsely sign this certificate.

Witness my hand in the presence of __________ [Insert name and address of witness] this ________ day of ____________, ______.

____
(Signature of voter)

Signature of witness ______________________________________
Address of witness _______________________________________

Note: This certificate must be witnessed by a person who is 18 years of age or older, and must contain the signature and address of the witness.

(d) Instruction Sheets. — The county board of elections shall prepare and print a sufficient number of sheets of instructions on how voters covered by the provisions of this Article are to prepare absentee ballots and return them to the chairman of the county board of elections. The instruction sheets shall be printed and available for use not later than the date of ballot availability. (1929, c. 164, s. 39; 1941, c. 346, ss. 2-6; 1943, c. 503, s. 3; 1963, c. 457, ss. 12-14; 1967, c. 775, s. 1; 1973, c. 793, s. 72; 1975, c. 844, ss. 15-17; 1979, c. 411, s. 7; 1985 (Reg. Sess., 1986), c. 986, s. 2; 1987, c. 485, ss. 2, 5; c. 509, s. 9; c. 583, s. 5; 1989, c. 635, s. 5; 1999-456, s. 59; 2009-537, s. 1.)

Editor's Note. — Section 4 of Session Laws 1985 (Reg. Sess., 1986), c. 986, provided that s. 2 thereof, which amended subsections (b) and (c), would expire with respect to primaries and elections held on or after December 31, 1986.

Session Laws 1985 (Reg. Sess., 1986), c. 987, made the same changes to this section as Session Laws 1985 (Reg. Sess., 1986), c. 986, but was only to become effective if the Attorney General of the United States interposed objection to Session Laws 1985 (Reg. Sess., 1986), c. 986 as to the fact that such bill provided for designating vacancies for all unexpired terms separately from full terms. Chapter 987 also provided that the act would expire with respect to primaries and elections held on or after December 31, 1986. Objection to c. 986 was not made. Moreover, Session Laws 1987, c. 509, s. 9 repealed Session Laws 1985 (Reg. Sess., 1986), c. 987. Therefore, c. 987 never went into effect.

Effect of Amendments. — Session Laws 2009-537, s. 1, effective January 1, 2010, and applicable with respect to elections held on or after that date, rewrote subsection (a); in subsections (b) and (c), substituted "not later than 60 days before the statewide general election in even-numbered years and not later than 50 days before the primary or any other election" for "not later than 50 days before the primary or election" at the end of the first sentence, and added the second sentence in both subsections; substituted "the applicant is registered" for "his ballots are to be voted" at the end of subdivision (c)(1); in the certificate in subdivision (c)(2), inserted "[ ] A United States citizen currently outside the United States", inserted the blank line and text "[E-mail address]", substituted "[Insert name and address of witness]" for "[Insert names and addresses of witnesses]", deleted the signature lines for "witness #2" and deleted "#1" at the end of the remaining signature lines, and substituted "a person who is 18 years of age or older, and must contain the signature and address of the witness" for "any two persons who are 18 years of age or older, and must contain their signatures and addresses" at the end of the certificate's note; and substituted "the date of ballot availability" for "60 days before the primary or election" at the end of subsection (d).

CASE NOTES

Cited in James v. Bartlett, 359 N.C. 260, 607 S.E.2d 638, 2005 N.C. LEXIS 146 (2005).

§ 163-249. Consideration and approval of applications and issuance of absentee ballots.

The procedure to be followed in receiving applications for absentee ballots under this Article, passing upon their validity, and issuing absentee ballots shall be governed by the provisions of this section.

(1) Record of Applications Received and Ballots Issued. — Upon receipt of a voter's written application for absentee ballots in either of the forms permitted by G.S. 163-247, the chairman of the county board of

elections shall promptly enter in the register of military absentee ballot applications and ballots issued:

a. Name of voter applying for absentee ballots.

b. Applicant's political party affiliation as stated in an application for ballots in a primary.

c. Number assigned voter's application. (Numbers assigned applications received under the provisions of this Article shall be chosen so as not to be identical with numbers assigned applications received under the provisions of Article 20.)

d. Precinct in which applicant is registered if he is already registered, or precinct in which applicant is registered by the chairman of the county board of elections under the provisions of subdivisions (2) and (3) of this section.

e. Address to which ballots are to be mailed.

f. Statement of basis on which applicant asserts his qualifications for obtaining absentee ballots under the provisions of this Article.

g. Date application for ballots is received by chairman.

(2) Determination of Validity of Applications for Absentee Ballots; Handling Applications for Persons Not Registered. — The chairman of the county board of elections shall pass upon the validity of all applications for absentee ballots received under the provisions of this Article, and he shall not delegate this responsibility.

If the chairman finds that the applicant is a qualified voter of the county, that he is registered in the precinct stated in his application, that the assertions in his application are true, that they demonstrate that he is entitled to vote by absentee ballot under the terms of this Article, and that his application is in proper form, the chairman shall approve the application for absentee ballots.

If the chairman finds that the applicant is not registered to vote in the precinct in which he declares he is a resident, the chairman shall make a reasonable investigation as to the applicant's residence. If the chairman determines that the applicant is a resident of the precinct asserted, that he is eligible to register and vote under the Constitution and statutes of this State, and that his application is otherwise in order, the chairman shall register him according to the procedure specified in subdivision (3) of this section and approve his application for absentee ballots.

(3) Record of Chairman's Decisions; Registration by Chairman. — At the time the chairman of the county board of elections makes his decision on an application for absentee ballots, he shall enter in the appropriate column in the register of military absentee ballot applications and ballots issued opposite the name of the applicant a notation of whether his application was "Approved" or "Disapproved." In cases in which the chairman determines that an unregistered applicant is entitled to register, he shall also note in the appropriate column of the register the designation of the precinct in which the applicant is entitled to vote. This entry shall constitute registration and shall entitle an otherwise qualified applicant to receive absentee ballots.

(4) Delivery of Absentee Ballots and Container-Return Envelope to Applicant. — When the chairman of the county board of elections approves an application for military absentee ballots he shall promptly issue and transmit them in accordance with the following instructions:

a. On the top margin of each ballot the applicant is entitled to vote, the chairman shall write or type the words "Absentee Ballot No ________" and insert in the blank space the number assigned the applicant's application in the register of military absentee ballot applications and ballots issued. He shall not write, type, or print any other matter upon the ballots transmitted to the absentee voter.

b. The chairman shall fold and place the ballots (identified in accordance with the preceding instruction) in a container-return envelope and write or type in the appropriate blanks thereon, the absentee voter's name, his application number, and the designation of the precinct in which his ballots are to be voted. The chairman shall leave the container-return envelope holding the ballots unsealed.

c. The chairman shall then place the unsealed container-return envelope holding the ballots, together with printed instructions for voting and returning the ballots, in an envelope addressed to the applicant at the address stated in his application, seal the envelope, and mail it at the expense of the county board of elections. (1941, c. 346, ss. 2-5; 1943, c. 503, s. 3; 1963, c. 457, ss. 12, 13; 1967, c. 775, s. 1.)

§ 163-250. Voting absentee ballots and transmitting them to chairman of county board of elections.

(a) Procedure for Voting Absentee Ballots. — In the presence of a person who is at least 18 years of age, the voter shall:

(1) Mark the voter's ballots, or cause them to be marked by that person in the voter's presence according to the voter's instructions.

(2) Fold each ballot separately, or cause each of them to be folded in the voter's presence.

(3) Place the folded ballots in the container-return envelope and securely seal it, or have this done in the voter's presence.

(4) Make and subscribe the certificate printed on the container-return envelope according to the provisions of G.S. 163-248(c).

The person in whose presence the ballots were marked shall sign the certificate as a witness and shall give that person's address.

(b) Transmitting Executed Absentee Ballots to Chairman of County Board of Elections. — When executed and witnessed in accordance with the provisions of subsection (a) of this section, the sealed container-return envelope in which executed absentee ballots have been placed shall be mailed by the voter to the chairman of the county board of elections who issued them. (1941, c. 346, ss. 7-10; 1963, c. 457, s. 15; 1967, c. 775, s. 1; 1987, c. 583, s. 6; 2009-537, s. 7.)

Effect of Amendments. — Session Laws 2009-537, s. 7, effective January 1, 2010, and applicable with respect to elections held on or after that date, in subsection (a), substituted "a person who is at least" for "two persons who are at least" in the introductory language, and made related stylistic and gender neutral changes throughout the subsection.

§ 163-251. Certified list of approved military absentee ballot applications; record of ballots received; disposition of list; list constitutes registration.

(a) Preparation of List. — The chairman of the county board of elections shall prepare, or cause to be prepared, a list in quadruplicate of all military absentee ballots returned to the county board of elections to be counted which have been approved by the county board of elections. At the end of the list the chairman shall execute the following certificate under oath:

"State of North Carolina
County of ____________________
I, __________________, Chairman of the ______________ County Board of Elections, do hereby certify that the foregoing is a list of all executed military absentee ballots to be voted in the election to be conducted on the ________ day of ________, ________, which have been approved by the County Board of Elections. I further certify that I have issued ballots to no other persons than those listed herein and further that I have not delivered military absentee ballots to persons other than those listed herein; that this list constitutes the only precinct registration of military absentee voters whose names have not heretofore been entered on the regular registration of the appropriate precinct.
This the ________ day of ________, ________.

____
(Signature of Chairman of County Board of Elections)

Sworn to and subscribed before me this ________ day of ________, ________.

____
(Signature of Officer administering oath)

____
(Title of officer)"

(b) Distribution of List. — No earlier than 3:00 P.M. on the day before the election and no later than 10:00 A.M. on election day, the chairman shall cause one copy of the list of executed military absentee ballots, which may be a continuing countywide list or a separate list for each precinct, to be immediately deposited as first-class mail to the State Board of Elections. The chairman shall retain one copy in the board office for public inspection and he shall cause two copies of the appropriate precinct list to be delivered to the chief judge of each precinct in the county. The chief judge shall post one copy in the voting place and retain one copy until all challenges of absentee ballots have been heard by the county board of elections. Challenges shall be made as provided in G.S. 163-89.

After receipt of the list of absentee voters required by this section the chief judge shall call the name of each person recorded on the list and enter an "A" in the appropriate voting square on the voter's permanent registration record, if any. If such person is already recorded as having voted in that election, the chief judge shall enter a challenge which shall be presented to the chairman of the county board of elections for resolution by the board of elections prior to certification of results by the board.

(c) List Constitutes Registration. — The "List of Applicants for Military Absentee Ballots to Whom Ballots Have Been Issued" prescribed by this section, when delivered to the chief judges of the various precincts, shall constitute the only precinct registration of the military absentee voters listed thereon whose names are not already entered in the registration records of the appropriate precinct. Chief judges shall not add the names of persons listed on the military absentee list to the regular registration books of their precincts.

(d) Counting Ballots, Hearing Challenges. — The county board of elections shall count military ballots as provided for civilian absentee ballots in G.S. 163-234, and shall hear challenges as provided in G.S. 163-89. (1941, c. 346, ss. 7-10, 12, 13; 1943, c. 503, ss. 4, 5; 1963, c. 457, s. 15; 1967, c. 775, s. 1; 1973, c. 536, s. 2; 1977, c. 265, s. 17; 1979, c. 797, s. 3; 1981, c. 155, s. 2; c. 308, s. 3; 1983, c. 331, s. 4; 1993 (Reg. Sess., 1994), c. 762, ss. 56, 57; 1999-456, s. 59.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 752, s. 61, effective January 1, 1995, provides: "Any person who on December 31, 1994, was a registrar under G.S. 164-41 shall be a chief judge under G.S. 163-41."

§ 163-252: Repealed by Session Laws 1973, c. 536, s. 5.

§ 163-253. Article inapplicable to persons after change of status; reregistration not required.

Upon discharge from the armed forces of the United States or termination of any other status qualifying the voter to register and vote by absentee ballot under the provisions of this Article, the voter shall not be entitled to vote by military absentee ballot, but if the voter was registered under the provisions of this Article that voter's registration shall remain valid for the remainder of the calendar year that voter registered, and that voter shall be entitled to vote in any primary or election for the remainder of the calendar year without having to reregister. If requested by election officials, the voter shall present proof of military status at the time of registration. This section does not entitle a person to vote in North Carolina if that person has become disqualified because of change of permanent residence to another State or because of conviction of a felony. (1943, c. 503, s. 12; 1967, c. 775, s. 1; 1999-424, s. 7(k); 2001-466, s. 4(e).)

§ 163-254. Registration and voting on primary or election day.

Notwithstanding any other provisions of Chapter 163 of the General Statutes, an individual shall be permitted to register in person at any time the office of the board of elections or the voting place is open, including the day of a primary or election if that individual was absent on the day the registration records close for an election, but returns to that individual's county of residence in North Carolina thereafter, and if the absence is due to an occupation or status of that individual listed below:

(1) Individuals serving in the armed forces of the United States, including (but not limited to) the Army, the Navy, the Air Force, the Marine Corps, the Coast Guard, the Merchant Marine, the National Oceanic and Atmospheric Administration, the commissioned corps of the Public Health Service, and members of the National Guard and military reserve.
(2) Spouses of individuals serving in the armed forces of the United States residing outside the counties of their spouses' voting residence.
(3) Disabled war veterans in United States government hospitals.
(4) Civilians attached to and serving outside the United States with the armed forces of the United States.
(5) Members of the Peace Corps.

If an individual so absent on the day registration closes shall appear in person at the voting place on election day and is otherwise eligible to vote, that individual shall be entitled to register and vote at the voting place that day, regardless of whether the person's occupation or status as outlined in subdivisions (1) through (5)of this section has changed since the close of registration. (1977, c. 93; 1999-424, s. 7(*l*); 2001-353, s. 3; 2009-281, s. 1.)

Effect of Amendments. — Session Laws 2009-281, s. 1, effective July 10, 2009, substituted "National Guard" for "national guard" in subdivision (1).

Legal Periodicals. — For survey of 1977 administrative law affecting state government, see 56 N.C.L. Rev. 867 (1978).

§ 163-255. Absentee voting at office of board of elections.

Notwithstanding any other provisions of Chapter 163 of the General Statutes, any person eligible to vote an absentee ballot pursuant to G.S. 163-245 shall be permitted to vote an absentee ballot pursuant to G.S. 163-227.2 if the person has not already voted an absentee ballot which has been returned to the board of elections, and if he will not be in the county on the day of the primary or election.

In the event an absentee application or ballot has already been mailed to such person applying to vote pursuant to G.S. 163-227.2, the board of elections shall void the application and ballot unless the voted absentee ballot has been received by the board of elections. Such person shall be eligible to vote pursuant to G.S. 163-227.2 no later than 5:00 P.M. on the day next preceding the primary, second primary or election. (1977, c. 93; 1979, c. 797, s. 4.)

§ 163-256. Regulations of State Board of Elections.

(a) The State Board of Elections shall adopt rules and regulations to carry out the intent and purpose of G.S. 163-254 and 163-255, and to ensure that a proper list of persons voting under said sections shall be maintained by the boards of elections, and to ensure proper registration records, and such rules and regulations shall not be subject to the provisions of Article 2A of Chapter 150B of the General Statutes.

(b) The State Board of Elections shall be the single office responsible for providing information concerning voter registration and absentee voting procedures to be used by absent uniformed services voters and overseas voters as to all elections and procedures relating to the use of federal write-in absentee ballots. Unless otherwise required by law, the State Board of Elections shall be responsible for maintaining contact and cooperation with the Federal Voting Assistance Program, the United States Department of Defense, and other federal entities that deal with military and overseas voting. The State Board of Elections shall, as needed, make recommendations concerning military and overseas citizen voting to the General Assembly, the Governor, and other State officials. (1977, c. 93; 1987, c. 827, s. 1; 2003-226, s. 18.)

Editor's Note. — Session Laws 2003-226, s. 1, provides: "The purpose of this act is to ensure that the State of North Carolina has a system for all North Carolina elections that complies with the requirements for federal elections set forth in the federal Help America Vote Act of 2002, Public Law 107-252, 116 Stat. 1666 (2002), codified at 42 U.S.C. §§ 15481-15485.

"The General Assembly finds that the education and training of election officials as required by G.S. 163-82.34 has met and continues to meet the mandate for the education and training of precinct officials and other election officials in section 254(a)(3) of the Help America Vote Act of 2002. The General Assembly further finds that the establishment, development, and continued operation of the statewide list maintenance program for voter registration set forth in G.S. 163-82.14 has met and continues to meet the mandates of section 303(a)(2) of the Help America Vote Act of 2002.

"In certain other areas of the election statutes and other laws, the General Assembly finds that the statutes must be amended to comply with the Help America Vote Act."

§ 163-257. Facsimile, electronic mail, or scanned transmission of election materials.

An applicant entitled to exercise the rights conferred by this Article may apply for registration and an absentee ballot by facsimile, electronic mail, or transmission of a scanned document if otherwise qualified to apply for and vote by absentee ballot. A county board of elections may send and receive absentee ballot applications and accept voted ballots by facsimile, electronic mail, or transmission of a scanned document from eligible electors as defined in G.S. 163-245. The State Board of Elections shall promulgate uniform rules for the use of facsimiles, electronic mail, and transmission of scanned documents in application and voting under this section, and all county boards of elections shall adhere to those rules. (1999-455, s. 20; 2004-127, s. 9(b).)

Editor's Note. — Session Laws 1999-455, s. 24, made this section applicable to elections held on or after January 1, 2000, except that the State Board of Elections may issue rules required or permitted by this act prior to that date.

The prefatory language of Session Laws 1999-455, s. 20, provided that Article 21 was amended by the addition of this section, but no Chapter for this section was specified. This section was codified in Chapter 163, Article 21, at the direction of the Revisor of Statutes.

§ 163-258. Emergency powers.

If an international, national, or local emergency or other situation arises that makes substantial compliance with this Article or the Uniformed and Overseas Citizens Absentee Voting Act impossible or unreasonable, the State Board of Elections may prescribe, by emergency rule, such special procedures or requirements as may be necessary to facilitate absentee voting by those absent uniformed services voters or overseas voters directly affected who are eligible to vote in this State. The rule shall become effective when filed with the Codifier of Rules. (2009-537, s. 9.)

Editor's Note. — Session Laws 2009-537, s., 11, made this section effective January 1, 2010, and applicable with respect to elections held on or after that date.

SUBCHAPTER VIII. REGULATION OF ELECTION CAMPAIGNS.

ARTICLE 22.

Corrupt Practices and Other Offenses Against the Elective Franchise.

§§ 163-259 through 163-268: Repealed by Session Laws 1975, c. 565, s. 8.

§§ 163-269, 163-270: Repealed by Session Laws 1999-31, s. 5(b), effective May 4, 1999.

§ 163-271. Intimidation of voters by officers made misdemeanor.

It shall be unlawful for any person holding any office, position, or employment in the State government, or under and with any department, institution, bureau, board, commission, or other State agency, or under and with any county, city, town, district, or other political subdivision, directly or indirectly, to discharge, threaten to discharge, or cause to be discharged, or otherwise intimidate or oppress any other person in such employment on account of any vote such voter or any member of his family may cast, or consider or intend to cast, or not to cast, or which he may have failed to cast, or to seek or undertake to control any vote which any subordinate of such person may cast, or consider or intend to cast, or not to cast, by threat, intimidation, or declaration that the position, salary, or any part of the salary of such subordinate depends in any manner whatsoever, directly or indirectly, upon the way in which subordinate or any member of his family casts, or considers or intends to cast, or not to cast his vote, at any primary or election. A violation of this section is a Class 2 misdemeanor. (1933, c. 165, s. 25; 1967, c. 775, s. 1; 1987, c. 565, s. 11; 1993, c. 539, s. 1109; 1994, Ex. Sess., c. 24, s. 14(c).)

Legal Periodicals. — For comment on political patronage and the Fourth Circuit's test of dischargeability, see 15 Wake Forest L. Rev. 655 (1979).

CASE NOTES

Cited in McCollum v. Stahl, 579 F.2d 869 (4th Cir. 1978); Burns v. Brinkley, 933 F. Supp. 528 (E.D.N.C. 1996).

§ 163-272: Repealed by Session Laws 1971, c. 872, s. 3.

§ 163-272.1. Penalties for violation of this Chapter.

Whenever in this Chapter it is provided that a crime is a misdemeanor, the punishment shall be for a Class 2 misdemeanor. (1987, c. 565, s. 1; 1993, c. 539, s. 1110; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 163-273. Offenses of voters; interference with voters; penalty.

(a) Any person who shall, in connection with any primary or election in this State, do any of the acts and things declared in this section to be unlawful, shall be guilty of a Class 2 misdemeanor. It shall be unlawful:

(1) For a voter, except as otherwise provided in this Chapter, to allow his ballot to be seen by any person.

(2) For a voter to take or remove, or attempt to take or remove, any ballot from the voting enclosure.

(3) For any person to interfere with, or attempt to interfere with, any voter when inside the voting enclosure.

(4) For any person to interfere with, or attempt to interfere with, any voter when marking his ballots.

(5) For any voter to remain longer than the specified time allowed by this Chapter in a voting booth, after being notified that his time has expired.

(6) For any person to endeavor to induce any voter, while within the voting enclosure, before depositing his ballots, to show how he marks or has marked his ballots.

(7) For any person to aid, or attempt to aid, any voter by means of any mechanical device, or any other means whatever, while within the voting enclosure, in marking his ballots.

(b) Election officers shall cause any person committing any of the offenses set forth in subsection (a) of this section to be arrested and shall cause charges to be preferred against the person so offending in a court of competent jurisdiction. (1929, c. 164, s. 29; 1967, c. 775, s. 1; 1987, c. 565, s. 12; 1993, c. 539, s. 1111; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 163-274. Certain acts declared misdemeanors.

(a) Class 2 Misdemeanors. — Any person who shall, in connection with any primary or election in this State, do any of the acts and things declared in this subsection to be unlawful, shall be guilty of a Class 2 misdemeanor. It shall be unlawful:

(1) For any person to fail, as an officer or as a judge or chief judge of a primary or election, or as a member of any board of elections, to prepare the books, ballots, and return blanks which it is his duty under the law to prepare, or to distribute the same as required by law, or to perform any other duty imposed upon him within the time and in the manner required by law;

(1a) For any member, director, or employee of a board of elections to alter a voter registration application or other voter registration record without either the written authorization of the applicant or voter or the written authorization of the State Board of Elections;

(2) For any person to continue or attempt to act as a judge or chief judge of a primary or election, or as a member of any board of elections, after having been legally removed from such position and after having been given notice of such removal;

(3) For any person to break up or by force or violence to stay or interfere with the holding of any primary or election, to interfere with the possession of any ballot box, election book, ballot, or return sheet by those entitled to possession of the same under the law, or to interfere in any manner with the performance of any duty imposed by law upon any election officer or member of any board of elections;

(4) For any person to be guilty of any boisterous conduct so as to disturb any member of any election board or any chief judge or judge of election in the performance of his duties as imposed by law;

(5) For any person to bet or wager any money or other thing of value on any election;

(5a) Repealed by Session Laws 1999-455, s. 21, applicable to elections held on or after January 1, 2000.

(6) For any person, directly or indirectly, to discharge or threaten to discharge from employment, or otherwise intimidate or oppose any legally qualified voter on account of any vote such voter may cast or consider or intend to cast, or not to cast, or which he may have failed to cast;

(7) For any person to publish in a newspaper or pamphlet or otherwise, any charge derogatory to any candidate or calculated to affect the candidate's chances of nomination or election, unless such publication be signed by the party giving publicity to and being responsible for such charge;

(8) For any person to publish or cause to be circulated derogatory reports with reference to any candidate in any primary or election, knowing such report to be false or in reckless disregard of its truth or falsity, when such report is calculated or intended to affect the chances of such candidate for nomination or election;

(9) For any person to give or promise, in return for political support or influence, any political appointment or support for political office;

(10) For any chairman of a county board of elections or other returning officer to fail or neglect, willfully or of malice, to perform any duty, act, matter or thing required or directed in the time, manner and form in which said duty, matter or thing is required to be performed in relation to any primary, general or special election and the returns thereof;

(11) For any clerk of the superior court to refuse to make and give to any person applying in writing for the same a duly certified copy of the returns of any primary or election or of a tabulated statement to a primary or election, the returns of which are by law deposited in his office, upon the tender of the fees therefor;

(12) For any person willfully and knowingly to impose upon any blind or illiterate voter a ballot in any primary or election contrary to the wish or desire of such voter, by falsely representing to such voter that the ballot proposed to him is such as he desires; or

(13) Except as authorized by G.S. 163-82.15, for any person to provide false information, or sign the name of any other person, to a written report under G.S. 163-82.15.

(b) Class 1 Misdemeanor. — Any person who shall, in connection with any primary or election in this State, do any of the acts and things declared in this subsection to be unlawful shall be guilty of a Class 1 misdemeanor. It shall be unlawful for any person who has access to an official voted ballot or record to knowingly disclose in violation of G.S. 163-165.1(e) how an individual has voted that ballot. (1931, c. 348, s. 9; 1951, c. 983, s. 1; 1967, c. 775, s. 1; 1979, c. 135, s. 3; 1987, c. 565, s. 13; c. 583, s. 9; 1993, c. 539, s. 1112; 1994, Ex. Sess., c. 24, s. 14(c); 1993 (Reg. Sess., 1994), c. 762, s. 58(a)-(c); 1999-424, s. 7(h); 1999-426, s. 2(a); 1999-455, s. 21; 2007-391, ss. 9(b), 16(b).)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 61, effective January 1, 1995, provides: "Any person who on December 31, 1994, was a registrar under G.S. 163-41 shall be a chief judge under G.S. 163-41."

Legal Periodicals. — For note, "Constitutional Law — Freedom of Speech — State v. Petersilie, 334 N.C. 169, 432 S.E.2d 832 (1993)," see 72 N.C.L. Rev. 1618 (1994).

CASE NOTES

Free Speech Guarantees Not Violated. — Subdivision (7), prohibiting anonymous, derogatory charges against candidates for primary or general elections, does not violate the free speech guarantees of U.S. Const., Amend. I or N.C. Const., Art. I, § 14. State v. Petersilie, 334 N.C. 169, 432 S.E.2d 832 (1993).

Indictment Held Insufficient. — An indictment charging that defendant unlawfully and willfully, by his own boisterous and violent conduct, disturbed a named registrar (now chief judge) while in the performance of her duties in examining a named applicant for registration was insufficient, although charging the offense in the words of the statute, since such words did not in themselves inform the accused of the specific offense of which he was accused, so as to enable him to prepare his defense or plead his conviction or acquittal as a bar to further prosecution for the same offense. State v. Walker, 249 N.C. 35, 105 S.E.2d 101 (1958).

Cited in Boyce & Isley, PLLC v. Cooper, 153 N.C. App. 25, 568 S.E.2d 893, 2002 N.C. App. LEXIS 1088 (2002); Grant v. Miller, 170 N.C. App. 184, 611 S.E.2d 477, 2005 N.C. App. LEXIS 902 (2005); Craven v. SEIU COPE, 188 N.C. App. 814, 656 S.E.2d 729, 2008 N.C. App. LEXIS 266 (2008).

§ 163-275. Certain acts declared felonies.

Any person who shall, in connection with any primary, general or special election held in this State, do any of the acts or things declared in this section to be unlawful, shall be guilty of a Class I felony. It shall be unlawful:

(1) For any person fraudulently to cause his name to be placed upon the registration books of more than one election precinct or fraudulently to cause or procure his name or that of any other person to be placed upon the registration books in any precinct when such registration in that precinct does not qualify such person to vote legally therein, or to impersonate falsely another registered voter for the purpose of voting in the stead of such other voter;

(2) For any person to give or promise or request or accept at any time, before or after any such primary or election, any money, property or other thing of value whatsoever in return for the vote of any elector;

(3) For any person who is an election officer, a member of an election board or other officer charged with any duty with respect to any primary or election, knowingly to make any false or fraudulent entry on any election book or any false or fraudulent returns, or knowingly to make or cause to be made any false statement on any ballot, or to do any fraudulent act or knowingly and fraudulently omit to do any act or make any report legally required of such person;

(4) For any person knowingly to swear falsely with respect to any matter pertaining to any primary or election;

(5) For any person convicted of a crime which excludes him from the right of suffrage, to vote at any primary or election without having been restored to the right of citizenship in due course and by the method provided by law;

(6) For any person to take corruptly the oath prescribed for voters;

(7) For any person with intent to commit a fraud to register or vote at more than one precinct or more than one time, or to induce another to do so, in the same primary or election, or to vote illegally at any primary or election;

(8) For any chief judge or any clerk or copyist to make any entry or copy with intent to commit a fraud;

(9) For any election official or other officer or person to make, certify, deliver or transmit any false returns of any primary or election, or to make any erasure, alteration, or conceal or destroy any election ballot, book, record, return or process with intent to commit a fraud;

(10) For any person to assault any chief judge, judge of election or other election officer while in the discharge of his duty in the registration of voters or in conducting any primary or election;

(11) For any person, by threats, menaces or in any other manner, to intimidate or attempt to intimidate any chief judge, judge of election or other election officer in the discharge of his duties in the registration of voters or in conducting any primary or election;

(12) For any chief judge, judge of election, member of a board of elections, assistant, marker, or other election official, directly or indirectly, to seek, receive or accept money or the promise of money, the promise of office, or other reward or compensation from a candidate in any primary or election or from any source other than such compensation as may be provided by law for his services;

(13) For any person falsely to make or present any certificate or other paper to qualify any person fraudulently as a voter, or to attempt thereby to secure to any person the privilege of voting;

(14) For any officer to register voters and any other individual to knowingly and willfully receive, complete, or sign an application to register from any voter contrary to the provisions of G.S. 163-82.4; or

(15) Reserved for future codification purposes.

(16) For any person falsely to make the certificate provided by G.S. 163-229(b)(2) or G.S. 163-250(a).

(17) For any person, directly or indirectly, to misrepresent the law to the public through mass mailing or any other means of communication where the intent and the effect is to intimidate or discourage potential voters from exercising their lawful right to vote.

(18) For any person, knowing that a person is not a citizen of the United States, to instruct or coerce that person to register to vote or to vote. (1901, c. 89, s. 13; Rev., s. 3401; 1913, c. 164, s. 2; C.S., s. 4186; 1931,

c. 348, s. 10; 1943, c. 543; 1965, c. 899; 1967, c. 775, s. 1; 1979, c. 539, s. 4; 1979, 2nd Sess., c. 1316, ss. 27, 28; 1981, cc. 63, 179; 1985, c. 562, s. 5; 1987, c. 565, s. 14; c. 583, s. 7; 1989, c. 770, s. 38; 1991, c. 727, s. 1; 1993, c. 553, s. 68; 1993 (Reg. Sess., 1994), c. 762, s. 58(d)-(g); 1999-424, s. 7(i); 2007-391, s. 17(a).)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 61, effective January 1, 1995, provides: "Any person who on December 31, 1994, was a registrar under G.S. 163-41 shall be a chief judge under G.S. 163-41."

CASE NOTES

Cited in Aycock v. Padgett, 134 N.C. App. 164, 516 S.E.2d 907 (1999).

§ 163-276. Convicted officials; removal from office.

Any public official who shall be convicted of violating any provision of Article 14A or 22 of this Chapter, in addition to the punishment provided by law, shall be removed from office by the judge presiding, and, if the conviction is for a felony, shall be disqualified from voting until his citizenship is restored as provided by law. (1949, c. 504; 1967, c. 775, s. 1; 1985, c. 563, s. 11.3; 2002-159, s. 21(c).)

§ 163-277. Compelling self-incriminating testimony; person so testifying excused from prosecution.

No person shall be excused from attending or testifying or producing any books, papers or other documents before any court or magistrate upon any investigation, proceeding or trial for the violation of any of the provisions of this Article, upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate or degrade him, but such person may be subpoenaed and required to testify by and for the State relative to any offense arising under the provisions of this Article; but such person shall not be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may so testify or produce evidence, documentary or otherwise, and no testimony so given or produced shall be used against him upon any criminal investigation or proceeding, but such person so compelled to testify with respect to any acts of his own shall be immune from prosecution on account thereof, and shall be pardoned for any violation of law about which such person shall be so required to testify. (1931, c. 348, s. 11; 1967, c. 775, s. 1.)

Legal Periodicals. — For general discussion of the limits to self-incrimination, see 15 N.C.L. Rev. 229 (1937).

§ 163-278. Duty of investigating and prosecuting violations of this Article.

It shall be the duty of the State Board of Elections and the district attorneys to investigate any violations of this Article, and the Board and district attorneys are authorized and empowered to subpoena and compel the attendance of any person before them for the purpose of making such investigation. The State Board of Elections and the district attorneys are authorized to call upon the Attorney General to furnish assistance by the State Bureau of

Investigation in making the investigations of such violations. The State Board of Elections shall furnish the district attorney a copy of its investigation. The district attorney shall initiate prosecution and prosecute any violations of this Article. The provisions of G.S. 163-278.28 shall be applicable to violations of this Article. (1931, c. 348, s. 12; 1967, c. 775, s. 1; 1975, c. 565, s. 7.)

Legal Periodicals. — For survey of 1978 constitutional law, see 57 N.C.L. Rev. 958 (1979).

For 1997 Legislative Survey, see 20 Campbell L. Rev. 409.

§§ 163-278.1 through 163-278.4: Reserved for future codification purposes.

ARTICLE 22A.

Regulating Contributions and Expenditures in Political Campaigns.

Part 1. In General.

§ 163-278.5. Scope of Article; severability.

The provisions of this Article apply to primaries and elections for North Carolina offices and to North Carolina referenda and do not apply to primaries and elections for federal offices or offices in other States or to non-North Carolina referenda. Any provision in this Article that regulates a non-North Carolina entity does so only to the extent that the entity's actions affect elections for North Carolina offices or North Carolina referenda.

The provisions of this Article are severable. If any provision is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions of the Article that can be given effect without the invalid provision.

This section applies to Articles 22B, 22D, 22E, 22F, 22G, 22H, 22J, and 22M of the General Statutes to the same extent that it applies to this Article. (1999-31, s. 6(a); 2000-140, s. 82; 2005-430, s. 7; 2007-349, s. 5; 2009-534, s. 6.)

Editor's Note. — The last paragraph, as added by Session Laws 2005-430, s. 7, effective December 1, 2005, was applicable to all contributions and expenditures made or accepted on or after that date. The paragraph was subsequently amended by Session Laws 2007-349, s. 5, effective January 1, 2008.

Session Laws 2009-574, s. 46.1, provides: "The Joint Legislative Elections Oversight Committee may study the constitutionality of Article 22A of Chapter 163 of the General Statutes and make recommendations to the 2010 Regular Session of the 2009 General Assembly on or before its convening."

Session Laws 2009-574, s. 52.1, provides: "For legislative studies authorized by this act, out-of-state travel must be authorized by the President Pro Tempore of the Senate or the Speaker of the House of Representatives, as appropriate."

Effect of Amendments. — Session Laws 2007-349, s. 5, effective January 1, 2008, inserted "22G, 22H, and 22M" and made a related stylistic change in the last paragraph of the section.

Session Laws 2009-534, s. 6, effective December 1, 2009, inserted "22J" in the last paragraph of the section.

CASE NOTES

Constitutionality. — Because the monetary trigger contained in G.S. 163-278.6(14) fails to account for the overall activities of an entity and may be used as evidence of an entity's major purpose, it is unconstitutionally overbroad, however, any presumption in this context is not per se unconstitutional as this holding is limited to the major purpose presumption based entirely on a monetary standard completely untethered from the other factors identified by the United States Supreme Court in determining major purposes. The portion of G.S. 163-278.6(14) relating to the major purpose presumption is therefore substantially overbroad and invalid; however, the remaining portions of G.S. 163-278.6(14) can be severed and given effect without the invalid portion. G.S. 163-278.5. N.C. Right to Life, Inc. v. Leake, 344 F.3d 418, 2003 U.S. App. LEXIS 19656 (4th Cir. 2003).

§ 163-278.6. Definitions.

When used in this Article:

(1) The term "board" means the State Board of Elections with respect to all candidates for State, legislative, and judicial offices and the county or municipal board of elections with respect to all candidates for county and municipal offices. The term means the State Board of Elections with respect to all statewide referenda and the county or municipal board of elections conducting all local referenda.

(2) The term "broadcasting station" means any commercial radio or television station or community antenna radio or television station. Special definitions of "radio" and "television" that apply only in Part 1A of this Article are set forth in G.S. 163-278.38Z.

(3) The term "business entity" means any partnership, joint venture, joint-stock company, company, firm, or any commercial or industrial establishment or enterprise.

(4) The term "candidate" means any individual who, with respect to a public office listed in G.S. 163-278.6(18), has taken positive action for the purpose of bringing about that individual's nomination or election to public office. Examples of positive action include:

a. Filing a notice of candidacy or a petition requesting to be a candidate,

b. Being certified as a nominee of a political party for a vacancy,

c. Otherwise qualifying as a candidate in a manner authorized by law,

d. Making a public announcement of a definite intent to run for public office in a particular election, or

e. Receiving funds or making payments or giving the consent for anyone else to receive funds or transfer anything of value for the purpose of bringing about that individual's nomination or election to office. Transferring anything of value includes incurring an obligation to transfer anything of value.

Status as a candidate for the purpose of this Article continues if the individual is receiving contributions to repay loans or cover a deficit or is making expenditures to satisfy obligations from an election already held. Special definitions of "candidate" and "candidate campaign committee" that apply only in Part 1A of this Article are set forth in G.S. 163-278.38Z.

(5) The term "communications media" or "media" means broadcasting stations, carrier current stations, newspapers, magazines, periodicals, outdoor advertising facilities, billboards, newspaper inserts, and any person or individual whose business is polling public opinion, analyzing or predicting voter behavior or voter preferences. Special definitions of "print media," "radio," and "television" that apply only in Part 1A of this Article are set forth in G.S. 163-278.38Z.

(6) The terms "contribute" or "contribution" mean any advance, conveyance, deposit, distribution, transfer of funds, loan, payment, gift, pledge or subscription of money or anything of value whatsoever, to a candidate to support or oppose the nomination or election of one or

more clearly identified candidates, to a political committee, to a political party, or to a referendum committee, whether or not made in an election year, and any contract, agreement, or other obligation to make a contribution. An expenditure forgiven by a person or entity to whom it is owed shall be reported as a contribution from that person or entity. These terms include, without limitation, such contributions as labor or personal services, postage, publication of campaign literature or materials, in-kind transfers, loans or use of any supplies, office machinery, vehicles, aircraft, office space, or similar or related services, goods, or personal or real property. These terms also include, without limitation, the proceeds of sale of services, campaign literature and materials, wearing apparel, tickets or admission prices to campaign events such as rallies or dinners, and the proceeds of sale of any campaign-related services or goods. Notwithstanding the foregoing meanings of "contribution," the word shall not be construed to include services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate, political committee, or referendum committee. The term "contribution" does not include an "independent expenditure." If:

a. Any individual, person, committee, association, or any other organization or group of individuals, including but not limited to, a political organization (as defined in section 527(e)(1) of the Internal Revenue Code of 1986) makes, or contracts to make, any disbursement for any electioneering communication, as defined in G.S. 163-278.80(2) and (3) and G.S. 163-278.90(2) and (3); and

b. That disbursement is coordinated with a candidate, an authorized political committee of that candidate, a State or local political party or committee of that party, or an agent or official of any such candidate, party, or committee

that disbursement or contracting shall be treated as a contribution to the candidate supported by the electioneering communication or that candidate's party and as an expenditure by that candidate or that candidate's party.

(7) The term "corporation" means any corporation established under either domestic or foreign charter, and includes a corporate subsidiary and any business entity in which a corporation participates or is a stockholder, a partner or a joint venturer. The term applies regardless of whether the corporation does business in the State of North Carolina.

(7a) The term "costs of collection" means monies spent by the State Board of Elections in the collection of the penalties levied under this Article to the extent the costs do not constitute more than fifty percent (50%) of the civil penalty. The costs are presumed to be ten percent (10%) of the civil penalty unless otherwise determined by the State Board of Elections based on the records of expenses incurred by the State Board of Elections for its collection procedures.

(7b) The term "day" means calendar day.

(7c) The term "election cycle" means the period of time from January 1 after an election for an office through December 31 after the election for the next term of the same office. Where the term is applied in the context of several offices with different terms, "election cycle" means the period from January 1 of an odd-numbered year through December 31 of the next even-numbered year.

(8) The term "election" means any general or special election, a first or second primary, a run-off election, or an election to fill a vacancy. The term "election" shall not include any local or statewide referendum.

(8a) The term "enforcement costs" means salaries, overhead, and other monies spent by the State Board of Elections in the enforcement of the penalties provisions of this Article, including the costs of investigators, attorneys, travel costs for State Board employees and its attorneys, to the extent the costs do not constitute more than fifty percent (50%) of the sum levied for the enforcement costs and civil late penalty.

(9) The terms "expend" or "expenditure" mean any purchase, advance, conveyance, deposit, distribution, transfer of funds, loan, payment, gift, pledge or subscription of money or anything of value whatsoever, whether or not made in an election year, and any contract, agreement, or other obligation to make an expenditure, to support or oppose the nomination, election, or passage of one or more clearly identified candidates, or ballot measure. An expenditure forgiven by a person or entity to whom it is owed shall be reported as a contribution from that person or entity. Supporting or opposing the election of clearly identified candidates includes supporting or opposing the candidates of a clearly identified political party. The term "expenditure" also includes any payment or other transfer made by a candidate, political committee, or referendum committee.

(9a) The term "independently expend" or "independent expenditure" means an expenditure to support or oppose the nomination or election of one or more clearly identified candidates that is made without consultation or coordination with a candidate or agent of a candidate whose nomination or election the expenditure supports or whose opponent's nomination or election the expenditure opposes. Supporting or opposing the election of clearly identified candidates includes supporting or opposing the candidates of a clearly identified political party. A contribution is not an independent expenditure. As applied to referenda, the term "independent expenditure" applies if consultation or coordination does not take place with a referendum committee that supports a ballot measure the expenditure supports, or a referendum committee that opposes the ballot measure the expenditure opposes.

(10) The term "individual" means a single individual or more than one individual.

(11) The term "insurance company" means any person whose business is making or underwriting contracts of insurance, and includes mutual insurance companies, stock insurance companies, and fraternal beneficiary associations.

(12) The term "labor union" means any union, organization, combination or association of employees or workmen formed for the purposes of securing by united action favorable wages, improved labor conditions, better hours of labor or work-related benefits, or for handling, processing or righting grievances by employees against their employers, or for representing employees collectively or individually in dealings with their employers. The term includes any unions to which Article 10, Chapter 95 applies.

(13) The term "person" means any business entity, corporation, insurance company, labor union, or professional association.

(14) The term "political committee" means a combination of two or more individuals, such as any person, committee, association, organization, or other entity that makes, or accepts anything of value to make, contributions or expenditures and has one or more of the following characteristics:

a. Is controlled by a candidate;
b. Is a political party or executive committee of a political party or is controlled by a political party or executive committee of a political party;

c. Is created by a corporation, business entity, insurance company, labor union, or professional association pursuant to G.S. 163-278.19(b); or

d. Has the major purpose to support or oppose the nomination or election of one or more clearly identified candidates.

Supporting or opposing the election of clearly identified candidates includes supporting or opposing the candidates of a clearly identified political party.

If the entity qualifies as a "political committee" under sub-subdivision a., b., c., or d. of this subdivision, it continues to be a political committee if it receives contributions or makes expenditures or maintains assets or liabilities. A political committee ceases to exist when it winds up its operations, disposes of its assets, and files its final report.

The term "political committee" includes the campaign of a candidate who serves as his or her own treasurer.

Special definitions of "political action committee" and "candidate campaign committee" that apply only in Part 1A of this Article are set forth in G.S. 163-278.38Z.

(15) The term "political party" means any political party organized or operating in this State, whether or not that party is recognized under the provisions of G.S. 163-96. A special definition of "political party organization" that applies only in Part 1A of this Article is set forth in G.S. 163-278.38Z.

(16) Repealed by Session Laws 1999-31, s. 4.

(17) The term "professional association" means any trade association, group, organization, association, or collection of persons or individuals formed for the purposes of advancing, representing, improving, furthering or preserving the interests of persons or individuals having a common vocation, profession, calling, occupation, employment, or training.

(18) The term "public office" means any office filled by election by the people on a statewide, county, municipal or district basis, and this Article shall be applicable to such elective offices whether the election therefor is partisan or nonpartisan.

(18a) The term "referendum" means any question, issue, or act referred to a vote of the people of the entire State by the General Assembly, a unit of local government, or by the people under any applicable local act and includes constitutional amendments and State bond issues. The term "referendum" includes any type of municipal, county, or special district referendum and any initiative or referendum authorized by a municipal charter or local act. A recall election shall not be considered a referendum within the meaning of this Article.

(18b) The term "referendum committee" means a combination of two or more individuals such as a committee, association, organization, or other entity or a combination of two or more business entities, corporations, insurance companies, labor unions, or professional associations such as a committee, association, organization, or other entity the primary purpose of which is to support or oppose the passage of any referendum on the ballot. If the entity qualifies as a "referendum committee" under this subdivision, it continues to be a referendum committee if it receives contributions or makes expenditures or maintains assets or liabilities. A referendum committee ceases to exist when it winds up its operations, disposes of its assets, and files its final report.

(19) The term "treasurer" means an individual appointed by a candidate, political committee, or referendum committee as provided in G.S.

163-278.7 or G.S. 163-278.40A. (1973, c. 1272, s. 1; 1975, c. 798, ss. 5, 6; 1979, c. 500, s. 1; c. 1073, ss. 1-3, 19, 20; 1981, c. 837, s. 1; 1983, c. 331, s. 6; 1985, c. 352, ss. 1-3; 1997-515, ss. 4(a)-(c), 7(b)-(d); 1999-31, ss. 1(a), (b), 2(a)-(c), 3, 4(a); 1999-424, s. 6(a), (b); 2002-159, s. 55(n); 2003-278, s. 5; 2004-125, s. 3; 2004-127, s. 15; 2004-203, s. 12(b); 2005-430, s. 10; 2006-264, s. 23; 2007-391, s. 3; 2008-150, s. 6(a); 2008-187, s. 33(a); 2009-534, ss. 1, 3(a), (b).)

Local Modification. — Town of Chapel Hill: 1987 (Reg. Sess., 1988), c. 1023, s. 2, 2007-222, s. 1 (expires July 1, 2012).

Editor's Note. — Session Laws 1997-515, s. 14, is a severability clause.

Session Laws 1997-515, s. 15, provides, in part: "Prosecutions for, or sentences based on, offenses occurring before the relevant effective dates in this act are not abated or affected by this act, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Subdivision (7), as amended by Session Laws 2005-430, s. 10, effective December 1, 2005, is applicable to all contributions and expenditures made or accepted on or after that date.

Session Laws 2007-391, s. 1(c), was amended by Session Laws 2008-198, s. 33(a), to eliminate any confusion as to effective dates of the 2007 act. Session Laws 2007-391, s. 3, which deleted the former second paragraph under subdivision (14)d., is effective August 19, 2007.

Effect of Amendments. — Session Laws 2008-150, s. 6(a), effective August 2, 2008, in subdivision (14), added the fourth paragraph; and in sub-subdivision (14)d, substituted "Has the major purpose" for "Has as a major purpose" at the beginning.

Session Laws 2009-534. ss. 1 and 3, effective December 1, 2009, rewrote subdivision (4); and, in subdivisions (6) and (9), substituted "obligation to make" for "promise or other obligation, whether or not legally enforceable, to make" in the first sentence, and added the present second sentence in both subdivisions.

Legal Periodicals. — For survey of 1978 administrative law, see 57 N.C.L. Rev. 831 (1979).

For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

CASE NOTES

Constitutionality. — Because subdivision (14) imposes spending restrictions and reporting requirements on groups engaging only in issue advocacy and does not limit its coverage to entities engaging in express advocacy, it violates the First Amendment and is facially unconstitutional. North Carolina Right to Life, Inc. v. Bartlett, 3 F. Supp. 2d 675, 1998 U.S. Dist. LEXIS 6266 (E.D.N.C. 1998), aff'd in part and rev'd in part on other grounds, 168 F.3d 705 (4th Cir. 1999), cert. denied, 528 U.S. 1153, 120 S. Ct. 1156, 145 L. Ed. 2d 1069 (2000).

Subsection (14) is unconstitutionally vague and overbroad in that its definition of political committee encompasses both express and issue advocacy and thus subjects groups engaged only in issue advocacy to an intrusive set of reporting requirements, placing an unacceptable burden on speech. North Carolina Right to Life, Inc. v. Bartlett, 168 F.3d 705, 1999 U.S. Dist. LEXIS 2350 (4th Cir. 1999), cert. denied, 528 U.S. 1153, 120 S. Ct. 1156, 145 L. Ed. 2d 1069 (2000).

Because the monetary trigger contained in G.S. 163-278.6(14) fails to account for the overall activities of an entity and may be used as evidence of an entity's major purpose, it is unconstitutionally overbroad, however, any presumption in this context is not per se unconstitutional as this holding is limited to the major purpose presumption based entirely on a monetary standard completely untethered from the other factors identified by the United States Supreme Court in determining major purposes. The portion of G.S. 163-278.6(14) relating to the major purpose presumption is therefore substantially overbroad and invalid; however, the remaining portions of G.S. 163278.6(14) can be severed and given effect without the invalid portion. G.S. 163-278.5. N.C. Right to Life, Inc. v. Leake, 344 F.3d 418, 2003 U.S. App. LEXIS 19656 (4th Cir. 2003).

G.S. 163-278.6(14) expands the definition of political committee beyond the constitutional limits of the First Amendment by imposing a political committee designation and its associated burdens on entities when influencing elections is only a major purpose, instead of the major purpose, of an organization. G.S. 163-278.6(14) magnifies its overbreadth by providing insufficient direction to speakers and leaving regulators free to operate without even the guidance of discernible, neutral criteria; furthermore, narrower means exist for North Carolina to achieve its regulatory goals. N.C. Right to Life, Inc. v. Leake, 525 F.3d 274, 2008 U.S. App. LEXIS 9426 (4th Cir. 2008).

Existence of Case or Controversy. — A case or controversy existed with respect to challenges by an issue advocacy nonprofit corporation, despite the State's claim that irrespective of the statute's plain language, it would allow plaintiff to engage in forms of issue advocacy without penalty; however, without a change in the statute, the plaintiff's speech remained chilled by the threat of future prosecution. North Carolina Right to Life, Inc. v. Bartlett, 168 F.3d 705, 1999 U.S. Dist. LEXIS 2350 (4th Cir. 1999), cert. denied, 528 U.S. 1153, 120 S. Ct. 1156, 145 L. Ed. 2d 1069 (2000).

Standing and Ripeness. — Plaintiff, a tax-exempt nonprofit membership corporation, had standing to challenge this section's definition of "political committee" although the statute had never been applied to it, where it was entitled to preenforcement review in light of the fact that denial of review would impose upon it the choice of either refraining from activity it believed to be constitutionally protected or engaging in such activity and facing possible prosecution; the challenge was ripe for ruling because the plaintiff's stated desire to engage in express advocacy and to spend over $3,000 this election cycle was credible, not merely hypothetical. North Carolina Right To Life, Inc. v. Leake, 108 F. Supp. 2d 498, 2000 U.S. Dist. LEXIS 12164 (E.D.N.C. 2000).

Political Committee Registration Requirements Upheld. — Plaintiff, a tax-exempt nonprofit membership corporation, was denied a preliminary injunction to enjoin enforcement of North Carolina's political committee registration requirements, as provided in this section, G.S. 163-278.7 through 163-278.11 and G.S. 163-278.13, because the court found that the "major purpose" test was neither vague nor overbroad; that North Carolina's higher threshold, $3,000 per two-year election cycle raising a rebuttable presumption that the group's major purpose is electioneering, ensured that only groups engaging in significant electioneering were presumed to be political committees; that North Carolina's express advocacy test narrowed the communications that qualify as expenditures; and that the law provided sufficient notice to and safeguards for issue advocacy groups. North Carolina Right To Life, Inc. v. Leake, 108 F. Supp. 2d 498, 2000 U.S. Dist. LEXIS 12164 (E.D.N.C. 2000).

Independent Expenditures. — Because the application of a $4,000 contribution limit to political committees that make independent expenditures, as defined in G.S. 163-278.6(9a), does not further the state's interest in preventing corruption, G.S. 163-278.13 violates the First Amendment insofar as G.S. 163-278.13 is applied to independent expenditure political committees. N.C. Right to Life, Inc. v. Leake, 525 F.3d 274, 2008 U.S. App. LEXIS 9426 (4th Cir. 2008).

Applied in Preston v. Leake, 629 F. Supp. 2d 517, 2009 U.S. Dist. LEXIS 54523 (E.D.N.C. 2009).

Cited in State v. Charlotte Liberty Mut. Ins. Co., 39 N.C. App. 557, 251 S.E.2d 867 (1979); Perry v. Bartlett, 231 F.3d 155, 2000 U.S. App. LEXIS 24793 (4th Cir. 2000).

§ 163-278.7. Appointment of political treasurers.

(a) Each candidate, political committee, and referendum committee shall appoint a treasurer and, under verification, report the name and address of the treasurer to the Board. Only an individual who resides in North Carolina shall be appointed as a treasurer. A candidate may appoint himself or any other individual, including any relative except his spouse, as his treasurer, and, upon failure to file report designating a treasurer, the candidate shall be concluded to have appointed himself as treasurer and shall be required to personally fulfill the duties and responsibilities imposed upon the appointed treasurer and subject to the penalties and sanctions hereinafter provided.

(b) Each appointed treasurer shall file with the Board at the time required by G.S. 163-278.9(a)(1) a statement of organization that includes:

(1) The Name, Address and Purpose of the Candidate, Political Committee, or Referendum Committee. — When the political committee or referendum committee is created pursuant to G.S. 163-278.19(b), the name shall be or include the name of the corporation, insurance company, business entity, labor union or professional association whose officials, employees, or members established the committee. When the political committee or referendum committee is not created pursuant to G.S. 163-278.19(b), the name shall be or include the economic interest, if identifiable, principally represented by the committee's organizers or intended to be advanced by use of the committee's receipts.

(2) The names, addresses, and relationships of affiliated or connected candidates, political committees, referendum committees, political parties, or similar organizations;

(3) The territorial area, scope, or jurisdiction of the candidate, political committee, or referendum committee;

(4) The name, address, and position with the candidate or political committee of the custodian of books and accounts;

(5) The name and party affiliation of the candidate(s) whom the committee is supporting or opposing, and the office(s) involved;

(5a) The name of the referendum(s) which the referendum committee is supporting or opposing, and whether the committee is supporting or opposing the referendum;

(6) The name of the political committee or political party being supported or opposed if the committee is supporting the ticket of a particular political or political party;

(7) A listing of all banks, safety deposit boxes, or other depositories used, including the names and numbers of all accounts maintained and the numbers of all such safety deposit boxes used, provided that the Board shall keep any account number included in any report filed after March 1, 2003, and required by this Article confidential except as necessary to conduct an audit or investigation, except as required by a court of competent jurisdiction, or unless confidentiality is waived by the treasurer. Disclosure of an account number in violation of this subdivision shall not give rise to a civil cause of action. This limitation of liability does not apply to the disclosure of account numbers in violation of this subdivision as a result of gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable.

(8) The name or names and address or addresses of any assistant treasurers appointed by the treasurer. Such assistant treasurers shall be authorized to act in the name of the candidate, political committee, or referendum committee and shall be fully responsible for any act or acts committed by the assistant treasurer. The treasurer shall be fully liable for any violation of this Article committed by any assistant treasurer; and

(9) Any other information which might be requested by the Board that deals with the campaign organization of the candidate or referendum committee.

(c) Any change in information previously submitted in a statement of organization shall be reported to the Board within a 10-day period following the change.

(d) A candidate, political committee or referendum committee may remove his or its treasurer. In case of the death, resignation or removal of his or its treasurer before compliance with all obligations of a treasurer under this Article, such candidate, political committee or referendum committee shall appoint a successor within 10 days of the vacancy of such office, and certify the name and address of the successor in the manner provided in the case of an original appointment.

(e) Every treasurer of a referendum committee shall receive, prior to every election in which the referendum committee is involved, training from the State Board of Elections as to the duties of the office, including the requirements of G.S. 163-278.13(e1), provided that the treasurer may designate an employee or volunteer of the committee to receive the training.

(f) Every treasurer of a political committee shall participate in training as to the duties of the office within three months of appointment and at least once every four years thereafter. The State Board of Elections shall provide the training as to the duties of the office in person, through regional seminars, and through interactive electronic means. The treasurer may designate an assistant treasurer to participate in the training, if one is named under subdivision (b)(8) of this section. The treasurer may choose to participate in training prior to each election in which the political committee is involved. All such training shall be free of charge to the treasurer and assistant treasurer. (1973, c. 1272, s. 1; 1979, c. 500, s. 2; c. 1073, ss. 4, 5, 16, 18, 20; 1987, c. 113, s. 1; 1995, c. 315, s. 1; 2002-159, s. 57.1(a); 2004-203, s. 59(a); 2005-430, s. 10.1; 2006-195, s. 7; 2009-534, s. 4.)

Editor's Note. — Session Laws 2002-159, s. 57.1(a) added the proviso in subdivision (b)(7), in s. 57.1(b) provides: "This section becomes effective January 1, 2003, and applies to any report filed on or after that date. The State Board of Elections may redact, and may authorize county boards of elections to redact, account numbers from public copies of reports filed prior to January 1, 2003."

Subsection (f), added by Session Laws 2005-430, s. 10.1, effective December 1, 2005, is applicable to all contributions and expenditures made or accepted on or after that date.

Effect of Amendments. — Session Laws 2009-534, s. 4, effective December 1, 2009, added the present second sentence in subsection (a).

CASE NOTES

Political Committee Registration Requirements Upheld. — Plaintiff, a tax-exempt nonprofit membership corporation, was denied a preliminary injunction to enjoin enforcement of North Carolina's political committee registration requirements, as provided in G.S. 163-278.6(14), this section, G.S. 163-278.8 through 163-278.11 and G.S. 163-278.13, because the court found that the "major purpose" test was neither vague nor overbroad; that North Carolina's higher threshold, $3,000 per two-year election cycle raising a rebuttable presumption that the group's major purpose is electioneering, ensured that only groups engaging in significant electioneering were presumed to be political committees; that North Carolina's express advocacy test narrowed the communications that qualify as expenditures; and that the law provided sufficient notice to and safeguards for issue advocacy groups. North Carolina Right To Life, Inc. v. Leake, 108 F. Supp. 2d 498, 2000 U.S. Dist. LEXIS 12164 (E.D.N.C. 2000).

Cited in In re Wright, 313 N.C. 495, 329 S.E.2d 668 (1985); North Carolina Right to Life, Inc. v. Bartlett, 3 F. Supp. 2d 675, 1998 U.S. Dist. LEXIS 6266 (E.D.N.C. 1998); N.C. Right to Life, Inc. v. Leake, 344 F.3d 418, 2003 U.S. App. LEXIS 19656 (4th Cir. 2003).

§ 163-278.7A. Gifts from federal political committees.

It shall be permissible for a federal political committee, as defined by the Federal Election Campaign Act and regulations adopted pursuant thereto, to make contributions to a North Carolina candidate or political committee registered under this Article with the State Board of Elections or a county board of elections, provided that the contributing committee does all the following:

(1) Is registered with the State Board of Elections consistent with the provisions of this Article.

(2) Complies with reporting requirements specified by the State Board of Elections. Those requirements shall not be more stringent than those required of North Carolina political committees registered under this Article, unless the federal political committee makes any contribution to a North Carolina candidate or political committee in any election in excess of four thousand dollars ($4,000) for that election. "Election" shall be as defined in G.S. 163-278.13(d).

(3) Makes its contributions within the limits specified in this Article.

(4) Appoints an assistant or deputy treasurer who is a resident of North Carolina and stipulates to the State Board of Elections that the designated in-State resident assistant or deputy treasurer shall be

authorized to produce whatever records reflecting political activity in North Carolina the State Board of Elections deems necessary. (1995 (Reg. Sess., 1996), c. 593, s. 1; 2003-274, s. 1.)

Editor's Note. — Session Laws 2003-274, s. 1, effective when the State Board of Elections develops the technological capacity to implement it, but no later than January 1, 2004, added "does all the following" at the end of the introductory paragraph; added the second and third sentences in subdivision (2); and made minor punctuation changes.

§ 163-278.8. Detailed accounts to be kept by political treasurers.

(a) The treasurer of each candidate, political committee, and referendum committee shall keep detailed accounts, current within not more than seven days after the date of receiving a contribution or making an expenditure, of all contributions received and all expenditures made by or on behalf of the candidate, political committee, or referendum committee. The accounts shall include the information required by the State Board of Elections on its forms.

(b) Accounts kept by the treasurer of a candidate, political committee, or referendum committee or the accounts of a treasurer or political committee at any bank or other depository listed under G.S. 163-278.7(b)(7), may be inspected, before or after the election to which the accounts refer, by a member, designee, agent, attorney or employee of the Board who is making an investigation pursuant to G.S. 163-278.22.

(c) Repealed by Session Laws 2004-125, s. 5(a), effective July 20, 2004, and applicable to contributions made on or after January 1, 2003.

(d) Repealed by Session Laws 2006-195, s. 4, effective January 1, 2007, and applicable to all contributions made and accepted on or after that date.

(e) All expenditures for media expenses shall be made by a verifiable form of payment. The State Board of Elections shall prescribe methods to ensure an audit trail for every expenditure so that the identity of each payee can be determined. All media expenditures in any amount shall be accounted for and reported individually and separately with specific descriptions to provide a reasonable understanding of the expenditure.

(f) All expenditures for nonmedia expenses (except postage) of more than fifty dollars ($50.00) shall be made by a verifiable form of payment. The State Board of Elections shall prescribe methods to ensure an audit trail for every expenditure so that the identity of each payee can be determined. All expenditures for nonmedia expenses of fifty dollars ($50.00) or less may be made by check or by cash payment. All nonmedia expenditures of more than fifty dollars ($50.00) shall be accounted for and reported individually and separately with a specific description to provide a reasonable understanding of the expenditure, but expenditures of fifty dollars ($50.00) or less may be accounted for and reported in an aggregated amount, but in that case the treasurer shall account for and report that the treasurer made expenditures of fifty dollars ($50.00) or less each, the amounts, dates, and the purposes for which made. In the case of a non media expenditure required to be accounted for individually and separately with a specific description to provide a reasonable understanding of the expenditure by this subsection, if the expenditure was to an individual, the report shall list the name and address of the individual.

(g) All proceeds from loans shall be recorded separately with a detailed analysis reflecting the amount of the loan, the source, the period, the rate of interest, and the security pledged, if any, and all makers and endorsers.

(h) The treasurer shall maintain all moneys of the political committee in a bank account or bank accounts used exclusively by the political committee and shall not commingle those funds with any other moneys. (1973, c. 1272, s. 1; 1977, c. 635, s. 1; 1979, c. 1073, ss. 16, 20; 1981, c. 814, s. 1; 1985, c. 353, ss. 1, 2; 1993 (Reg. Sess., 1994), c. 744, s. 1; 1999-424, s. 7(m); 2004-125, s. 5(a); 2005-430, ss. 2, 3; 2006-161, ss. 2, 3; 2006-195, s. 4; 2008-150, s. 10(a).)

Editor's Note. — Session Laws 2006-161, ss. 2 and 3, which amended this section effective January 1, 2007, to add the references to "specific descriptions" in subsection (e) and (f), was made applicable to all political committees and referendum committees with active accounts with the State Board of Elections or a county board of elections on or after January 1, 2007.

Session Laws 2006-195, s. 4, which amended this section effective January 1, 2007, to add the last sentence of subsection (a) and delete subsection (d), was made applicable to all contributions made and accepted on and after January 1, 2007.

Effect of Amendments. — Session Laws 2008-150, s. 10(a), effective September 1, 2008, added subsection (h).

Legal Periodicals. — For survey of 1979 administrative law affecting state government, see 56 N.C.L. Rev. 867 (1978).

For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

CASE NOTES

Cited in North Carolina Right to Life, Inc. v. Bartlett, 3 F. Supp. 2d 675, 1998 U.S. Dist. LEXIS 6266 (E.D.N.C. 1998); N.C. Right to Life, Inc. v. Leake, 344 F.3d 418, 2003 U.S. App. LEXIS 19656 (4th Cir. 2003).

§ 163-278.8A. (For effective date and applicability, see Editor's note) Campaign sales by political party executive committees.

(a) Exempt Purchase Price Not Treated as "Contribution." — Notwithstanding the provisions of G.S. 163-278.6(6), the purchase price of goods or services sold by a political party executive committee as provided in subsection (b) of this section shall not be treated as a "contribution" for purposes of account-keeping under G.S. 163-278.8, for purposes of the reporting of contributions under G.S. 163-278.11, or for the purpose of the limit on contributions under G.S. 163-278.13. The treasurer is not required to obtain, maintain, or report the name or other identifying information of the purchaser of the goods or services, as long as the requirements of subsection (b) of this section are satisfied. However, the proceeds from the sales of those goods and services shall be treated as contributions for other purposes, and expenditures of those proceeds shall be reported as expenditures under this Article.

(b) Exempt Purchase Price. — A purchase price for goods or services sold by a political party executive committee qualifies for the exemption provided in subsection (a) of this section as long as the sale of the goods or services adheres to a plan that the treasurer has submitted to and that has been approved in writing by the Executive Director of the State Board of Elections. The Executive Director shall approve the treasurer's plan upon and only upon finding that all the following requirements are satisfied:

(1) That the price to be charged for the goods or services is reasonably close to the market price for the goods or services.

(2) That the total amount to be raised from sales under all plans by the committee does not exceed ten thousand dollars ($10,000) per election cycle.

(3) That no purchaser makes total purchases under the plan that exceed fifty dollars ($50.00).

(4) That the treasurer include in the report under G.S. 163-278.11, covering the relevant time period, all of the following:
    a. A description of the plan.

b. The amount raised from sales under the plan.
c. The number of purchases made.

(5) That the treasurer shall include in the appropriate report under G.S. 163-278.11 any in-kind contribution made to the political party executive committee in providing the goods or services sold under the plan and that no in-kind contribution accepted as part of the plan violates any provision of this Article.

The Executive Director may require a format for submission of a plan, but that format shall not place undue paperwork burdens upon the treasurer. As used in this subdivision, the term "election cycle" has the same meaning as in G.S. 163-278.6(7c). (2008-150, s. 8(a).)

Editor's Note. — Section Laws 2008-150, s. 8(b), provides: "This section becomes effective August 15, 2008, or on the date of preclearance under Section 5 of the Voting Rights Act of 1965, whichever occurs later, except that with respect to county political party executive committees in counties not subject to Section 5 of the Voting Rights Act it is effective when it becomes law [August 15, 2008]. This section applies to contributions made or accepted on or after the effective date. If preclearance is denied to this section, this section is repealed on the date of denial." Preclearance from the U.S. Department of Justice was received by letter dated October 6, 2008.

§ 163-278.9. Statements filed with Board.

(a) Except as provided in G.S. 163-278.10A, the treasurer of each candidate and of each political committee shall file with the Board under certification of the treasurer as true and correct to the best of the knowledge of that officer the following reports:

(1) Organizational Report. — The appointment of the treasurer as required by G.S. 163-278.7(a), the statement of organization required by G.S. 163-278.7(b), and a report of all contributions and expenditures not previously reported shall be filed with the Board no later than the tenth day following the day the candidate files notice of candidacy or the tenth day following the organization of the political committee, whichever occurs first. Any candidate whose campaign is being conducted by a political committee which is handling all contributions and expenditures for his campaign shall file a statement with the Board stating such fact at the time required herein for the organizational report. Thereafter, the candidate's political committee shall be responsible for filing all reports required by law.

(2) Repealed by Session Laws 1999-31, s. 7(a), effective January 1, 2000.

(3) Postprimary Report(s). — Repealed by Session Laws 1997-515, s. 1.

(4) Preelection Report. — Repealed by Session Laws 1997-515, s. 1.

(4a) 48-Hour Report. — A political committee or political party that receives a contribution or transfer of funds shall disclose within 48 hours of receipt a contribution or transfer of one thousand dollars ($1,000) or more received before an election but after the period covered by the last report due before that election. The disclosure shall be by report to the State Board of Elections identifying the source and amount of the funds. The State Board of Elections shall specify the form and manner of making the report, including the reporting of in-kind contributions.

(5) Repealed by Session Laws 1985, c. 164, s. 1.

(5a) Quarterly Reports. — During even-numbered years during which there is an election for that candidate or in which the campaign committee is supporting or opposing a candidate, the treasurer shall file a report by mailing or otherwise delivering it to the Board no later than seven working days after the end of each calendar quarter covering the prior calendar quarter, except that:

a. The report for the first quarter shall also cover the period in April through the seventeenth day before the primary, the first quarter report shall be due seven days after that date, and the second quarter report shall not include that period if a first quarter report was required to be filed; and

b. The report for the third quarter shall also cover the period in October through the seventeenth day before the election, the third quarter report shall be due seven days after that date, and the fourth quarter report shall not include that period if a third quarter report was required to be filed.

(6) Semiannual Reports. — If contributions are received or expenditures made for which no reports are otherwise required by this Article, any and all such contributions and expenditures shall be reported by the last Friday in July, covering the period through the last day of June, and shall be reported by the last Friday in January, covering the period through the last day of December.

(b) Except as otherwise provided in this Article, each report shall be current within seven days prior to the date the report is due and shall list all contributions received and expenditures made which have not been previously reported.

(c) Repealed by Session Laws 1985, c. 164, s. 6.1.

(d) Candidates and committees for municipal offices are not subject to subsections (a), (b) and (c) of this section, unless they make contributions or expenditures concerning elections covered by this Part. Reports for those candidates and committees are covered by Part 2 of this Article.

(e) Notwithstanding subsections (a) through (c) of this section, any political party (including a State, district, county, or precinct committee thereof) which is required to file reports under those subsections and under the Federal Election Campaign Act of 1971, as amended (2 U.S.C. 434), shall instead of filing the reports required by those subsections, file with the State Board of Elections:

(1) The organizational report required by subsection (a)(1) of this section, and

(2) A copy of each report required to be filed under 2 U.S.C. 434, such copy to be filed on the same day as the federal report is required to be filed.

(f) Any report filed under subsection (e) of this section may include matter required by the federal law but not required by this Article.

(g) Any report filed under subsection (e) of this section must contain all the information required by G.S. 163-278.11, notwithstanding that the federal law may set a higher reporting threshold.

(h) Any report filed under subsection (e) of this section may reflect the cumulative totals required by G.S. 163-278.11 in an attachment, if the federal law does not permit such information in the body of the report.

(i) Any report or attachment filed under subsection (e) of this section must be certified.

(j) Treasurers for the following entities shall electronically file each report required by this section that shows a cumulative total for the election cycle in excess of five thousand dollars ($5,000) in contributions, in expenditures, or in loans, according to rules adopted by the State Board of Elections:

(1) A candidate for statewide office;

(2) A State, district, county, or precinct executive committee of a political party, if the committee makes contributions or independent expenditures in excess of five thousand dollars ($5,000) that affect contests for statewide office;

(3) A political committee that makes contributions in excess of five thousand dollars ($5,000) to candidates for statewide office or makes

independent expenditures in excess of five thousand dollars ($5,000) that affect contests for statewide office.

The State Board of Elections shall provide the software necessary to file an electronic report to a treasurer required to file an electronic report at no cost to the treasurer.

(k) All reports under this section must be filed by a treasurer or assistant treasurer who has completed all training as to the duties of the office required by G.S. 163-278.7(f). (1973, c. 1272, s. 1; 1975, c. 565, s. 1; 1979, c. 500, ss. 3, 16; c. 730; 1981, c. 837, s. 2; 1985, c. 164, ss. 1, 6-6.2; 1987 (Reg. Sess., 1988), c. 1028, s. 6; 1991 (Reg. Sess., 1992), c. 1032, s. 10A; 1997-515, ss. 1(a), 4(d1), 5(a), 12(a); 1999-31, s. 7(a), (b); 2001-235, s. 2; 2001-419, s. 7; 2001-487, s. 97(b); 2002-159, s. 21(d); 2006-195, ss. 5.1, 8; 2008-150, ss. 9(c), (d), 11(a).)

Editor's Note. — Session Laws 1997-515, s. 1(b), provides: "The State Board of Elections shall study the feasibility of requiring monthly reporting by campaign treasurers during even-numbered years, with weekly reports required during the month before each primary and election. The State Board shall report in writing to the General Assembly by March 1, 1998."

Session Laws 1997-515, s. 14, is a severability clause.

Session Laws 1997-515, s. 15, provides, in part: "Prosecutions for, or sentences based on, offenses occurring before the relevant effective dates in this act are not abated or affected by this act, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Effect of Amendments. — Session Laws 2008-150, s. 9(c) and (d), effective December 1, 2008, in the introductory language of subdivision (a)(5a), inserted "or opposing"; and in subsection (d), added "unless they make contributions or expenditures concerning elections covered by this Part" to the end of the first sentence.

Session Laws 2008-150, s. 11(a), effective October 1, 2008, in subdivision (a)(4a), deleted "from any political committee" following "transfer of funds" in the first sentence, and added "including the reporting of in-kind contributions" to the end of the last sentence.

CASE NOTES

Cited in N.C. Right to Life, Inc. v. Leake, 344 F.3d 418, 2003 U.S. App. LEXIS 19656 (4th Cir. 2003).

§ 163-278.9A. Statements filed by referendum committees.

(a) The treasurer of each referendum committee shall file under verification with the Board the following reports:

(1) Organizational Report. — The appointment of the treasurer as required by G.S. 163-278.7(a), the statement of organization required by G.S. 163-278.7(b), and a report of all contributions and expenditures shall be filed with the Board no later than the tenth day following the organization of the referendum committee.

(2) Pre-Referendum Report. — The treasurer shall file a report with the Board no later than the tenth day preceding the referendum.

(2a) 48-Hour Report. — A referendum committee that receives a contribution or transfer of funds shall disclose within 48 hours of receipt a contribution or transfer of one thousand dollars ($1,000) or more received before a referendum but after the period covered by the last report due before that referendum. The disclosure shall be by report to the State Board of Elections identifying the source and amount of such funds. The State Board of Elections shall specify the form and manner of making the report, including the reporting of in-kind contributions.

(3) Final Report. — The treasurer shall file a final report no later than the tenth day after the referendum. If the final report fails to disclose a

final accounting of all contributions and expenditures, a supplemental final report shall be filed no later than January 7, after the referendum, and shall be current through December 31 after the referendum.

(4) Annual Reports. — If contributions are received or expenditures made during a calendar year for which no reports are otherwise required by this Article, any and all such contributions and expenditures shall be reported by January 7 of the following year.

(b) Except as otherwise provided in this Article, each report shall be current within seven days prior to the date the report is due and shall list all contributions received and expenditures made which have not been previously reported. (1979, c. 1073, s. 6; 1997-515, s. 12(b); 2002-159, s. 21(e); 2008-150, s. 11(b).)

Effect of Amendments. — Session Laws 2008-150, s. 11(b), effective October 1, 2008, in subdivision (a)(2a), deleted "from any political committee" following "transfer of funds" in the first sentence, and added "including the reporting of in-kind contributions" to the end of the last sentence.

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

§ 163-278.10. Procedure for inactive candidate or committee.

If no contribution is received or expenditure made by or on behalf of a candidate, political committee, or referendum committee during a period described in G.S. 163-278.9, the treasurer shall file with the Board, at the time required by G.S. 163-278.9, a statement to that effect and it shall not be required that any inactive candidate or committee so filing a report of inactivity file any additional reports required by G.S. 163-278.9 so long as the candidate or committee remains inactive. (1973, c. 1272, s. 1; 1979, c. 1073, s. 20.)

§ 163-278.10A. Threshold of $1,000 for financial reports for certain candidates.

(a) Notwithstanding any other provision of this Chapter, a candidate for a county office, municipal office, local school board office, soil and water conservation district board of supervisors, or sanitary district board shall be exempted from the reports of contributions, loans, and expenditures required in G.S. 163-278.9(a), 163-278.40B, 163-278.40C, 163-278.40D, and 163-278.40E if to further the candidate's campaign that candidate:

(1) Does not receive more than one thousand dollars ($1,000) in contributions, and
(2) Does not receive more than one thousand dollars ($1,000) in loans, and
(3) Does not spend more than one thousand dollars ($1,000).

To qualify for the exemption from those reports, the candidate's treasurer shall file a certification that the candidate does not intend to receive in contributions or loans or expend more than one thousand dollars ($1,000) to further the candidate's campaign. The certification shall be filed with the Board at the same time the candidate files the candidate's Organizational Report as required in G.S. 163-278.7, G.S. 163-278.9, and G.S. 163-278.40A. If the candidate's campaign is being conducted by a political committee which is handling all contributions, loans, and expenditures for the candidate's campaign, the treasurer of the political committee shall file a certification of intent to stay within the threshold amount. If the intent to stay within the threshold changes, or if the one-thousand-dollar ($1,000) threshold is exceeded, the treasurer shall immediately notify the Board and shall be responsible for filing all reports required in G.S. 163-278.9 and 163-278.40B, 163-278.40C, 163-278.40D, and 163-278.40E; provided that any contribution, loan, or expenditure which would have been required to be reported on an earlier report but for this section shall be included on the next report required after the intent changes or the threshold is exceeded.

(b) The exemption from reporting in subsection (a) of this section applies to political party committees under the same terms as for candidates, except that the term "to further the candidate's campaign" does not relate to a political party committee's exemption, and all contributions, expenditures, and loans during an election shall be counted against the political party committee's threshold amount. (1987 (Reg. Sess., 1988), c. 1028, s. 2; c. 1081, s. 3; 1989, c. 449; c. 770, s. 53; 1997-515, s. 4(e); 2001-235, s. 3; 2009-534, s. 5.)

Local Modification. — Town of Chapel Hill: 1999-255, s. 4.

Effect of Amendments. — Session Laws 2009-534, s. 5, effective December 1, 2009, substituted "$1,000 for financial reports for certain candidates" for "$3,000 for Financial Reports" in the section heading; substituted "one thousand dollars ($1,000)" for "three thousand dollars ($3,000)" throughout the section; inserted "for a county office, municipal office, local school board office, soil and water conservation district board of supervisors, or sanitary district board" in the introductory language of subsection (a); substituted "one-thousand-dollar ($1,000) threshold" for "three thousand dollar ($3,000) threshold" in the third sentence of the second paragraph of subsection (a); substituted "The exemption from reporting" for "The exemption" at the beginning of subsection (b); and made gender neutral changes throughout the section.

§ 163-278.11. Contents of treasurer's statement of receipts and expenditures.

(a) Statements filed pursuant to provisions of this Article shall set forth the following:

(1) Contributions. — Except as provided in subsection (a1) of this section, a list of all contributions received by or on behalf of a candidate, political committee, or referendum committee. The statement shall list the name and complete mailing address of each contributor, the amount contributed, the principal occupation of the contributor, and the date such contribution was received. The total sum of all contributions to date shall be plainly exhibited. Forms for required reports shall be prescribed by the Board. As used in this section, "principal occupation of the contributor" means the contributor's:

a. Job title or profession; and

b. Employer's name or employer's specific field of business activity.

The State Board of Elections shall prepare a schedule of specific fields of business activity, adapting or modifying as it deems suitable the business activity classifications of the Internal Revenue Code or other relevant classification schedules. In reporting a contributor's specific field of business activity, the treasurer shall use the classification schedule prepared by the State Board.

(2) Expenditures. — A list of all expenditures required under G.S. 163-278.8 made by or on behalf of a candidate, political committee, or referendum committee. The statement shall list the name and complete mailing address of each payee, the amount paid, the purpose, and the date such payment was made. The total sum of all expenditures to date shall be plainly exhibited. Forms for required reports shall be prescribed by the Board. In accounting for all expenditures in accordance with G.S. 163-278.8(e) and G.S. 163-278.8(f), the payee shall be the individual or person to whom the candidate, political committee, or referendum committee is obligated to make the expen-

diture. If the expenditure is to a financial institution for revolving credit or a reimbursement for a payment to a financial institution for revolving credit, the statement shall also include a specific itemization of the goods and services purchased with the revolving credit. If the obligation is for more than one good or service, the statement shall include a specific itemization of the obligation so as to provide a reasonable understanding of the obligation.

(3) Loans. — Every candidate and treasurer shall attach to the campaign transmittal submitted with each report an addendum listing all proceeds derived from loans for funds used or to be used in this campaign. The addendum shall be in the form as prescribed by the State Board of Elections and shall list the amount of the loan, the source, the period, the rate of interest, and the security pledged, if any, and all makers and endorsers.

(a1) Threshold for Reporting Identity of Contributor. — A treasurer shall not be required to report the name, address, or principal occupation of any individual who contributes fifty dollars ($50.00) or less to the treasurer's committee during an election as defined in G.S. 163-278.13. The State Board of Elections shall provide on its reporting forms for the reporting of contributions below that threshold. On those reporting forms, the State Board may require date and amount of contributions below the threshold, but may treat differently for reporting purposes contributions below the threshold that are made in different modes and in different settings.

(b) Statements shall reflect anything of value paid for or contributed by any person or individual, both as a contribution and expenditure. A political party executive committee that makes an expenditure that benefits a candidate or group of candidates shall report the expenditure, including the date, amount, and purpose of the expenditure and the name of and office sought by the candidate or candidates on whose behalf the expenditure was made. A candidate who benefits from the expenditure shall report the expenditure or the proportionate share of the expenditure from which the candidate benefitted as an in-kind contribution if the candidate or the candidate's committee has coordinated with the political party executive committee concerning the expenditure.

(c) Best Efforts. — When a treasurer shows that best efforts have been used to obtain, maintain, and submit the information required by this Article for the candidate or political committee, any report of that candidate or committee shall be considered in compliance with this Article and shall not be the basis for criminal prosecution or the imposition of civil penalties, other than forfeiture of a contribution improperly accepted under this Article. The State Board of Elections shall promulgate rules that specify what are "best efforts" for purposes of this Article, adapting as it deems suitable the provisions of 11 C.F.R. § 104.7. The rules shall include a provision that if the treasurer, after complying with this Article and the rules, does not know the occupation of the contributor, it shall suffice for the treasurer to report "unable to obtain". (1973, c. 1272, s. 1; 1977, c. 635, s. 2; 1979, c. 1073, s. 20; 1997-515, ss. 2(a), (b), 3(a); 2006-161, s. 4; 2006-195, s. 5; 2007-391, s. 35(a); 2008-187, s. 33(a).)

Editor's Note. — Session Laws 2007-391, s. 1(c), was amended by Session Laws 2008-198, s. 33(a), to eliminate any confusion as to effective dates of the act. Session Laws 2007-391, s. 35(a), which deleted "resident of the State" following "occupation of any individual" in the first sentence of subsection (a1), is effective August 19, 2007.

Legal Periodicals. — For survey of 1977 administrative law affecting state government, see 56 N.C.L. Rev. 867 (1978).

For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

CASE NOTES

Political Committee Registration Requirements Upheld. — Plaintiff, a tax-exempt nonprofit membership corporation, was denied a preliminary injunction to enjoin enforcement of North Carolina's political committee registration requirements, as provided in this section, G.S. 163-278.6(14), G.S. 163-278.7 through 163-278.10 and G.S. 163-278.13, because the court found that the "major purpose" test was neither vague nor overbroad; that North Carolina's higher threshold, $3,000 per two-year election cycle raising a rebuttable presumption that the group's major purpose is electioneering, ensured that only groups engaging in significant electioneering were presumed to be political committees; that North Carolina's express advocacy test narrowed the communications that qualify as expenditures; and that the law provided sufficient notice to and safeguards for issue advocacy groups. North Carolina Right To Life, Inc. v. Leake, 108 F. Supp. 2d 498, 2000 U.S. Dist. LEXIS 12164 (E.D.N.C. 2000).

Standing to Challenge Campaign Finances. — Voter who sought injunctions to compel the State Elections Board to further investigate a matter that it deemed unnecessary and to compel a citizens' group to file an unnecessary additional campaign finance report failed to state cause of action. Batdorff v. N.C. State Bd. of Elections, 150 N.C. App. 108, 563 S.E.2d 43, 2002 N.C. App. LEXIS 408 (2002), cert. granted, 356 N.C. 159, 568 S.E.2d 186 (2002).

Cited in North Carolina Right to Life, Inc. v. Bartlett, 3 F. Supp. 2d 675, 1998 U.S. Dist. LEXIS 6266 (E.D.N.C. 1998); N.C. Right to Life, Inc. v. Leake, 344 F.3d 418, 2003 U.S. App. LEXIS 19656 (4th Cir. 2003).

§ 163-278.12. Special reporting of contributions and independent expenditures.

(a) Subject to G.S. 163-278.39 and G.S. 163-278.14, individuals and other entities not otherwise prohibited from doing so may make independent expenditures. In the event an individual or other entity making independent expenditures but not otherwise required to report them makes independent expenditures in excess of one hundred dollars ($100.00), that individual or entity shall file a statement of such independent expenditure with the appropriate board of elections in the manner prescribed by the State Board of Elections.

(b) Any entity other than an individual that is permitted to make contributions but is not otherwise required to report them shall report each contribution in excess of one hundred dollars ($100.00) with the appropriate board of elections in the manner prescribed by the State Board of Elections.

(c) In assuring compliance with subsections (a) and (b) of this section, the State Board of Elections shall require the identification of each entity making a donation of more than one hundred dollars ($100.00) to the entity filing the report if the donation was made for the purpose of furthering the reported independent expenditure or contribution.

(d) Contributions or expenditures required to be reported under this section shall be reported within 30 days after they exceed one hundred dollars ($100.00) or 10 days before an election the contributions or expenditures affect, whichever occurs earlier. (1973, c. 1272, s. 1; 1979, c. 107, s. 15; c. 1073, s. 20; 1999-31, s. 2(d); 2004-127, s. 16.)

§ 163-278.12A: Repealed by Session Laws 2004-125, s. 4, effective July 20, 2004.

§ 163-278.13. Limitation on contributions.

(a) No individual, political committee, or other entity shall contribute to any candidate or other political committee any money or make any other contribution in any election in excess of four thousand dollars ($4,000) for that election.

(b) No candidate or political committee shall accept or solicit any contribution from any individual, other political committee, or other entity of any money or any other contribution in any election in excess of four thousand dollars ($4,000) for that election.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section, it shall be lawful for a candidate or a candidate's spouse, parents, brothers and sisters to make a contribution to the candidate or to the candidate's treasurer of any amount of money or to make any other contribution in any election in excess of four thousand dollars ($4,000) for that election.

(d) For the purposes of this section, the term "an election" means any primary, second primary, or general election in which the candidate or political committee may be involved, without regard to whether the candidate is opposed or unopposed in the election, except that where a candidate is not on the ballot in a second primary, that second primary is not "an election" with respect to that candidate.

(d1) Notwithstanding subsections (a) and (b) of this section, a candidate or political committee may accept a contribution knowing that the contribution is to be reimbursed to the entity making the contribution and knowing the candidate or political committee has funds sufficient to reimburse the entity making the contribution if all of the following conditions are met:

(1) The entity submits sufficient information of the contribution to the candidate or political committee for reimbursement within 45 days of the contribution.

(2) The candidate or political committee makes a reimbursement to the entity making the contribution within seven days of submission of sufficient information.

(3) The candidate or political committee indicates on its report under G.S. 163-278.11 that the good, service, or other item resulting in the reimbursement is an expenditure of the candidate or political committee, and notes if the contribution was by credit card.

(4) The contribution does not exceed one thousand dollars ($1,000.00).

(d2) Any contribution, or portion thereof, made under subsection (d1) of this section that is not submitted for reimbursement in accordance with subsection (d1) of this section shall be treated as a contribution for purposes of this section. Any contribution, or portion thereof, made under subsection (d1) of this section that is not reimbursed in accordance with subsection (d1) of this section shall be treated as a contribution for purposes of this section.

(e) Except as provided in subsections (e2), (e3), and (e4) of this section, this section shall not apply to any national, State, district or county executive committee of any political party. For the purposes of this section only, the term "political party" means only those political parties officially recognized under G.S. 163-96.

(e1) No referendum committee which received any contribution from a corporation, labor union, insurance company, business entity, or professional association may make any contribution to another referendum committee, to a candidate or to a political committee.

(e2) In order to make meaningful the provisions of Article 22D of this Chapter, the following provisions shall apply with respect to candidates for justice of the Supreme Court and judge of the Court of Appeals:

(1) No candidate shall accept, and no contributor shall make to that candidate, a contribution in any election exceeding one thousand dollars ($1,000) except as provided for elsewhere in this subsection.

(2) A candidate may accept, and a family contributor may make to that candidate, a contribution not exceeding two thousand dollars ($2,000) in an election if the contributor is that candidate's parent, child, brother, or sister.

(3) Repealed by Session Laws 2008-150, s. 7(a), effective August 2, 2008.

As used in this subsection, "candidate" is also a political committee authorized by the candidate for that candidate's election. Nothing in this subsection shall prohibit a candidate or the spouse of that candidate from making a contribution or loan secured entirely by that individual's assets to that candidate's own campaign.

(e3) Notwithstanding the provisions of subsections (a) and (b) of this section, no candidate for superior court judge or district court judge shall accept, and no contributor shall make to that candidate, a contribution in any election exceeding one thousand dollars ($1,000), except as provided in subsection (c) of this section. As used in this subsection, "candidate" is also a political committee authorized by the candidate for that candidate's election. Nothing in this subsection shall prohibit a candidate or the spouse of that candidate from making a contribution or loan secured entirely by that individual's assets to that candidate's own campaign.

(e4) In order to make meaningful the provisions of the North Carolina Voter-Owned Elections Act, as set forth in Article 22J of this Chapter, no candidate for an office subject to that Article shall accept, and no contributor shall make to that candidate, a contribution during the period beginning 21 days before the day of the general election and ending the day after the general election if that contribution causes the candidate to exceed the "trigger for matching funds" defined in G.S. 163-278.96(17). As used in this subsection, the term "candidate" also includes "candidate campaign committee" as defined in G.S. 163-278.38Z(3). Nothing in this subsection shall prohibit a candidate from making a contribution or loan secured entirely by that candidate's assets to that candidate's own campaign or to a political committee, the principal purpose of which is to support that candidate's campaign. This subsection applies with respect to a candidate only if both of the following statements are true regarding that candidate:

(1) That candidate is opposed in the general election by a certified candidate as defined in Article 22J of this Chapter.

(2) That certified candidate has not received the maximum matching funds available under G.S. 163-278.99B(c).

The recipient of a contribution that apparently violates this subsection has three days to return the contribution or file a detailed statement with the State Board of Elections explaining why the contribution does not violate this subsection.

(e5) The contribution limits of subsections (a) and (b) of this section do not apply to contributions made to an independent expenditure political committee. For purposes of this section, an "independent expenditure political committee" is a political committee whose treasurer makes and abides by a certification to the State Board of Elections that the political committee does not and will not make contributions, directly or indirectly, to candidates or to political committees that make contributions to candidates. The State Board of Elections shall provide forms for implementation of this subsection. This subsection shall not apply to a candidate or a political committee controlled by a candidate. The exception of this subsection is in addition to any other exception provided by law.

(f) Any individual, candidate, political committee, referendum committee, or other entity that violates the provisions of this section is guilty of a Class 2 misdemeanor. (1973, c. 1272, s. 1; 1979, c. 1073, ss. 8, 20; 1981, c. 225; 1987, c. 565, s. 15; 1993, c. 539, s. 1113; 1994, Ex. Sess., c. 24, s. 14(c); 1997-515, s. 8(a); 1999-31, s. 5(c); 2002-158, s. 2; 2006-192, ss. 15, 16, 17; 2007-391, s. 36; 2007-484, s. 43.8(c); 2007-510, s. 1(c); 2007-540, ss. 2, 3; 2008-150, ss. 6(c), 7(a); 2008-187, s. 33(a).)

Editor's Note. — Session Laws 2002-158, s. 15, contains a severability clause.

Session Laws 2002-158, s. 15.1, states that nothing in this act obligates the General Assembly to appropriate funds to implement the provisions of the act now or in the future.

Session Laws 2007-540, s. 4, is a severability clause.

Session Laws 2007-391, s. 1(c), was amended by Session Laws 2008-198, s. 33(a), to eliminate any confusion as to effective dates of the 2007 act. Session Laws 2007-391, s. 36, which added subsections (d1) and (d2), is effective August 19, 2007.

Effect of Amendments. — Session Laws 2008-150, ss. 6(c) and 7(a), effective August 2, 2008, added subsection (e5); and repealed subdivision (e2)(3).

CASE NOTES

Political Committee Registration Requirements Upheld. — Plaintiff, a tax-exempt nonprofit membership corporation, was denied a preliminary injunction to enjoin enforcement of North Carolina's political committee registration requirements, as provided in G.S. 163-278.6(14), G.S. 163-278.7 through 163-278.11 and this section, because the court found that the "major purpose" test was neither vague nor overbroad; that North Carolina's higher threshold, $3,000 per two-year election cycle raising a rebuttable presumption that the group's major purpose is electioneering, ensured that only groups engaging in significant electioneering were presumed to be political committees; that North Carolina's express advocacy test narrowed the communications that qualify as expenditures; and that the law provided sufficient notice to and safeguards for issue advocacy groups. North Carolina Right To Life, Inc. v. Leake, 108 F. Supp. 2d 498, 2000 U.S. Dist. LEXIS 12164 (E.D.N.C. 2000).

Plaintiff, a tax-exempt nonprofit membership corporation, had standing to challenge this section and assert the rights of its contributors because it was a "single-issue" organization, its contributors were closely-identified with each other by the desire to elect pro-life candidates, the provision was shown to cause injury to the organization, and a significant obstacle to members' challenge of the provision existed where the organization could not easily discover contributors wishing to donate more than $4,000 without itself transgressing the law; however, since the plaintiff was unlikely to prevail on the merits, a preliminary injunction was found inappropriate. North Carolina Right To Life, Inc. v. Leake, 108 F. Supp. 2d 498, 2000 U.S. Dist. LEXIS 12164 (E.D.N.C. 2000).

The plaintiff's challenge to this section was ripe where the plaintiff, a tax-exempt nonprofit membership corporation, stated that it would like to solicit, through mailings or otherwise, more than $4,000 from potential contributors, where it could be prosecuted for mailing this solicitation, and where the State provided insufficient evidence to suggest that the threat of prosecution was merely speculative. North Carolina Right To Life, Inc. v. Leake, 108 F. Supp. 2d 498, 2000 U.S. Dist. LEXIS 12164 (E.D.N.C. 2000).

Constitutionality. — Four thousand dollar limitation on contributions to "independent expenditure political action committees" under G.S. 163-278.13, is substantially overbroad and unconstitutional. N.C. Right to Life, Inc. v. Leake, 344 F.3d 418, 2003 U.S. App. LEXIS 19656 (4th Cir. 2003).

G.S. 163-278.13's limit on contributions was unconstitutional as applied to an independent expenditure political committee (IEPC) established by a nonprofit corporation because the contribution limits were not closely drawn to protect issue advocacy protected by the First Amendment; the state failed to show that independent expenditures made by IEPCs had a tendency to corrupt or create an appearance of corruption, and the state did not identify any legal authority that considered a political action committee and its sponsoring corporation, which was prohibited under 2 U.S.C. § 441b from making contributions and independent expenditures, as identical entities. N.C. Right to Life, Inc. v. Leake, 482 F. Supp. 2d 686, 2007 U.S. Dist. LEXIS 25876 (E.D.N.C. 2007), aff'd in part, rev'd in part, 525 F.3d 274 (4th Cir. N.C. 2008).

Because the application of a $4,000 contribution limit to political committees that make independent expenditures, as defined in G.S. 163-278.6(9a), does not further the state's interest in preventing corruption, G.S. 163-278.13 violates the First Amendment insofar as G.S. 163-278.13 is applied to independent expenditure political committees. N.C. Right to Life, Inc. v. Leake, 525 F.3d 274, 2008 U.S. App. LEXIS 9426 (4th Cir. 2008).

Ban on contributions during the twenty-one days prior to an election under the Judicial Campaign Reform Act, G.S. 163-278.13(e2)(3), did not violate the First Amendment because the ban was a closely drawn means of advancing the state's interest in operating a public funding system to minimize the danger of corruption, or the appearance thereof, in judicial elections. N.C. Right to Life Comm. Fund v. Leake, 524 F.3d 427, 2008 U.S. App. LEXIS 9413 (4th Cir. 2008).

Cited in State v. Bolt, 81 N.C. App. 133, 344 S.E.2d 51 (1986).

§ 163-278.13A: Repealed by Session Laws 1997-515, s. 9, effective January 1, 1998.

§ 163-278.13B. Limitation on fund-raising during legislative session.

(a) Definitions. — For purposes of this section:

(1) "Limited contributor" means a lobbyist registered under Chapter 120C of the General Statutes, that lobbyist's agent, that lobbyist's principal as defined in G.S. 120C-100(11) or a political committee that employs or contracts with or whose parent entity employs or contracts with a lobbyist registered under Chapter 120C of the General Statutes.

(2) "Limited contributee" means a member of or candidate for the Council of State, a member of or candidate for the General Assembly.

(3) The General Assembly is in "regular session" from the date set by law or resolution that the General Assembly convenes until the General Assembly either adjourns sine die or recesses or adjourns for more than 10 days.

(4) A contribution is "made" during regular session if the check or other instrument is dated during the session, or if the check or other instrument is delivered to the limited contributee during session, or if the limited contributor pledges during the session to deliver the check or other instrument at a later time.

(5) A contribution is "accepted" during regular session if the check or other instrument is dated during the session, or if the limited contributee receives the check or other instrument during session and does not return it within 10 days, or agrees during session to receive the check or other instrument at a later time.

(b) Prohibited Solicitations. — While the General Assembly is in regular session, no limited contributee or the real or purported agent of a limited contributee shall:

(1) Solicit a contribution from a limited contributor to be made to that limited contributee or to be made to any other candidate, officeholder, or political committee; or

(2) Solicit a third party, requesting or directing that the third party directly or indirectly solicit a contribution from a limited contributor or relay to the limited contributor the limited contributee's solicitation of a contribution.

It shall not be deemed a violation of this section for a limited contributee to serve on a board or committee of an organization that makes a solicitation of a limited contributor as long as that limited contributee does not directly participate in the solicitation and that limited contributee does not directly benefit from the solicitation.

(c) Prohibited Contributions. — While the General Assembly is in regular session:

(1) No limited contributor shall make or offer to make a contribution to a limited contributee.

(2) No limited contributor shall make a contribution to any candidate, officeholder, or political committee, directing or requesting that the contribution be made in turn to a limited contributee.

(3) No limited contributor shall transfer any amount of money or anything of value to any entity, directing or requesting that the entity use what was transferred to contribute to a limited contributee.

(4) No limited contributee or the real or purported agent of a limited contributee prohibited from solicitation by subsection (b) of this section shall accept a contribution from a limited contributor.

(5) No limited contributor shall solicit a contribution from any individual or political committee on behalf of a limited contributee. This subdivision does not apply to a limited contributor soliciting a contribution on behalf of a political party executive committee if the solicitation is solely for a separate segregated fund kept by the political party limited to use for activities that are not candidate-specific, including generic voter registration and get-out-the-vote efforts, pollings, mailings, and other general activities and advertising that do not refer to a specific individual candidate.

(d) Exception. — The provisions of this section do not apply with regard to a limited contributee during the three weeks prior to the day of a second primary if that limited contributee is a candidate who will be on the ballot in that second primary.

(e) Prosecution. — A violation of this section is a Class 2 misdemeanor. (1997-515, s. 9(b); 1999-31, s. 5(d); 1999-453, s. 6(a); 2000-136, s. 1; 2006-201, s. 21.)

Editor's Note. — Subsections (d) and (e) were so designated at the direction of the Revisor of Statutes, the designations in Session Laws 1997-515, s. 9(b) having been (c1) and (d), respectively.

Session Laws 2006-201, s. 23(b), as amended by Session Laws 2007-347, s. 16, provides: "Public servants holding positions on January 1, 2007, shall participate in ethics education presentations under G.S. 138A-14 and lobbying education programs under G.S. 120C-103 on or before January 1, 2008."

Session Laws 2006-201, s. 24, is a severability clause.

Session Laws 2006-201, s. 25, provides, in part, that: "Prosecutions for offenses or ethics violations committed before January 1, 2007, are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

CASE NOTES

This section is unconstitutional as applied to independent political committees accepting contributions on behalf of candidates; while this section was enacted for a compelling governmental interest, i.e., the prevention of corruption or the appearance of corruption among both incumbents and challengers while the General Assembly is in session, the remedy set forth was not narrowly tailored and the court, therefore, properly severed "political committee" from the definition of "limited contributee." Winborne v. Easley, 136 N.C. App. 191, 523 S.E.2d 149, 1999 N.C. App. LEXIS 1301 (1999).

Constitutionality as to Individual Challenger. — Because a compelling government interest was addressed in amending this section to include challengers, the section is narrowly tailored in its application to challengers, as well as incumbents; plaintiff who made no showing that the section invidiously discriminates against him as a challenger unsuccessfully challenged its constitutionality as applied to him. Winborne v. Easley, 136 N.C. App. 191, 523 S.E.2d 149, 1999 N.C. App. LEXIS 1301 (1999).

This section did not impermissibly burden the rights of free speech and association of lobbyists and political action committees as lobbyists are free to contribute during the times when the General Assembly is not in session, and they may engage in political speech for the entire year. Furthermore, the restrictions advance a compelling state interest by preventing corruption and the appearance of corruption. North Carolina Right to Life, Inc. v. Bartlett, 168 F.3d 705, 1999 U.S. Dist. LEXIS 2350 (4th Cir. 1999), cert. denied, 528 U.S. 1153, 120 S. Ct. 1156, 145 L. Ed. 2d 1069 (2000).

The constitutionality of this section was properly before the court, although not directly raised, where plaintiff sought a means to obtain contributions from lobbyists and their political committees during the legislative session. Winborne v. Easley, 136 N.C. App. 191, 523 S.E.2d 149, 1999 N.C. App. LEXIS 1301 (1999).

Applied in Preston v. Leake, 629 F. Supp. 2d 517, 2009 U.S. Dist. LEXIS 54523 (E.D.N.C. 2009).

OPINIONS OF ATTORNEY GENERAL

The Federal Election Campaign Act (FECA) of 1971 preempts this section prohibiting a member of the General Assembly from accepting contributions from lobbyists while the General Assembly is in session if the member is a candidate for federal office. See opinion of Attorney General to Ms. Yvonne Southerland, Deputy Director, State Board of Elections, 1998 N.C.A.G. 22 (5/4/98).

§ 163-278.13C. Campaign contributions prohibition.

(a) No lobbyist may make a contribution as defined in G.S. 163-278.6 to a candidate or candidate campaign committee as defined in G.S. 163-278.38Z when that candidate meets any of the following criteria:

(1) Is a legislator as defined in G.S. 120C-100.

(2) Is a public servant as defined in G.S. 138A-3(30)a. and G.S. 120C-104.

(b) No lobbyist may collect contributions from multiple contributors, take possession of such multiple contributions, or transfer or deliver the collected multiple contributions to the intended recipient. This section shall apply only to contributions to a candidate or candidate campaign committee as defined in G.S. 163-278.38Z when that candidate is a legislator as defined in G.S. 120C-100 or a public servant as defined in G.S. 138A-3(30)a.

(c) This section shall not apply to a lobbyist, who has filed a notice of candidacy for office under G.S. 163-106 or Article 11 of Chapter 163 of the General Statutes or has been nominated under G.S. 163-114 or G.S. 163-98, making a contribution to that lobbyist's candidate campaign committee.

(d) For purposes of this section, the term "lobbyist" shall mean an individual registered as a lobbyist under Chapter 120C of the General Statutes. (2006-201, s. 18; 2007-347, s. 5(a), (b); 2008-213, s. 86.)

Editor's Note. — This section is former G.S. 120C-302, recodified as G.S. 163-278.13C, effective August 9, 2007, by Session Laws 2007-347, s. 5.

Effect of Amendments. — Session Laws 2008-213, s. 86, effective August 15, 2008, added "and G.S. 120C-104" to subdivision (a)(2).

CASE NOTES

Constitutionality. — Lobbyist was not entitled to judgment on the pleadings on her action alleging that G.S. 163-278.13C(a) (the campaign contribution prohibition) violated rights of free speech and association as protected by the First and Fourteenth Amendments because without any factual findings as to how North Carolina candidates raised their funding, the court could not conclude as a matter of law that the campaign contribution prohibition would have prevented candidates from amassing the resources necessary for effective advocacy. Preston v. Leake, 629 F. Supp. 2d 517, 2009 U.S. Dist. LEXIS 54523 (E.D.N.C. 2009).

Lobbyist was not entitled to judgment on the pleadings on her action alleging that G.S. 163-278.13C(a) (the campaign contribution prohibition) violated rights of free speech and association as protected by the First and Fourteenth Amendments because the court could not find on the pleadings that the campaign contribution prohibition so significantly impeded lobbyists' First Amendment rights as to be unconstitutional, as there were numerous ways lobbyists were still allowed to directly exercise their rights of free expression and association under the campaign contribution prohibition (including expressing support for or opposition to a candidate, volunteering for a candidate, making contributions to their employer's political committees and then making recommendations as to who the committee should support, and soliciting others to make contributions to a candidate). Preston v. Leake, 629 F. Supp. 2d 517, 2009 U.S. Dist. LEXIS 54523 (E.D.N.C. 2009).

Standing to Challenge Statute. — As G.S. 163-278.13C(a) facially restricted the expressive activity of a class to which the lobbyist belonged, and violators of the campaign contribution prohibition were subject to prosecution, all the requisite elements to establish a "credible threat of prosecution" were present, and as the campaign contribution prohibition tended to chill the exercise of First Amendment rights, the lobbyist had established standing to challenge the campaign contribution prohibition. Preston v. Leake, 629 F. Supp. 2d 517, 2009 U.S. Dist. LEXIS 54523 (E.D.N.C. 2009).

§ 163-278.14. No contributions in names of others; no anonymous contributions; contributions in excess of fifty dollars; no contribution without specific designation of contributor.

(a) No individual, political committee, or other entity shall make any contribution anonymously or in the name of another. No candidate, political committee, referendum committee, political party, or treasurer shall knowingly accept any contribution made by any individual or person in the name of another individual or person or made anonymously. If a candidate, political committee, referendum committee, political party, or treasurer receives anonymous contributions or contributions determined to have been made in the name of another, he shall pay the money over to the Board, by check, and all such moneys received by the Board shall be deposited in the Civil Penalty and Forfeiture Fund of the State of North Carolina.

(b) No entity shall make, and no candidate, committee or treasurer shall accept, any monetary contribution in excess of fifty dollars ($50.00) unless such contribution is in the form of a check, draft, money order, credit card charge, debit, or other noncash method that can be subject to written verification. No contribution in the form of check, draft, money order, credit card charge, debits, or other noncash method may be made or accepted unless it contains a specific designation of the intended contributee chosen by the contributor. The State Board of Elections may prescribe guidelines as to the reporting and verification of any method of contribution payment allowed under this Article. For contributions by money order, the State Board shall prescribe methods to ensure an audit trail for every contribution so that the identity of the contributor can be determined. For a contribution made by credit card, the credit card account number of a contributor is not a public record.

(c) No political committee or referendum committee shall make any contribution unless in doing so it reports to the recipient the contributor's name as required in G.S. 163-278.7(b)(1). (1973, c. 1272, s. 1; 1979, c. 1073, s. 19; 1987, c. 113, s. 2; 1999-453, s. 4(a); 2001-319, s. 10(a); 2002-159, s. 55(k); 2004-125, s. 5(b); 2005-430, s. 1; 2006-195, ss. 1, 5.2; 2007-484, s. 23.)

Editor's Note. — Session Laws 2004-125, s. 6, is a severability clause.

CASE NOTES

Standing to Challenge Campaign Finances. — Voter who sought injunctions to compel the State Elections Board to further investigate a matter that it deemed unnecessary and to compel a citizens' group to file an unnecessary additional campaign finance report failed to state cause of action. Batdorff v. N.C. State Bd. of Elections, 150 N.C. App. 108, 563 S.E.2d 43, 2002 N.C. App. LEXIS 408 (2002), cert. granted, 356 N.C. 159, 568 S.E.2d 186 (2002).

§ 163-278.14A. Evidence that communications are "to support or oppose the nomination or election of one or more clearly identified candidates."

(a) The following shall be means of proving that an individual or other entity acted "to support or oppose the nomination or election of one or more clearly identified candidates": presenting evidence of financial sponsorship of communications to the general public that use phrases such as "vote for", "reelect", "support", "cast your ballot for", "(name of candidate) for (name of office)", "(name of candidate) in (year)", "vote against", "defeat", "reject", "vote pro-(policy position)" or "vote anti-(policy position)" accompanied by a list of candidates clearly labeled "pro-(policy position)" or "anti-(policy position)", or communications of campaign words or slogans, such as posters, bumper stickers, advertisements, etc., which say "(name of candidate)'s the One", "(name of candidate) '98", "(name of candidate)!", or the names of two candidates joined by a hyphen or slash.

(b) Notwithstanding the provisions of subsection (a) of this section, a communication shall not be subject to regulation as a contribution or expenditure under this Article if it:

(1) Appears in a news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, or magazine, unless those facilities are owned or controlled by any political party, or political committee;

(2) Is distributed by a corporation solely to its stockholders and employees; or

(3) Is distributed by any organization, association, or labor union solely to its members or to subscribers or recipients of its regular publications, or is made available to individuals in response to their request, including through the Internet. (1999-453, s. 3(a); 2008-150, s. 6(b).)

Editor's Note. — Session Laws 1999-453, s. 1, provides that the act shall be known as "The Campaign Reform Act of 1999."

Session Laws 1999-453, s. 10, provides that prosecutions for, or sentences based on, offenses occurring before the relevant effective date in this act [August 12, 1999] are not abated or affected by this act, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences.

Session Laws 1999-453, s. 11, contains a severability clause.

Effect of Amendments. — Session Laws 2008-150, s. 6(b), effective August 2, 2008, rewrote subsection (a).

CASE NOTES

Constitutionality. — Section 163-278.14A(a)(2) is unconstitutionally vague and overbroad; the context prong of G.S. 163-278.14A impermissibly regulates issue advocacy. This test violates the express advocacy test adopted by the United States Supreme Court in that it does not limit the scope of "express advocacy" to include only clear words that directly fit the term "express advocacy," but instead allows consideration of various contextual factors. N.C. Right to Life, Inc. v. Leake, 344 F.3d 418, 2003 U.S. App. LEXIS 19656 (4th Cir. 2003).

First sentence of G.S. 163-278.14A(a)(2) impermissibly dilutes the Buckley standard by allowing regulation of communications which do not contain explicit words of advocacy. N.C. Right to Life, Inc. v. Leake, 344 F.3d 418, 2003 U.S. App. LEXIS 19656 (4th Cir. 2003).

Context prong of G.S. 163-278.14A(a)(2) is unconstitutionally vague and overbroad because it regulates issue advocacy protected by the First Amendment, it uses ambiguous time frames and unspecified distribution limitations, and it is not narrowly tailored to combat electoral corruption, and accordingly to the extent that G.S. 163-278.6(14)'s major purpose test for identifying political committees incorporates the context prong of G.S. 163-278.14A(a)(2), G.S. 163-278.6(14) is also unconstitutional; however, G.S. 163-278.14A(a)(2) is severable, and after such severance, the remainder of G.S. 163-278.14A is valid and enforceable, as is G.S. 163-278.6(14). N.C. Right to Life, Inc. v. Leake, 482 F. Supp. 2d 686, 2007 U.S. Dist. LEXIS 25876 (E.D.N.C. 2007), aff'd in part, rev'd in part, 525 F.3d 274 (4th Cir. N.C. 2008).

Former G.S. 163-278.14A(a)(2), which attempts to determine the essential nature of a communication by considering contextual factors, is unconstitutionally overbroad and vague because it regulates speech that is neither express advocacy nor its functional equivalent and, therefore, strays too far from the regulation of elections into the regulation of ordinary political speech. Former G.S. 163-278.14A(a)(2) is not limited to an express group of election-related words, and its ad hoc, context-based, totality of the circumstances approach is susceptible of interpretations other than as an appeal to vote for or against a specific candidate (decided prior to 2008 repeal of subdivision (a)(2)). N.C. Right to Life, Inc. v. Leake, 525 F.3d 274, 2008 U.S. App. LEXIS 9426 (4th Cir. 2008).

§ 163-278.15. No acceptance of contributions made by corporations, foreign and domestic, or other prohibited sources.

(a) No candidate, political committee, political party, or treasurer shall accept any contribution made by any corporation, foreign or domestic, regardless of whether such corporation does business in the State of North Carolina, or made by any business entity, labor union, professional association, or insurance company. This section does not apply with regard to entities permitted to make contributions by G.S. 163-278.19(f).

(b) A candidate or political committee may accept a contribution knowing that the contribution is the proceeds of a loan made in the ordinary course of business by a financial institution if all of the following conditions are met:

(1) The full amount of the loan is secured by collateral placed, or by guaranties given, by one or more individuals or entities who are not prohibited by this Article from making contributions to the candidate or political committee. The value of the collateral posted by each individual or entity, or the amount of each guaranty, may not exceed the contribution limitations applicable under this Article to each individual or entity. The value of collateral posted may exceed the contribution limitations applicable under this Article in cases where the amount of the loan secured by that collateral does not exceed the contribution limitations applicable to the individual or entity.

(2) During the time that any loan remains outstanding and unpaid, then the value of any collateral posted, or the amount of each guaranty, for that loan shall be considered to be a contribution by the individual or entity securing the loan. If the loan, or any portion of the loan, is repaid to the financial institution by the candidate or political committee to whom the loan was made during the contribution limitation period for the same "election" as defined in G.S. 163-278.13(d) in which the loan was made, the individual or entity securing the loan shall be eligible to further contribute to that candidate or political committee up to the amount of the repayment. If multiple individuals or entities secured the loan that is repaid to the financial institution by the candidate or political committee, then the amount repaid shall be prorated amongst the multiple individuals or entities.

(3) If the loan is to the candidate or political committee, only the candidate, the candidate's spouse, or the political committee to whom the loan was made may repay the loan.

The State Board of Elections shall develop forms for reporting the proceeds of loans in a full and accurate manner. (1973, c. 1272, s. 1; 1999-31, s. 5(e); 2006-195, s. 6; 2006-262, s. 4.1(c).)

Editor's Note. — Session Laws 2006-262, s. 5, provides that s. 4.1(c) of this act, which designated the existing provisions of the section as subsection (a) and added subsection (b), is effective when it becomes law, except that any criminal penalty resulting from Session Laws 2006-262 becomes effective October 1, 2006. Prosecutions for offenses committed before October 1, 2006, are not abated or affected by Session Laws 2006-262, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 163-278.16. Regulations regarding timing of contributions and expenditures.

(a) Except as provided in G.S. 163-278.6(14) and G.S. 163-278.12, no contribution may be received or expenditure made by or on behalf of a candidate, political committee, or referendum committee:

(1) Until the candidate, political committee, or referendum committee appoints a treasurer and certifies the name and address of the treasurer to the Board; and

(2) Unless the contribution is received or the expenditure made by or through the treasurer of the candidate, political committee, or referendum committee.

(b) through (e) Repealed by Session Laws 1975, c. 565, s. 2.

(f), (g) Repealed by Session Laws 1999-453, s. 2(b), effective August 12, 1999. (1973, c. 1272, s. 1; 1975, c. 565, s. 2; 1979, c. 500, s. 4; c. 1073, ss. 19, 20; 1987, c. 652; 1997-515, s. 13.1(a); 1999-31, ss. 1(d), 4(b); 1999-453, s. 2(b).)

§ 163-278.16A. Restriction on use of State funds by declared candidate for Council of State for advertising or public service announcements using their names, pictures, or voices.

After December 31 prior to a general election in which a Council of State office will be on the ballot, no declared candidate for that Council of State office shall use or permit the use of State funds for any advertisement or public service announcement in a newspaper, on radio, or on television that contains that declared candidate's name, picture, or voice, except in case of State or national emergency and only if the announcement is reasonably necessary to that candidate's official function. For purposes of this section, "declared candidate" means someone who has publicly announced an intention to run. (1997-515, s. 13(a).)

CASE NOTES

Application. — Section 163-278.16A, prohibiting the expenditure of public funds for advertisements for candidates for public office, applies only to prohibit advertisements in years when declared council of state candidates are on an election ballot. Fuller v. Easley, 145 N.C. App. 391, 553 S.E.2d 43, 2001 N.C. App. LEXIS 642 (2001).

§ 163-278.16B. Use of contributions for certain purposes.

(a) A candidate or candidate campaign committee may use contributions only for the following purposes:

(1) Expenditures resulting from the campaign for public office by the candidate or candidate's campaign committee.

(2) Expenditures resulting from holding public office.

(3) Donations to an organization described in section 170(c) of the Internal Revenue Code of 1986 (26 U.S.C. § 170(c)), provided that the candidate or the candidate's spouse, children, parents, brothers, or sisters are not employed by the organization.

(4) Contributions to a national, State, or district or county committee of a political party or a caucus of the political party.

(5) Contributions to another candidate or candidate's campaign committee.

(6) To return all or a portion of a contribution to the contributor.

(7) Payment of any penalties against the candidate or candidate's campaign committee for violation of this Article imposed by a board of elections or a court of competent jurisdiction.

(8) Payment to the Escheat Fund established by Chapter 116B of the General Statutes.

(9) Legal expense donation not in excess of four thousand dollars ($4,000) per calendar year to a legal expense fund established pursuant to Article 22M of Chapter 163 of the General Statutes.

(b) As used in this section, the term "candidate campaign committee" means the same as in G.S. 163-278.38Z(3).

(c) Contributions made to a candidate or candidate campaign committee do not become a part of the personal estate of the individual candidate. The candidate may file with the board a written designation of those funds that directs to which of the permitted uses in subsection (a) of this section they shall be paid in the event of the death or incapacity of the candidate. After the payment of permitted outstanding debts of the account, the candidate's filed written designation shall control. If the candidate files no such written designation, the funds after payment of permitted outstanding debts shall be distributed in accordance with subdivision (a)(8) of this section. (2006-161, s. 1; 2007-391, s. 30; 2008-187, s. 33(a); 2008-213, s. 87; 2009-534, s. 2(h).)

Editor's Note. — Session Laws 2006-161, s. 6, made this section effective October 1, 2006, and applicable to all candidates and candidate campaign committees with active accounts with the State Board of Elections or a county board of elections on or after October 1, 2006.

Session Laws 2007-391, s. 1(c), was amended by Session Laws 2008-198, s. 33(a), to eliminate any confusion as to effective dates of the 2007 act. Session Laws 2007-391, s. 30, which substituted "The candidate may file" for "A candidate or the candidate who directs the candidate campaign committee may file" in the second sentence of subsection (c), is effective August 19, 2007.

Effect of Amendments. — Session Laws 2008-213, s. 87, effective August 15, 2008, substituted "Donations" for "Contributions" in subdivision (a)(3).

Session Laws 2009-534, s. 2(h), effective December 1, 2009, added subdivision (a)(9).

§ 163-278.17. Statements of media receiving campaign expenditures.

(a) Repealed by Session Laws 1985, c. 183, s. 1.

(b) Each media shall require written authority for each expenditure from each candidate, treasurer or individual making or authorizing an expenditure.

A candidate may authorize advertisement paid for by a treasurer appointed by the candidate. All authorizations of expenditures signed by a candidate, treasurer or individual shall be deemed public records and copies of said authorizations shall be available for inspection during normal business hours at the office(s) of the media making the publication or broadcast nearest to the place(s) of publication or broadcast.

(c) Repealed by Session Laws 1985, c. 183, s. 2. (1973, c. 1272, s. 1; 1975, c. 565, s. 3; 1979, c. 500, ss. 5, 6; c. 1073, s. 9; 1985, c. 183, ss. 1, 2.)

§ 163-278.18. Normal commercial charges for political advertising.

(a) No media and no supplier of materials or services shall charge or require a candidate, treasurer, political party, or individual to pay a charge for advertising, materials, space, or services purchased for or in support of or in opposition to any candidate, political committee, or political party that is higher than the normal charge it requires other customers to pay for comparable advertising, materials, space, or services purchased for other purposes.

(b) A newspaper, magazine, or other advertising medium shall not charge any candidate, treasurer, political committee, political party, or individual for any advertising for or in support of or in opposition to any candidate, political committee or political party at a rate higher than the comparable rate charged to other persons for advertising of comparable frequency and volume; and every candidate, treasurer, political party or individual, with respect to political advertising, shall be entitled to the same discounts afforded by the advertising medium to other advertisers under comparable conditions and circumstances. (1973, c. 1272, s. 1; 1977, c. 856.)

§ 163-278.19. Violations by corporations, business entities, labor unions, professional associations and insurance companies.

(a) Except as provided in subsections (a2), (b), (d), (e), (f), and (g) of this section it shall be unlawful for any corporation, business entity, labor union, professional association or insurance company directly or indirectly:

(1) To make any contribution to a candidate or political committee or to make any expenditure to support or oppose the nomination or election of a clearly identified candidate;

(2) To pay or use or offer, consent or agree to pay or use any of its money or property for any contribution to a candidate or political committee or for any expenditure to support or oppose the nomination or election of a clearly identified candidate; or

(3) To compensate, reimburse, or indemnify any person or individual for money or property so used or for any contribution or expenditure so made;

and it shall be unlawful for any officer, director, stockholder, attorney, agent or member of any corporation, business entity, labor union, professional association or insurance company to aid, abet, advise or consent to any such contribution or expenditure, or for any person or individual to solicit or knowingly receive any such contribution or expenditure. Supporting or opposing the election of clearly identified candidates includes supporting or opposing the candidates of a clearly identified political party. Any officer, director, stockholder, attorney, agent or member of any corporation, business entity, labor union, professional association or insurance company aiding or abetting in any contribution or expenditure made in violation of this section shall be guilty of a Class 2 misdemeanor, and shall in addition be liable to such corporation, business entity, labor union, professional association or insurance company for the amount of such contribution or expenditure, and the same may be recovered of him upon suit by any stockholder or member thereof.

(a1) A transfer of funds shall be deemed to have been a contribution or expenditure made indirectly if it is made to any committee or political party account, whether inside or outside this State, with the intent or purpose of being exchanged in whole or in part for any other funds to be contributed or expended in an election for North Carolina office or to offset any other funds contributed or expended in an election for North Carolina office.

(a2) Proceeds of loans made in the ordinary course of business by financial institutions may be used for contributions made in compliance with this Chapter. Financial institutions may also grant revolving credit to political committees and referendum committees in the ordinary course of business.

(b) It shall, however, be lawful for any corporation, business entity, labor union, professional association or insurance company to communicate with its employees, stockholders or members and their families on any subject; to conduct nonpartisan registration and get-out-the-vote campaigns aimed at their employees, stockholders, or members and their families; or for officials and employees of any corporation, insurance company or business entity or the officials and members of any labor union or professional association to establish, administer, contribute to, and to receive and solicit contributions to a separate segregated fund to be utilized for political purposes, and those individuals shall be deemed to become and be a political committee as that term is defined in G.S. 163-278.6(14) or a referendum committee as defined in G.S. 163-278.6(18b); provided, however, that it shall be unlawful for any such fund to make a contribution or expenditure by utilizing contributions secured by physical force, job discrimination, financial reprisals or the threat of force, job discrimination or financial reprisals, or by dues, fees, or other moneys required as a condition of membership or employment or as a requirement with respect to any terms or conditions of employment, including, without limitation, hiring, firing, transferring, promoting, demoting, or granting seniority or employment-related benefits of any kind, or by moneys obtained in any commercial transaction whatsoever.

(c) A violation of this section is a Class 2 misdemeanor. In addition, the acceptance of any contribution, expenditure, payment, reimbursement, indemnification, or anything of value under subsection (a) shall be a Class 2 misdemeanor.

(d) Whenever a candidate or treasurer is an officer, director, stockholder, attorney, agent, or employee of any corporation, business entity, labor union, professional association or insurance company, and by virtue of his position therewith uses office space and communication facilities of the corporation, business entity, labor union, professional association or insurance company in the normal and usual scope of his employment, the fact that the candidate or treasurer receives telephone calls, mail, or visits in such office which relates to activities prohibited by this Article shall not be considered a violation under this section.

(e) Notwithstanding the prohibitions specified in this Article and Article 22 of this Chapter, a political committee organized under provisions of this Article shall be entitled to receive and the corporation, business entity, labor union, professional association, or insurance company designated on the committee's organizational report as the parent entity of the employees or members who organized the committee is authorized to give reasonable administrative support that shall include record keeping, computer services, billings, mailings to members of the committee, membership development, fund-raising activities, office supplies, office space, and such other support as is reasonably necessary for the administration of the committee.

The approximate cost of any reasonable administrative support shall be submitted to the committee, in writing, and the committee shall include that cost on the report required by G.S. 163-278.9(a)(6). Also included in the report shall be the approximate allocable portion of the compensation of any officer or employee of the corporation, business entity, labor union, professional association, or insurance company who has devoted more than thirty-five percent (35%) of his time during normal business hours of the corporation, business entity, labor union, professional association, or insurance company during the period covered by the required report. The approximate cost submitted by the parent corporation, business entity, labor union, professional association, or insurance company shall be entered on the committee's report as the final entry on its list of "contributions" and a copy of the written approximate cost received by it shall be attached.

The reasonable administrative support given by a corporation, business entity, labor union, professional association, or insurance company shall be designated on the books of the corporation, business entity, labor union, professional association, or insurance company as such and may not be treated by it as a business deduction for State income tax purposes.

(f) This section does not prohibit a contribution or independent expenditure by an entity that:

(1) Has as an express purpose promoting social, educational, or political ideas and not to generate business income;

(2) Does not have shareholders or other persons which have an economic interest in its assets and earnings; and

(3) Was not established by a business corporation, by an insurance company, by a business entity, including, but not limited to, those chartered under Chapter 55, Chapter 55A, Chapter 55B, or Chapter 58 of the General Statutes, by a professional association, or by a labor union and does not receive substantial revenue from such entities. Substantial revenue is rebuttably presumed to be more than ten percent (10%) of total revenues in a calendar year.

(g) If a political committee has as its only purpose accepting contributions and making expenditures to influence elections, and that political committee incorporates as a nonprofit corporation to shield its participants from liability created outside this Chapter, that political committee is not considered to be a corporation for purposes of this section. Incorporation of a political committee does not relieve any individual, person, or other entity of any liability, duty, or obligation created pursuant to any provision of this Chapter. To obtain the benefits of this subsection, an incorporating political committee must state exactly the following language as the only purpose for which the corporation can be organized: "to accept contributions and make expenditures to influence elections as a political committee pursuant to G.S. 163-278.6(14) only." No political committee shall do business as a political committee after incorporation unless it has been certified by the State Board of Elections as being in compliance with this subsection. (1973, c. 1272, s. 1; 1975, c. 565, s. 6; 1979, c. 517, ss. 1, 2; 1985, c. 354; 1987, c. 113, s. 3; c. 565, s. 16; 1993, c. 539, ss. 1115, 1116; c. 553, s. 69; 1994, Ex. Sess., c. 24, s. 14(c); 1999-31, ss. 4(d), 5(a), 6(b); 2001-487, s. 97(a); 2002-159, s. 57.3(a), (b); 2006-195, s. 3; 2006-262, ss. 4.1(a), (b), 4.3.)

Editor's Note. — Session Laws 2006-262, s. 5 provides that ss. 4.1(a), (b), and 4.3 of this act, which amended this section, are effective when it becomes law, except that any criminal penalty resulting from Session Laws 2006-262 becomes effective October 1, 2006. Prosecutions for offenses committed before October 1, 2006, are not abated or affected by Session Laws 2006-262, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Legal Periodicals. — For survey of 1978 administrative law, see 57 N.C.L. Rev. 831 (1979).

For survey of 1978 constitutional law, see 57 N.C.L. Rev. 958 (1979).

For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

For note, "Addressing a 'New Corruption' in Campaign Financing," see 69 N.C.L. Rev. 1060 (1991).

CASE NOTES

Constitutionality. — This section is constitutional on its face and as applied to construe plaintiff's payment of defendant's advertising expenses as advances prohibited by the section, since the prohibition thereof constitutes only a minimal intrusion on plaintiff's constitutional rights, and is clearly reasonable in light of the purposes to be accomplished by the section. Louchheim, Eng & People, Inc. v. Carson, 35 N.C. App. 299, 241 S.E.2d 401 (1978).

Because this section prohibits all nonprofit corporations from making independent expenditures for any political purpose, regardless of whether the corporations demonstrate a threat to the political process, it is facially overbroad and violates the First Amendment. North Carolina Right to Life, Inc. v. Bartlett, 3 F. Supp. 2d 675, 1998 U.S. Dist. LEXIS 6266 (E.D.N.C. 1998), aff'd in part and rev'd in part on other grounds, 168 F.3d 705 (4th Cir. 1999), cert. denied, 528 U.S. 1153, 120 S. Ct. 1156, 145 L. Ed. 2d 1069 (2000).

This section is overbroad and unconstitutionally vague, given its failure to make exception for nonprofit corporations presenting a minimal risk of distorting the political process. North

Carolina Right to Life, Inc. v. Bartlett, 168 F.3d 705, 1999 U.S. Dist. LEXIS 2350 (4th Cir. 1999), cert. denied, 528 U.S. 1153, 120 S. Ct. 1156, 145 L. Ed. 2d 1069 (2000).

The purposes of this section are identical to those of its federal counterpart, namely, to protect the populace from undue influence by corporations and labor unions, and to ensure the responsiveness of elected officials to the public at large. Louchheim, Eng & People, Inc. v. Carson, 35 N.C. App. 299, 241 S.E.2d 401 (1978); State v. Charlotte Liberty Mut. Ins. Co., 39 N.C. App. 557, 251 S.E.2d 867, aff'd, 298 N.C. 270, 258 S.E.2d 343 (1979).

The advance of money or anything of value to a political candidate by a corporation, labor union or business entity constitutes an illegal contribution or expenditure within the meaning of this section. Louchheim, Eng & People, Inc. v. Carson, 35 N.C. App. 299, 241 S.E.2d 401 (1978).

Contributions by Insurance Companies to Appreciation Breakfast for Newly Reelected Insurance Commissioner. — Summons drawn under G.S. 163-270 and this section failed sufficiently to charge of offense within the ambit of these sections where insurance companies made contributions of money for an appreciation breakfast for the Commissioner of Insurance after his reelection. State v. Charlotte Liberty Mut. Ins. Co., 39 N.C. App. 557, 251 S.E.2d 867, aff'd, 298 N.C. 270, 258 S.E.2d 343 (1979).

Cited in State v. Charlotte Liberty Mut. Ins. Co., 298 N.C. 270, 258 S.E.2d 343 (1979).

§ 163-278.19A. Contributions allowed.

Notwithstanding any other provision of this Chapter, it is lawful for any person as defined in G.S. 163-278.6(13) to contribute to a referendum committee. (1979, c. 1073, s. 7.)

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

§ 163-278.19B. Political party headquarters building funds.

Notwithstanding the provisions of G.S. 163-278.19, a person prohibited by that section from making a contribution may donate to political parties and political parties may accept from such a person money and other things of value donated to a political party headquarters building fund. Donations to the political party headquarters building fund shall be subject to all the following rules:

(1) The donations solicited and accepted are designated to the political party headquarters building fund.

(2) Potential donors to that fund are advised that all donations will be exclusively for the political party headquarters building fund.

(3) The political party establishes a separate segregated bank account into which shall be deposited only donations for the political party headquarters building fund from persons prohibited by G.S. 163-278.19 from making contributions.

(4) The donations deposited in the separate segregated bank account for the political party headquarters building fund will be spent only to purchase a headquarters building, to construct a headquarters building, to renovate a headquarters building, to pay a mortgage on a headquarters building, or to repay donors if a headquarters building is not purchased, constructed, or renovated. Donations deposited into that account shall not be used for headquarters rent, utilities, or equipment other than fixtures.

(5) The political party executive committee shall report donations to and spending by a political party headquarters building fund on every report required to be made by G.S. 163-278.9. If a committee is excused from making general campaign finance reports under G.S.

163-278.10A, that committee shall nonetheless report donations in any amount to and spending in any amount by the political party headquarters building fund at the times required for reports in G.S. 163-278.9.

If all the criteria set forth in subdivisions (1) through (5) of this section are complied with, then donations to and spending by a political party headquarters building fund do not constitute contributions or expenditures as defined in G.S. 163-278.6. If those criteria are complied with, then donations may be made to a political party headquarters building fund. (1999-426, s. 9(a).)

§ 163-278.20: Repealed by Session Laws 2006-195, s. 2, effective January 1, 2007, and applicable to all contributions made and accepted on and after that date.

Editor's Note. — Session Laws 2006-195, s. 9, provides, in part, that: "The repeal of G.S. 163-278.20 is not effective retroactively and shall not be deemed to render lawful or unlawful any action occurring before its effective date."

§ 163-278.21. Promulgation of policy and administration through State Board of Elections.

The State Board of Elections shall have responsibility, adequate staff, equipment and facilities, for promulgating all regulations necessary for the enforcement and administration of this Article and to prevent the circumvention of the provisions of this Article. The State Board of Elections shall empower the Executive Director with the responsibility for the administrative operations required to administer this Article and may delegate or assign to him such other duties from time to time by regulations or orders of the State Board of Elections. (1973, c. 1272, s. 1; 1975, c. 798, s. 7; 1999-453, s. 5(c); 2001-319, s. 11.)

§ 163-278.22. Duties of State Board.

It shall be the duty and power of the State Board:

(1) To prescribe forms of statements and other information required to be filed by this Article, to furnish such forms to the county boards of elections and individuals, media or others required to file such statements and information, and to prepare, publish and distribute or cause to be distributed to all candidates at the time they file notices of candidacy a manual setting forth the provisions of this Article and a prescribed uniform system for accounts required to file statements by this Article.

(2) To accept and file any information voluntarily supplied that exceeds the requirements of this Article.

(3) To develop a filing, coding, and cross-indexing system consonant with the purposes of this Article.

(4) To make statements and other information filed with it available to the public at a charge not to exceed actual cost of copying.

(5) To preserve reports and statements filed under this Article. Such reports and statements, after a period of two years following the election year, may be transferred to the Department of Cultural Resources, Office of Archives and History, and shall be preserved for a period of 10 years.

(6) To prepare and publish such reports as it may deem appropriate.

(7) To make investigations to the extent the Board deems necessary with respect to statements filed under the provisions of this Article and

with respect to alleged failures to file any statement required under the provisions of this Article or Article 22M of the General Statutes and, upon complaint under oath by any registered voter, with respect to alleged violations of any part of this Article or Article 22M of the General Statutes.

(8) After investigation, to report apparent violations by candidates, political committees, referendum committees, legal expense funds, individuals or persons to the proper district attorney as provided in G.S. 163-278.27.

(9) To prescribe and furnish forms of statements and other material to the county boards of elections for distribution to candidates and committees required to be filed with the county boards.

(10) To instruct the chairman and director of elections of each county board as to their respective duties and responsibilities relative to the administration of this Article.

(11) To require appropriate certification of delinquent or late filings from the county boards of elections and to execute the same responsibilities relative to such reports as provided in G.S. 163-278.27.

(12) To assist county boards of elections in resolving questions arising from the administration of this Article.

(13) To require county boards of elections to hold such hearings, make such investigations, and make reports to the State Board as the State Board deems necessary in the administration of this Article.

(14) To calculate, assess, and collect civil penalties pursuant to this Article. (1973, c. 1272, s. 1; 1975, c. 798, s. 8; 1977, c. 626, s. 1; 1979, c. 500, ss. 9, 12, 13; c. 1073, s. 18; 1995, c. 243, s. 1; 1997-515, s. 7(e); 2002-159, s. 35(n); 2007-349, ss. 2, 3.)

Effect of Amendments. — Session Laws 2007-349, ss. 2 and 3, effective January 1, 2008, substituted "Article or Article 22M of the General Statutes" for "Article" twice near the end of subdivision (7), and inserted "legal expense funds" following "referendum committees" in subdivision (8).

CASE NOTES

Review of Board of Elections decision. — The Board of Elections is a quasi-judicial agency and, absent an abuse of discretion, cannot be compelled to a different decision once it has exercised its statutory duty to review a claim. Batdorff v. N.C. State Bd. of Elections, 150 N.C. App. 108, 563 S.E.2d 43, 2002 N.C. App. LEXIS 408 (2002), cert. granted, 356 N.C. 159, 568 S.E.2d 186 (2002).

Standing. — In a suit to enforce state election laws, an individual taxpayer had standing to seek equitable relief pursuant to G.S. 163-278.28. Fuller v. Easley, 145 N.C. App. 391, 553 S.E.2d 43, 2001 N.C. App. LEXIS 642 (2001).

§ 163-278.23. Duties of Executive Director of Board.

The Executive Director of the Board shall inspect or cause to be inspected each statement filed with the Board under this Article within 30 days after the date it is filed. The Executive Director shall advise, or cause to be advised, no more than 30 days and at least five days before each report is due, each candidate or treasurer whose organizational report has been filed, of the specific date each report is due. He shall immediately notify any individual, candidate, treasurer, political committee, referendum committee, media, or other entity that may be required to file a statement under this Article if:

(1) It appears that the individual, candidate, treasurer, political committee, referendum committee, media, or other entity has failed to file a statement as required by law or that a statement filed does not conform to this Article; or

(2) A written complaint is filed under oath with the Board by any registered voter of this State alleging that a statement filed with the Board does not conform to this Article or to the truth or that an individual, candidate, treasurer, political committee, referendum committee, media, or other entity has failed to file a statement required by this Article.

The entity that is the subject of the complaint will be given an opportunity to respond to the complaint before any action is taken requiring compliance.

The Executive Director of the Board of Elections shall issue written opinions to candidates, the communications media, political committees, referendum committees, or other entities upon request, regarding filing procedures and compliance with this Article. Any such opinion so issued shall specifically refer to this paragraph. If the candidate, communications media, political committees, referendum committees, or other entities rely on and comply with the opinion of the Executive Director of the Board of Elections, then prosecution or civil action on account of the procedure followed pursuant thereto and prosecution for failure to comply with the statute inconsistent with the written ruling of the Executive Director of the Board of Elections issued to the candidate or committee involved shall be barred. Nothing in this paragraph shall be construed to prohibit or delay the regular and timely filing of reports. The Executive Director shall file all opinions issued pursuant to this section with the Codifier of Rules to be published unedited in the North Carolina Register and the North Carolina Administrative Code.

This section applies to Articles 22B, 22D, 22E, 22F, 22G, 22H, and 22M of the General Statutes to the same extent that it applies to this Article. (1973, c. 1272, s. 1; 1975, c. 334; c. 565, s. 4; 1979, c. 500, s. 7; c. 1073, ss. 12, 13, 17; 1985, c. 759, s. 6.1; 1999-424, s. 6(c); 1999-453, s. 5(b); 1999-456, s. 63; 2001-319, s. 11; 2005-430, s. 8; 2007-349, s. 6.)

Editor's Note. — The last paragraph, as added by Session Laws 2005-430, s. 8, effective December 1, 2005, was applicable to all contributions and expenditures made or accepted on or after that date. The paragraph was subsequently amended by Session Laws 2007-349, s. 6, effective January 1, 2008.

Effect of Amendments. — Session Laws 2007-349, s. 6, effective January 1, 2008, substituted "22F, 22G, 22H, and 22M" for "and 22F" in the last paragraph.

CASE NOTES

Applied in North Carolina Right to Life, Inc. v. Bartlett, 168 F.3d 705, 1999 U.S. Dist. LEXIS 2350 (4th Cir. 1999).

§ 163-278.24. Statements examined within four months.

Within four months after the date of each election or referendum, the Executive Director shall examine or cause to be examined each statement filed with the Board under this Article, and, referring to the election or referendum, determine whether the statement conforms to law and to the truth. (1973, c. 1272, s. 1; 1979, c. 500, s. 8; c. 1073, s. 14; 1985, c. 183, s. 3; 2001-319, s. 11.)

§ 163-278.25. Issuance of declaration of nomination or certificate of election.

No declaration of nomination and no certificate of election shall be granted to any candidate until the candidate or his treasurer has filed the statements referring to the election he is required to file under this Article. Within 24 hours after reaching a decision that a declaration of nomination or certificate of election should not be granted, the Board shall give written notice of that decision, by telegraph or certified mail, to the candidate and the candidate's treasurer. Failure to grant certification shall not affect a successful candidate's title to an office to which he has been otherwise duly elected. (1973, c. 1272, s. 1.)

§ 163-278.26. Appeals from State Board of Elections; early docketing.

Any candidate for nomination or election who is denied a declaration of nomination or certificate of election, pursuant to G.S. 163-278.25, may, within five days after the action of the Board under that section, appeal to the Superior Court of Wake County for a final determination of any questions of law or fact which may be involved in the Board's action. The cause shall be entitled "In the Matter of the Candidacy of ...." It shall be placed on the civil docket of that court and shall have precedence over all other civil actions. In the event of an appeal, the chairman of the Board shall certify the record to the clerk of that court within five days after the appeal is noted.

The record on appeal shall consist of all reports filed by the candidate or his treasurer with the Board pursuant to this Article, and a memorandum of the Board setting forth with particularity the reasons for its action in denying the candidate a declaration of nomination or certificate of election. Written notice of the appeal shall be given to the Board by the candidate or his attorney, and may be effected by mail or personal delivery. On appeal, the cause shall be heard de novo. (1973, c. 1272, s. 1.)

Legal Periodicals. — For comment on election contests in North Carolina, see 55 N.C.L. Rev. 1228 (1977).

§ 163-278.27. Criminal penalties; duty to report and prosecute.

(a) Any individual, candidate, political committee, referendum committee, treasurer, person or media who intentionally violates the applicable provisions of G.S. 163-278.7, 163-278.8, 163-278.9, 163-278.10, 163-278.11, 163-278.12, 163-278.13, 163-278.13B, 163-278.14, 163-278.16, 163-278.16B, 163-278.17, 163-278.18, 163-278.19, 163-278.20, 163-278.39, 163-278.40A, 163-278.40B, 163-278.40C, 163-278.40D, 163-278.40E, or 163-278.40J is guilty of a Class 2 misdemeanor. The statute of limitations shall run from the day the last report is due to be filed with the appropriate board of elections for the election cycle for which the violation occurred.

(a1) A violation of G.S. 163-278.32 by making a certification knowing the information to be untrue is a Class I felony.

(b) Whenever the Board has knowledge of or has reason to believe there has been a violation of any section of this Article, it shall report that fact, together with accompanying details, to the following prosecuting authorities:

(1) In the case of a candidate for nomination or election to the State Senate or State House of Representatives: report to the district attorney of the prosecutorial district in which the candidate for nomination or election resides;

(2) In the case of a candidate for nomination or election to the office of Governor, Lieutenant Governor, Secretary of State, State Auditor, State Treasurer, State Superintendent of Public Instruction, State Attorney General, State Commissioner of Agriculture, State Commissioner of Labor, State Commissioner of Insurance, and all other State

elective offices, Justice of the Supreme Court, Judge of the Court of Appeals, judge of a superior court, judge of a district court, and district attorney of the superior court: report to the district attorney of the prosecutorial district in which Wake County is located;

(3) In the case of an individual other than a candidate, including, without limitation, violations by members of political committees, referendum committees or treasurers: report to the district attorney of the prosecutorial district in which the individual resides; and

(4) In the case of a person or any group of individuals: report to the district attorney or district attorneys [of] the prosecutorial district or districts in which any of the officers, directors, agents, employees or members of the person or group reside.

(c) Upon receipt of such a report from the Board, the appropriate district attorney shall prosecute the individual or persons alleged to have violated a section or sections of this Article.

(d) As a condition of probation, a sentencing judge may order that the costs incurred by the State Board of Elections in investigating and aiding the prosecution of a case be paid to the State Board of Elections by the defendant on such terms and conditions as set by the judge. (1973, c. 1272, s. 1; 1979, c. 500, s. 10; c. 1073, ss. 15, 19; 1981, c. 837, s. 4; 1987, c. 565, s. 17; 1993, c. 539, s. 1118; 1994, Ex. Sess., c. 24, s. 14(c); 1999-453, s. 2(c); 2001-419, s. 2; 2006-161, s. 5; 2007-391, s. 1(b); 2008-150, s. 9(b); 2008-187, s. 29.)

Editor's Note. — G.S. 163-278.20, referred to in subsection (a), was repealed by Session Laws 2006-195, s. 2, effective January 1, 2007.

Session Laws 2007-391, s. 1(c), as amended by Session Laws 2008-187, s. 33(a), provides: "This section becomes effective December 1, 2007, and applies to offenses committed on or after that date."

Effect of Amendments. — Session Laws 2008-150, s. 9(b), effective December 1, 2008, in subsection (a), inserted "163-278.40J" near the end of the first sentence, and made related changes.

Session Laws 2008-187, s. 29, effective August 7, 2008, substituted "G.S. 163-278.32" for "G.S. 278.32" in subsection (a1).

CASE NOTES

This section is clearly mandatory in its language. State v. Bolt, 81 N.C. App. 133, 344 S.E.2d 51 (1986).

Venue. — This section is a legislative determination that the crime of violating any section of this Article, when committed by an individual other than a candidate, is committed where the individual resides. Thus, venue lies solely in the county, subject only to defendant's right to move for a change of venue. State v. Bolt, 81 N.C. App. 133, 344 S.E.2d 51 (1986).

Standing to Raise Constitutional Challenge to Campaign Finance Laws. — Nonprofit corporation and affiliated political committees had standing to assert pre-enforcement challenges to campaign finance laws because the nonprofit corporation and political committees were chilled from engaging in potentially protected First Amendment political expression given that G.S. 163-278.27 subjected the nonprofit corporation and the political committees to the threat of prosecution for intentionally violating the challenged campaign finance statutes. N.C. Right to Life, Inc. v. Leake, 525 F.3d 274, 2008 U.S. App. LEXIS 9426 (4th Cir. 2008).

As G.S. 163-278.13C(a) facially restricted the expressive activity of a class to which the lobbyist belonged, and violators of the campaign contribution prohibition were subject to prosecution, all the requisite elements to establish a "credible threat of prosecution" were present, and as the campaign contribution prohibition tended to chill the exercise of First Amendment rights, the lobbyist had established standing to challenge the campaign contribution prohibition. Preston v. Leake, 629 F. Supp. 2d 517, 2009 U.S. Dist. LEXIS 54523 (E.D.N.C. 2009).

Cited in North Carolina Right to Life, Inc. v. Bartlett, 3 F. Supp. 2d 675, 1998 U.S. Dist. LEXIS 6266 (E.D.N.C. 1998); North Carolina Right To Life, Inc. v. Leake, 108 F. Supp. 2d 498, 2000 U.S. Dist. LEXIS 12164 (E.D.N.C. 2000); N.C. Right to Life, Inc. v. Leake, 344 F.3d 418, 2003 U.S. App. LEXIS 19656 (4th Cir. 2003).

§ 163-278.28. Issuance of injunctions; special prosecutors named.

(a) The superior courts of this State shall have jurisdiction to issue injunctions or grant any other equitable relief appropriate to enforce the provisions of this Article upon application by any registered voter of the State.

(b) If the Board makes a report to a district attorney under G.S. 163-278.27 and no prosecution is initiated within 45 days after the report is made, any registered voter of the prosecutorial district to whose district attorney a report has been made, or any board of elections in that district, may, by verified affidavit, petition the superior court for that district for the appointment of a special prosecutor to prosecute the individuals or persons who have or who are believed to have violated any section of this Article. Upon receipt of a petition for the appointment of a special prosecutor, the superior court shall issue an order to show cause, directed at the individuals or persons alleged in the petition to be in violation of this Article, why a special prosecutor should not be appointed. If there is no answer to the order, the court shall appoint a special prosecutor. If there is an answer, the court shall hold a hearing on the order, at which both the petitioning and answering parties may be heard, to determine whether a prima facie case of a violation and failure to prosecute exists. If there is such a prima facie case, the court shall so find and shall thereupon appoint a special prosecutor to prosecute the alleged violators. The special prosecutor shall take the oath required of assistant district attorneys by G.S. 7A-63, shall serve as an assistant district attorney pro tem of the appropriate district, and shall prosecute the alleged violators. (1973, c. 1272, s. 1; 1979, c. 500, s. 11.)

CASE NOTES

Review of Board of Elections decision. — The Board of Elections is a quasi-judicial agency and, absent an abuse of discretion, cannot be compelled to a different decision once it has exercised its statutory duty to review a claim. Batdorff v. N.C. State Bd. of Elections, 150 N.C. App. 108, 563 S.E.2d 43, 2002 N.C. App. LEXIS 408 (2002), cert. granted, 356 N.C. 159, 568 S.E.2d 186 (2002).

Standing. — In a suit to enforce state election laws, an individual taxpayer had standing to seek equitable relief pursuant to G.S. 163-278.28. Fuller v. Easley, 145 N.C. App. 391, 553 S.E.2d 43, 2001 N.C. App. LEXIS 642 (2001).

§ 163-278.29. Compelling self-incriminating testimony; individual so testifying excused from prosecution.

No individual shall be excused from attending or testifying or producing any books, papers, or other documents before any court upon any proceeding or trial of another for the violation of any of the provisions of this Article, upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him, but such individual may be subpoenaed and required to testify by and for the State relative to any offense arising under the provisions of this Article; but such individual shall not be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may be compelled to testify or produce evidence, documentary or otherwise, and no compelled testimony so given or produced shall be used against him upon any criminal proceeding, but such individual so compelled to testify with respect to any acts of his own shall be immune from prosecution on account thereof. (1973, c. 1272, s. 1.)

§ 163-278.30. Candidates for federal offices to file information reports.

Candidates for nomination in a party primary or for election in a general or special election to the offices of United States Senator, member of the United States House of Representatives, President or Vice-President of the United States shall file with the Board all reports they or political committee treasurers or other agents acting for them are required to file under the Federal Election Campaign Act of 1971, P.L. 92-225, as amended (T. 2, U.S.C. section 439). Those reports shall be filed with the Board at the times required by that act. The Board shall, with respect to those reports, have the following duties only:

(1) To receive and maintain in an orderly manner all reports and statements required to be filed with it;

(2) To preserve reports and statements filed under the Federal Election Campaign Act. Such reports and statements, after a period of two years following the election year, may be transferred to the Department of Cultural Resources, Division of Archives and History, and shall be preserved for a period of 10 years or for such period as may be required by federal law.

(3) To make the reports and statements filed with it available for public inspection and copying during regular office hours, commencing as soon as practicable but not later than the end of the day during which they were received, and to permit copying of any such report or statement by hand or by duplicating machine, requested by any individual, at the expense of such individual; and

(4) To compile and maintain a current list of all statements or parts of statements pertaining to each candidate.

Any duty of a candidate to file and the State Board to receive and make available under this section may be met by an agreement between the State Board and the Federal Election Commission, the effect of which is for the Federal Election Commission to provide promptly to the State Board the information required by this section. (1973, c. 1272, s. 1; 1979, c. 500, s. 14; 2002-159, s. 55(*l*).)

§ 163-278.31: Repealed by Session Laws 1985, c. 183, s. 4.

§ 163-278.32. Statements under oath.

Any statement required to be filed under this Article shall be signed and certified as true and correct by the individual, media, candidate, treasurer or others required to file it, and shall be certified as true and correct to the best of the knowledge of the individual, media, candidate, treasurer or others filing the statement; provided further that the candidate shall certify as true and correct to the best of his knowledge the organizational report and appointment of treasurer filed for the candidate or the candidate's principal campaign committee. A certification under this Article shall be treated as under oath, and any person making a certification under this Article knowing the information to be untrue is guilty of a Class I felony. (1973, c. 1272, s. 1; 1999-426, s. 10(a); 2001-235, s. 1; 2007-391, s. 1(a).)

Editor's Note. — Session Laws 2007-391, s. 1(c), as amended by Session Laws 2008-187, s. 33(a), provides: "This section becomes effective December 1, 2007, and applies to offenses committed on or after that date."

§ 163-278.33. Applicability of Article 22.

Sections 163-271 through 163-278 shall be applicable to the offices covered by this Article and G.S. 163-271 through 163-278 shall be applicable to all elective offices not covered by this Article. (1973, c. 1272, s. 3; 1975, c. 50; c. 565, s. 10; 2002-159, s. 21(f).)

Cross References. — As to offices covered by this Article, see G.S. 163-278.6, subdivision (18).

§ 163-278.34. Civil penalties.

(a) Civil Penalties for Late Filing. — Except as provided in G.S. 163-278.9 and G.S. 163-278.9A, all reports, statements or other documents required by this Article to be filed with the Board shall be filed either by manual delivery to or by mail addressed to the Board. Timely filing shall be complete if postmarked on the day the reports, statements or other documents are to be delivered to the Board. If a report, statement or other document is not filed within the time required by this Article, then the individual, person, media, candidate, political committee, referendum committee or treasurer responsible for filing shall pay to the State Board of Elections election enforcement costs and a civil late penalty as follows:

(1) Two hundred fifty dollars ($250.00) per day for each day the filing is late for a report that affects statewide elections, not to exceed a total of ten thousand dollars ($10,000); and

(2) Fifty dollars ($50.00) per day for each day the filing is late for a report that affects only nonstatewide elections, not to exceed a total of five hundred dollars ($500.00).

If the form is filed by mail, no civil late penalty shall be assessed for any day after the date of postmark. No civil late penalty shall be assessed for any day when the Board office at which the report is due is closed. The State Board shall immediately notify, or cause to be notified, late filers, from which reports are apparently due, by mail, of the penalties under this section. The State Board of Elections may waive a late penalty if it determines there is good cause for the waiver.

If the Board determines by clear and convincing evidence that the late filing constitutes a willful attempt to conceal contributions or expenditures, the Board may assess a civil penalty in an amount to be determined by that Board, plus the costs of investigation, assessment, and collection. The civil penalty shall not exceed three times the amount of the contributions and expenditures willfully attempted to be concealed.

(b) Civil Penalties for Illegal Contributions and Expenditures. — If an individual, person, political committee, referendum committee, candidate, or other entity intentionally makes or accepts a contribution or makes an unlawful expenditure in violation of this Article, then that entity shall pay to the State Board of Elections, in an amount to be determined by that Board, a civil penalty and the costs of investigation, assessment, and collection. The civil penalty shall not exceed three times the amount of the unlawful contribution or expenditure involved in the violation. The State Board of Elections may, in addition to the civil penalty, order that the amount unlawfully received be paid to the State Board by check, and any money so received by the State Board shall be deposited in the Civil Penalty and Forfeiture Fund of North Carolina.

(c) Civil Remedies Other Than Penalties. — The State Board of Elections, in lieu of or in addition to imposing a civil penalty under subsection (a) or (b) of this section, may take one or more of the following actions with respect to a violation for which a civil penalty could be imposed:

(1) Issue an order requiring the violator to cease and desist from the violation found.

(2) Issue an order to cease receiving contributions and making expenditures until a delinquent report has been filed and any civil penalty satisfied.

(3) Issue an order requiring the violator to take any remedial action deemed appropriate by the Board.

(4) Issue an order requiring the violator to file any report, statement, or other information as required by this Article or the rules adopted by the Board.

(5) Publicly reprimand the violator for the violation.

(d) Facts in Mitigation. — An individual or other entity notified that a penalty has been assessed against it may submit an affidavit to the State Board of Elections stating the facts in mitigation. The State Board of Elections may waive a civil penalty in whole or in part if it determines there is good cause for the waiver.

(e) Calculation and Assessment. — The State Board shall calculate and assess the amount of the civil penalty due under subsection (a) or (b) of this section and shall notify the person who is assessed the civil penalty of the amount. The notice of assessment shall be served by any means authorized under G.S. 1A-1, Rule 4, and shall direct the violator either to pay the assessment or to contest the assessment within 30 days by filing a petition for a contested case under Article 3 of Chapter 150B of the General Statutes. If a violator does not pay a civil penalty assessed by the Board within 30 days after it is due, the Board shall request the Attorney General to institute a civil action to recover the amount of the assessment. The civil action may be brought in the superior court of any county where the report was due to be filed or any county where the violator resides or maintains an office. A civil action must be filed within three years of the date the assessment was due. An assessment that is not contested is due when the violator is served with a notice of assessment. An assessment that is contested is due at the conclusion of the administrative and judicial review of the assessment. The State Board of Elections shall pay the clear proceeds of civil penalties collected under this section to the Civil Penalty and Forfeiture Fund pursuant to G.S. 115C-457.2. The State Board of Elections shall reduce the monies collected by the enforcement costs and the collection costs to determine the clear proceeds payable to the Civil Penalty and Forfeiture Fund. Monies set aside for the costs of enforcement and the costs of collection shall be credited to accounts of the State Board of Elections.

(f) Notifying and Consulting With District Attorney. — Before assessing a civil penalty under subsection (b) of this section or imposing a civil remedy under subsection (c) of this section, the State Board of Elections shall notify and consult with the district attorney who would be responsible under G.S. 163-278.27 for bringing a criminal prosecution concerning the violation. (1973, c. 1272, s. 1; 1975, c. 565, s. 5; 1979, c. 1073, s. 19; 1997-515, s. 7(a); 2001-353, s. 10; 2001-419, s. 1; 2007-391, ss. 2(a), 37; 2008-187, s. 33(a).)

Editor's Note. — Session Laws 2007-391, s. 1(c), was amended by Session Laws 2008-198, s. 33(a), to eliminate any confusion as to effective dates of the 2007 act. Session Laws 2007-391, s. 37, which added the last paragraph in subsection (2), is effective August 19, 2007.

CASE NOTES

Standing to Raise Constitutional Challenge to Campaign Finance Laws. — As G.S. 163-278.13C(a) facially restricted the expressive activity of a class to which the lobbyist belonged, and violators of the campaign contribution prohibition were subject to prosecution, all the requisite elements to establish a "credible threat of prosecution" were present, and as the campaign contribution prohibition tended to chill the exercise of First Amendment rights, the lobbyist had established standing to challenge the campaign contribution prohibition. Preston v. Leake, 629 F. Supp. 2d 517, 2009 U.S. Dist. LEXIS 54523 (E.D.N.C. 2009).

Cited in North Carolina Right to Life, Inc. v. Bartlett, 3 F. Supp. 2d 675, 1998 U.S. Dist. LEXIS 6266 (E.D.N.C. 1998); N.C. Right to Life, Inc. v. Leake, 344 F.3d 418, 2003 U.S. App. LEXIS 19656 (4th Cir. 2003).

§ 163-278.34A. Presumptions.

In any proceeding brought pursuant to this Article in which a presumption arises from the proof of certain facts, the defendant may offer some evidence to rebut the presumption, but the State bears the ultimate burden of proving the essential elements of its case. (1999-31, s. 1(c); 1999-453, s. 3.1(a).)

CASE NOTES

Cited in N.C. Right to Life, Inc. v. Leake, 344 F.3d 418, 2003 U.S. App. LEXIS 19656 (4th Cir. 2003).

§ 163-278.35. Preservation of records.

All reports, records and accounts required by this Article to be made, kept, filed, or maintained by any individual, media, candidate or treasurer shall be preserved and retained by the individual, media, candidate or treasurer for at least two years counting from the date of the election to which such reports, records and accounts refer. (1973, c. 1272, s. 1.)

§ 163-278.36: Repealed by Session Laws 2007-349, s. 4, effective January 1, 2008.

§ 163-278.37. County boards of elections to preserve reports.

The county boards of elections shall preserve all reports and statements filed with them pursuant to this Article for such period of time as directed by the State Board of Elections. (1979, c. 500, s. 15.)

§ 163-278.38. Effect of failure to comply.

The failure to comply with the provisions of this Article shall not invalidate the results of any referendum. (1979, c. 1073, s. 11.)

§§ 163-278.38A through 163-278.38Y: Reserved for future codification purposes.

Part 1A. Disclosure Requirements for Media Advertisements.

§ 163-278.38Z. Definitions.

As used in this Part:

(1) "Advertisement" means any message appearing in the print media, on television, or on radio that constitutes a contribution or expenditure under this Article.

(2) "Candidate" means any individual who, with respect to a public office listed in G.S. 163-278.6(18), has filed a notice of candidacy or a petition requesting to be a candidate, or has been certified as a nominee of a political party for a vacancy, or has otherwise qualified as a candidate in a manner authorized by law, or has filed a statement of organization under G.S. 163-278.7 and is required to file periodic financial disclosure statements under G.S. 163-278.9.

(3) "Candidate campaign committee" means any political committee organized by or under the direction of a candidate.

(4) "Full-screen" means the only picture appearing on the television screen during the oral disclosure statement contains the disclosing person, that the picture occupies all visible space on the television screen, and that the image of the disclosing person occupies at least fifty percent (50%) of the vertical height of the television screen.

(5) "Political action committee" has the same meaning as "political committee" in G.S. 163-278.6(14), except that "political action committee" does not include any political party or political party organization.

(6) "Political party organization" means any political party executive committee or any political committee that operates under the direction of a political party executive committee or political party chair.

(7) "Print media" means billboards, cards, newspapers, newspaper inserts, magazines, mass mailings, pamphlets, fliers, periodicals, and outdoor advertising facilities. A "mass mailing" is a mailing with more than 500 pieces.

(8) "Radio" means any radio broadcast station that is subject to the provisions of 47 U.S.C. §§ 315 and 317.

(9) "Scan line" means a standard term of measurement used in the electronic media industry calculating a certain area in a television advertisement.

(10) "Sponsor" means a candidate, candidate committee, political party organization, political action committee, referendum committee, individual, or other entity that purchases an advertisement.

(11) "Television" means any television broadcast station, cable television system, wireless-cable multipoint distribution system, satellite company, or telephone company transmitting video programming that is subject to the provisions of 47 U.S.C. §§ 315 and 317.

(12) "Unobscured" means the only printed material that may appear on the television screen is a visual disclosure statement required by law, and nothing is blocking the view of the disclosing person's face. (1999-453, s. 2(a); 2004-203, s. 12(a).)

Editor's Note. — This section was originally enacted by Session Laws 1999-453, s. 2(a), as G.S. 163-278.39B and was recodified as this section by Session Laws 2004-203, s. 12(a).

Subdivisions (5) to (7) were redesignated in alphabetical order at the direction of the Revisor of Statutes.

§ 163-278.39. Basic disclosure requirements for all political campaign advertisements.

(a) Basic Requirements. — It shall be unlawful for any sponsor to sponsor an advertisement in the print media or on radio or television that constitutes an expenditure or contribution required to be disclosed under this Article unless all the following conditions are met:

(1) It bears the legend or includes the statement: "Paid for by __________ [Name of candidate, candidate campaign committee, political party organization, political action committee, referendum

committee, individual, or other sponsor].” In television advertisements, this disclosure shall be made by visual legend.

(2) The name used in the labeling required in subdivision (1) of this subsection is the name that appears on the statement of organization as required in G.S. 163-278.7(b)(1).

(3) Repealed by Session Laws 2001-353, s. 5, effective August 10, 2001.

(4) The sponsor states in the advertisement its position for or against a ballot measure, provided that this subdivision applies only if the advertisement is made for or against a ballot measure.

(5) In a print media advertisement supporting or opposing the nomination or election of one or more clearly identified candidates, the sponsor states whether it is authorized by a candidate. The visual legend in the advertisement shall state either “Authorized by [name of candidate], candidate for [name of office]” or “Not authorized by a candidate.” This subdivision does not apply if the sponsor of the advertisement is the candidate the advertisement supports or that candidate’s campaign committee.

(6) In a print media advertisement that identifies a candidate the sponsor is opposing, the sponsor discloses in the advertisement the name of the candidate who is intended to benefit from the advertisement. This subdivision applies only when the sponsor coordinates or consults about the advertisement or the expenditure for it with the candidate who is intended to benefit.

If an advertisement described in this section is jointly sponsored, the disclosure statement shall name all the sponsors.

(b) Size Requirements. — In a print media advertisement covered by subsection (a) of this section, the height of all disclosure statements required by that subsection shall constitute at least five percent (5%) of the height of the printed space of the advertisement, provided that the type shall in no event be less than 12 points in size. In an advertisement in a newspaper or a newspaper insert, the total height of the disclosure statement need not constitute five percent of the printed space of the advertisement if the type of the disclosure statement is at least 28 points in size. If a single advertisement consists of multiple pages, folds, or faces, the disclosure requirement of this section applies only to one page, fold, or face. In a television advertisement covered by subsection (a) of this section, the visual disclosure legend shall constitute 32 scan lines in size. In a radio advertisement covered by subsection (a) of this section, the disclosure statement shall last at least two seconds, provided the statement is spoken so that its contents may be easily understood.

(c) Misrepresentation of Authorization. — Notwithstanding G.S. 163-278.27(a), any candidate, candidate campaign committee, political party organization, political action committee, referendum committee, individual, or other sponsor making an advertisement in the print media or on radio or television bearing any legend required by subsection (a) of this section that misrepresents the sponsorship or authorization of the advertisement is guilty of a Class 1 misdemeanor. (1999-453, s. 2(a); 2001-317, s. 1; 2001-353, s. 5.)

Editor’s Note. — Session Laws 1999-453, s. 1, provides that the act shall be known as “The Campaign Reform Act of 1999.”

Session Laws 1999-453, s. 10, provides that prosecutions for, or sentences based on, offenses occurring before the relevant effective date in this act [January 1, 2000] are not abated or affected by this act, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences.

Session Laws 1999-453, s. 11, contains a severability clause.

CASE NOTES

"For-or-Against Requirement" Possibly Unconstitutional. — The plaintiff, a tax-exempt nonprofit membership corporation which claimed that requiring any advertisement to state whether the sponsor was for or against the candidate constituted coerced speech, was entitled to injunctive relief; this section's "for-or-against requirement" compelling political speech that an advertisement sponsor might otherwise wish to avoid placed a content-based restraint on core political speech while adding little to the public's knowledge, where the "sponsors" already had to identify themselves, and the requirement's nexus with the State's informational interest was so weak that it was unlikely to withstand exacting scrutiny. North Carolina Right To Life, Inc. v. Leake, 108 F. Supp. 2d 498, 2000 U.S. Dist. LEXIS 12164 (E.D.N.C. 2000), decided prior to the repeal of subdivision (a)(3) in 2001.

§ 163-278.39A. Disclosure requirements for television and radio advertisements supporting or opposing the nomination or election of one or more clearly identified candidates.

(a) Expanded Disclosure Requirements. — Any political campaign advertisement on radio or television shall comply with the expanded disclosure requirements set forth in this section. To the extent that it provides the same information required by G.S. 163-278.39, a statement made pursuant to this section satisfies the requirements of G.S. 163-278.39 for the same advertisement.

(b) Disclosure Requirements for Television. —

(1) Candidate advertisements on television. — Television advertisements purchased by a candidate or by a candidate campaign committee supporting or opposing the nomination or election of one or more clearly identified candidates shall include a disclosure statement spoken by the candidate and containing at least the following words: "I am (or "This is________") [name of candidate], candidate for [name of office], and I (or "my campaign________") sponsored this ad." This subdivision applies only to an advertisement that mentions the name of, shows the picture of, transmits the voice of, or otherwise refers to an opposing candidate for the same office as the sponsoring candidate.

(2) Political party advertisements on television. — Television advertisements purchased by a political party organization supporting or opposing the nomination or election of one or more clearly identified candidates shall include a disclosure statement spoken by the chair, executive director, or treasurer of the political party organization and containing at least the following words: "The [name of political party organization] sponsored this ad opposing/supporting [name of candidate] for [name of office]." The disclosed name of the political party organization shall include the name of the political party as it appears on the ballot.

(3) Political action committee advertisements on television. — Television advertisements purchased by a political action committee supporting or opposing the nomination or election of one or more clearly identified candidates shall include a disclosure statement spoken by the chief executive officer or treasurer of the political action committee and containing at least the following words: "The [name of political action committee] political action committee sponsored this ad opposing/supporting [name of candidate] for [name of office]." The name of the political action committee used in the advertisement shall be the name that appears on the statement of organization as required in G.S. 163-278.7(b)(1).

(4) Advertisements on television by an individual. — Television advertisements purchased by an individual supporting or opposing the nomination or election of one or more clearly identified candidates shall include a disclosure statement spoken by the individual and containing at least the following words: "I am [individual's name], and I sponsored this advertisement opposing/supporting [name of candidate] for [name of office]."

(5) Advertisements on television by another sponsor. — Television advertisements purchased by a sponsor other than a candidate, a candidate campaign committee, a political party organization, a political action committee, or an individual which supports or opposes the nomination or election of one or more clearly identified candidates shall include a disclosure statement spoken by the chief executive or principal decision maker of the sponsor and containing at least the following words: "[Name of sponsor] sponsored this ad."

(6) All advertisements on television. — In any television advertisement described in subdivisions (1) through (4) of this subsection, an unobscured, full-screen picture containing the disclosing individual, either in photographic form or through the actual appearance of the disclosing individual on camera, shall be featured throughout the duration of the disclosure statement.

(c) Disclosure Requirements for Radio. —

(1) Candidate advertisements on radio. — Radio advertisements purchased by a candidate or by a candidate campaign committee supporting or opposing the nomination or election of one or more clearly identified candidates shall include a disclosure statement spoken by the candidate and containing at least the following words: "I am (or "This is________") [name of candidate], candidate for [name of office], and this ad was paid for (or "sponsored" or "furnished") by [name of candidate campaign committee that paid for the advertisement]." This subdivision applies only to an advertisement that mentions the name of, transmits the voice of, or otherwise refers to an opposing candidate for the same office as the sponsoring candidate.

(2) Political party advertisements on radio. — Radio advertisements purchased by a political party organization supporting or opposing the nomination or election of one or more clearly identified candidates shall include a disclosure statement spoken by the chair, executive director, or treasurer of the political party organization and containing at least the following words: "This ad opposing/supporting [name of candidate] for [name of office] was paid for (or "sponsored" or "furnished") by [name of political party]." The disclosed name of the political party organization shall include the name of the political party as it appears on the ballot.

(3) Political action committee advertisements on radio. — Radio advertisements purchased by a political action committee supporting or opposing the nomination or election of one or more clearly identified candidates shall include a disclosure statement spoken by the chief executive officer or treasurer of the political action committee and containing at least the following words: "This ad opposing/supporting [name of candidate] for [name of office] was paid for (or "sponsored" or "furnished") by [name of political action committee] political action committee." The name of the political action committee used in the advertisement shall be the name that appears on the statement of organization as required by G.S. 163-278.7(b)(1).

(4) Advertisements on radio by an individual. — Radio advertisements purchased by an individual supporting or opposing the nomination or

election of one or more clearly identified candidates shall include a disclosure statement spoken by the individual and containing at least the following words: "I am [individual's name], and this ad opposing/supporting [name of candidate] for [name of office] was paid for (or "sponsored" or "furnished") by me."

(5) Advertisements on radio by another sponsor. — Radio advertisements purchased by a sponsor other than a candidate, a candidate campaign committee, a political party organization, a political action committee, or an individual which supports or opposes the nomination or election of one or more clearly identified candidates shall include a disclosure statement spoken by the chief executive or principal decision maker of the sponsor and containing at least the following words: "[Name of sponsor] paid for (or "sponsored" or "furnished") this ad."

(d) Placement of Disclosure Statement in Television and Radio Advertisements. — In advertisements on television, a sponsor may place the disclosure statement required by this section at any point during the advertisement, except if the duration of the advertisement is more than five minutes, the disclosure statement shall be made both at the beginning and end of the advertisement. The sponsor may provide the oral disclosure statement required by this section at the same time as the visual disclosure required under the Communications Act of 1934, 47 U.S.C. §§ 315 and 317, is shown. But any visual disclosure legend shall be at least 32 scan lines in size. For advertisements on radio, the placement of the oral disclosure statement shall comply with the requirements of the Communications Act of 1934, 47 U.S.C. §§ 315 and 317.

(e) Choice of Supporting or Opposing a Candidate. — In its oral disclosure statement, a sponsoring political party organization, political action committee, individual, or other noncandidate sponsor shall choose either to identify an advertisement as supporting or opposing the nomination or election of one or more clearly identified candidates.

(e1) Joint Sponsors. — If an advertisement described in this section is jointly sponsored, the disclosure statement shall name all the sponsors and the disclosing individual shall be one of those sponsors. If a candidate is one of the sponsors, that candidate shall be the disclosing individual, and if more than one candidate is the sponsor, at least one of the candidates shall be the disclosing individual.

(f) Legal Remedy. — Pursuant to the conditions established in subdivisions (1), (2), and (3) of this subsection, a candidate for an elective office who complied with the television and radio disclosure requirements throughout that candidate's entire campaign shall have a monetary remedy in a civil action against (i) an opposing candidate or candidate committee whose television or radio advertisement violates these disclosure requirements and (ii) against any political party organization, political action committee, individual, or other sponsor whose advertisement for that elective office violates these disclosure requirements:

(1) Any plaintiff candidate in a statewide race in an action under this section shall complete and file a Notice of Complaint Regarding Failure to Disclose on Television or Radio Campaign Advertising with the State Board of Elections after the airing of the advertisement but no later than the first Friday after the Tuesday on which the election occurred. Candidates in nonstatewide races may file the notice during the same time period with one county board of elections within the electoral area in which they are candidates. The timely filing of this notice preserves the candidate's right to bring an action in superior court any time within 90 days after the election. A candidate shall bring the civil action in the county where the candidate filed the notice.

(2) Upon receiving a favorable verdict in accordance with existing law, the plaintiff candidate shall receive a monetary award of actual damages. The price of actual damages shall be calculated as the total dollar amount of television and radio advertising time that was aired and that the plaintiff candidate correctly identifies as being in violation of the disclosure requirements of this section.

The plaintiff candidate shall also receive an award that trebles the amount of actual damages if:

a. The plaintiff candidate can establish having notified or attempted to notify the sponsor of the advertisement properly by return-receipt mail about the failure of a particular advertisement or advertisements to comply with the disclosure requirements of this section, and

b. After the notice or attempted notice, the advertisement continued to be aired.

The treble damages shall be calculated from the date on which the return-receipt notice was accepted or rejected by a defendant sponsoring candidate or candidate committee, political party organization, political action committee, or individual. The plaintiff candidate or candidate committee shall send a copy of any return-receipt mailing to the relevant board of elections as provided in subdivision (1) of this subsection within five days after the notice is returned to the possession of the candidate or candidate committee.

The plaintiff candidate may bring the civil action personally or authorize his or her candidate campaign committee to bring the civil action.

(3) A candidate who violates the disclosure requirements of State law in this section and that candidate's campaign committee shall be jointly and severally liable for the payment of damages and attorneys' fees. If the candidate is held personally liable for any payment of damages or attorneys' fees, the candidate shall not use or be reimbursed by funds from the candidate's campaign committee in paying any amount.

(g) Relation to the Communications Act of 1934. — Television advertisements by a sponsor supporting or opposing the nomination or election of one or more clearly identified candidates shall comply with the oral disclosure requirements under State law in this section. Those advertisements shall also comply with disclosure requirements under the Communications Act of 1934, 47 U.S.C. §§ 315 and 317 by use of visual legends. The content of those visual legends is specified by the Communications Act of 1934, 47 U.S.C. §§ 315 and 317, and G.S. 163-278.39(a)(1). The size of those visual legends is determined by G.S. 163-278.39(b), which satisfies requirements under the Communications Act of 1934, 47 U.S.C. §§ 315 and 317. In the case of radio advertisements, the oral disclosure requirements under State law in this section incorporate the content requirements under the Communications Act of 1934, 47 U.S.C. §§ 315 and 317.

(h) No Additional Liability of Television or Radio Outlets. — Television or radio outlets shall not be liable under this Part for carriage of political advertisements that fail to include the disclosure requirements provided for in this Part.

(i) No Criminal Liability. — Nothing in this section regarding the disclosure requirements in subsections (b) and (c) of this section shall be relied upon or otherwise interpreted to create criminal liability. (1999-453, s. 2(a); 2000-140, ss. 83, 84; 2001-317, s. 2.)

§ 163-278.39B: Recodified as G.S. 163-278.38Z by Session Laws 2004-203, s. 12(a), effective August 17, 2004.

Editor's Note. — This section was enacted as G.S. 163-278.39B and was recodified as G.S. 163-278.38Z by Session Laws 2004-203, s. 12(a).

§ 163-278.39C. Scope of disclosure requirements.

The disclosure requirements of this Part apply to any sponsor of an advertisement in the print media or on radio or television the cost or value of which constitutes an expenditure or contribution required to be disclosed under this Article, except that the disclosure requirements of this Part:

(1) Do not apply to an individual who makes uncoordinated independent expenditures aggregating less than one thousand dollars ($1,000) in a political campaign; and

(2) Do not apply to an individual who incurs expenses with respect to a referendum.

The disclosure requirements of this Part do not apply to any advertisement the expenditure for which is required to be disclosed by G.S. 163-278.12A alone and by no other law. (1999-453, s. 2(a).)

Part 2. Municipal Campaign Reporting.

§ 163-278.40. Definitions.

When used in this Part, words and phrases have the same meaning as in G.S. 163-278.6, except that:

(1) The term "board" means the county board of elections;

(2) The term "city" means any incorporated city, town, or village. (1981, c. 837, s. 3; 1997-515, s. 4(d).)

Local Modification. — Town of Chapel Hill: 1987 (Reg. Sess., 1988), c. 1023, s. 2.

§ 163-278.40A. Organizational report.

(a) Each candidate and political committee in a city election shall appoint a treasurer and, under verification, report the name and address of the treasurer to the board. A candidate may appoint himself or any other individual, including any relative except his spouse, as his treasurer. If the candidate fails to designate a treasurer, the candidate shall be deemed to have appointed himself as treasurer. A candidate or political committee may remove his or its treasurer.

(b) The organizational report shall state the bank account and number of such campaign fund. Each report required by this Part shall reflect all contributions, expenditures and loans made in behalf of a candidate. The organizational report shall be filed with the county board of elections within 10 days after the candidate files a notice of candidacy with the county board of elections, or within 10 days following the organization of the political committee, whichever occurs first. (1981, c. 837, s. 3.)

Cross References. — For definition of "treasurer," see G.S. 163-278.6.

§ 163-278.40B. Campaign report; partisan election.

In any city election conducted on a partisan basis in accordance with G.S. 163-279(a)(2) and 163-291, the following reports shall be filed in addition to the organizational report:

(1) Thirty-five-day Report. — The treasurer shall file a report with the board 35 days before the primary.
(1a) Pre-primary Report. — The treasurer shall file a report with the board no later than the tenth day preceding each primary election.
(2) Pre-election Report. — The treasurer shall file a report 10 days before the election, unless a second primary is held and the candidate appeared on the ballot in the second primary, in which case the report shall be filed 10 days before the second primary.
(3) Repealed by Session Laws 1985, c. 164, s. 2.
(4) Semiannual Reports. — If contributions are received or expenditures made during any part of a calendar year, for which no reports are otherwise required by this section, any and all those contributions and expenditures shall be reported on semiannual reports due on the last Friday in July, covering the period through June 30, and due on the last Friday in January, covering the period through December 31 of the previous year. (1981, c. 837, s. 3; 1985, c. 164, s. 2; 1987 (Reg. Sess., 1988), c. 1028, s. 7; 2001-419, s. 3.)

§ 163-278.40C. Campaign report; nonpartisan election and runoff.

If any city election conducted under the nonpartisan election and runoff basis in accordance with G.S. 163-279(a) (4) and 163-293, the following reports shall be filed in addition to the organizational report:
(1) Thirty-five-day Report. — The treasurer shall file a report with the board 35 days before the election.
(1a) Pre-election Report. — The treasurer shall file a report with the board 10 days before the election.
(1b) Pre-runoff Report. — The treasurer shall file a report with the board 10 days before the runoff if the candidate is in a runoff.
(2) Repealed by Session Laws 1985, c. 164, s. 3.
(3) Semiannual Reports. — If contributions are received or expenditures made during any part of a calendar year, for which no reports are otherwise required by this section, any and all those contributions and expenditures shall be reported on semiannual reports due on the last Friday in July, covering the period through June 30, and due on the last Friday in January, covering the period through December 31 of the previous year. (1981, c. 837, s. 3; 1985, c. 164, s. 3; 1987 (Reg. Sess., 1988), c. 1028, s. 8; 2001-419, s. 4.)

§ 163-278.40D. Campaign report; nonpartisan primary and elections.

In any city election conducted under the nonpartisan primary method in accordance with G.S. 163-279(a)(3) and 163-294, the following reports shall be filed in addition to the organizational report:
(1) Thirty-five-day Report. — The treasurer shall file a report with the board 35 days before the primary if the candidate is in a primary or the same length of time before the election if the candidate is not in a primary.
(1a) Pre-primary and Pre-election Reports. — The treasurer shall file a report 10 days before the primary if the candidate is in a primary and 10 days before the election.
(2) Repealed by Session laws 1985, c. 164, s. 4.
(3) Semiannual Reports. — If contributions are received or expenditures made during any part of a calendar year, for which no reports are

otherwise required by this section, any and all those contributions and expenditures shall be reported on semiannual reports due on the last Friday in July, covering the period through June 30, and due on the last Friday in January, covering the period through December 31 of the previous year. (1981, c. 837, s. 3; 1985, c. 164, s. 4; 1987 (Reg. Sess., 1988), c. 1028, s. 9; 2001-419, s. 5.)

§ 163-278.40E. Campaign report; nonpartisan plurality.

In any city election conducted under the nonpartisan plurality method under G.S. 163-279(a)(1) and 163-292, the following reports shall be filed in addition to the organizational report:

(1) Thirty-five-day Report. — The treasurer shall file a report with the board 35 days before the election.

(1a) Pre-election Report. — The treasurer shall file a report 10 days before the election.

(2) Repealed by Session Laws 1985, c. 164, s. 5.

(3) Semiannual Reports. — If contributions are received or expenditures made during any part of a calendar year, for which no reports are otherwise required by this section, any and all those contributions and expenditures shall be reported on semiannual reports due on the last Friday in July, covering the period through June 30, and due on the last Friday in January, covering the period through December 31 of the previous year. (1981, c. 837, s. 3; 1985, c. 164, s. 5; 1987 (Reg. Sess., 1988), c. 1028, s. 10; 2001-419, s. 6.)

§ 163-278.40F. Form of report.

Forms of reports under this Part shall be prescribed by the board. (1981, c. 837, s. 3.)

§ 163-278.40G. Content.

Except as otherwise provided in this Part, each report shall be current within seven days prior to the date the report is due and shall list all contributions received and expenditures made which have not been previously reported. (1981, c. 837, s. 3.)

§ 163-278.40H. Notice of reports due.

The director of the board shall advise, or cause to be advised, no less than five days nor more than 15 days before each report is due each candidate or treasurer whose organizational report has been filed under G.S. 163-278.40A of the specific date each report is due. He shall immediately notify any individual, candidate, treasurer, or political committee, to file a statement under this Part if:

(1) It appears that the individual, candidate, treasurer, or political committee has failed to file a statement as required by law or that a statement filed does not conform to this Part; or

(2) A written complaint is filed under oath with the board by any registered voter of this State alleging that a statement filed with the board does not conform to this Part or to the truth or that an individual, candidate, treasurer, or political committee has failed to file a statement required by this Part. (1981, c. 837, s. 3; 1995, c. 243, s. 1.)

§ 163-278.40I. Part 1 to apply.

(a) Except as provided in this Part or in G.S. 163-278.9(d), the provisions of Part 1 shall apply to municipal elections covered by this Part.

(b) G.S. 163-278.7, 163-278.9(a), (b) and (c), 163-278.22(1) and (9), the first paragraph of 163-278.23, 163-278.24, 163-278.25, and 163-278.26 shall not apply to this Part. (1981, c. 837, s. 3.)

Editor's Note. — Subsection (c) of G.S. 163-278.9, referred to in this section, was repealed by Session Laws 1985, c. 164, s. 6.1, effective January 1, 1986.

§ 163-278.40J. Other committees report by municipal schedule.

A candidate or political committee that appoints a treasurer under G.S. 163-278.7 shall make reports according to the schedule under this Part if it makes contributions or expenditures concerning municipal elections. (2008-150, s. 9(a).)

Editor's Note. — Session Laws 2008-150, s. 9(e), made this section effective December 1, 2008.

Article 22B.

Appropriations from the North Carolina Political Parties Financing Fund.

§ 163-278.41. Appropriations in general election years and other years.

(a) Following the conclusion of the last primary or nominating convention held by a political party in a general election year in which a presidential election is held, the State chair of that political party may apply to the State Board of Elections (State Board) for the disbursement of all funds deposited with the State Treasurer on behalf of that party in the North Carolina Political Parties Financing Fund (Political Parties Fund) to be administered by the State Board of Elections and in which shall be placed money contributed by taxpayers, as provided in G.S. 105-159.1. If the regular date set for a primary in G.S. 163-1 or nominating convention in G.S. 163-98 is temporarily postponed for one election year, the State party chair may apply for the disbursement after the regular date set in those sections for that party's primary or convention, even though the primary has not occurred under the temporary schedule. Upon receipt of that application, the State Board shall forthwith, and every 30 days thereafter, pay over to said chairman all funds currently held by the State Treasurer on behalf of that chair's political party, but provided that all such payments shall cease 30 days after the State Board of Elections has certified all of the results of the general election to the Secretary of State. Upon receipt of that application, the State Board shall pay over to the chair all funds currently held by the State Treasurer in the "Presidential Election Year Candidates Fund" of that party, which funds shall be allocated and disbursed during the presidential election year by the same procedure as the funds received from the Political Parties Fund are allocated. Any remaining funds of the political party in the hands of the State Treasurer shall thereafter be held by the State Treasurer until eligible for distribution pursuant to this section.

(b) Following the conclusion of the last primary or nominating convention held by a political party in a general election year in which there is not a presidential election, the State chair of the political party may apply to the State Board for the disbursement of all funds deposited on behalf of such party in the Political Parties Fund. If the regular date set for a primary in G.S. 163-1 or nominating convention in G.S. 163-98 is temporarily postponed for one election year, the State party chair may apply for the disbursement after the regular date set in those sections for that party's primary or convention, even though the primary has not occurred under the temporary schedule. Upon receipt of such application, the State Board shall forthwith, and every 30 days thereafter, pay over to said chairman all funds currently held by the State Treasurer on behalf of that chair's political party provided that all such payments to the chairman shall cease 30 days after the State Board of Elections has certified all of the results of the general election. Any remaining funds of the political party in the hands of the State Treasurer shall thereafter be held by the State Treasurer until eligible for distribution pursuant to this section.

(c) In each year in which no general election is held, each State chair of a political party on behalf of which funds have been deposited in the Political Parties Fund may, on or between August 1 and September 1 thereof, apply to the State Board for payment of an amount not to exceed fifty percent (50%) of the then available funds credited to the account of that party. Upon receipt of such application, the State Board shall pay over to that State chair an amount not to exceed fifty percent (50%) of the then available funds credited to the account of that party. Additionally and upon receipt of that application, the State Board shall direct the State Treasurer to place fifty percent (50%) of those available funds in a separate interest bearing account to be known as the "Presidential Election Year Candidates Fund of the (name of the party) Party" to be disbursed in accord with the provisions of subsection (a) above. Any remaining funds of the political party in the hands of the State Treasurer shall thereafter be held by the State Treasurer until eligible for distribution by the State Board pursuant to this section. Any interest earned on the funds deposited in such Presidential Election Year Campaign Fund shall be credited thereto. (1977, 2nd Sess., c. 1298, s. 2; 1983, c. 700, s. 5; 1987 (Reg. Sess., 1988), c. 1063, s. 3; 1991, c. 347, s. 1; c. 397, s. 1; 2003-434, 1st Ex. Sess., s. 14.)

Editor's Note. — The original Article 22B, comprising G.S. 163-278.41 through 163-278.43 and covering the same subject matter as the present Article, was enacted by Session Laws 1975, c. 775, s. 2, effective for taxable years beginning on or after January 1, 1975, and expired by its own terms on December 31, 1977. See Session Laws 1975, c. 775, s. 3. The present Article 22B, comprising G.S. 163-278.41 through 163-278.45, was enacted by Session Laws 1977, 2nd Sess., c. 1298, s. 2, effective with respect to taxable years beginning on or after January 1, 1978. Session Laws 1981, c. 963, s. 1, amended Session Laws 1977, 2nd Sess., c. 1298, s. 3, so as to delete a provision that the 1977 act should expire on Dec. 31, 1981.

Session Laws 2003-434, 1st Ex. Sess., s. 14, effective November 25, 2003, and applicable to any case pending on or filed after that date, to any case regardless of when the case was filed, and to any action of a court affecting the validity of an act apportioning or redistricting State legislative or congressional districts, inserted the second sentence in subsection (a) and subsection (b), and made minor stylistic changes throughout the section.

Session Laws 2003-434, 1st Ex. Sess., s. 15 is a severability clause.

OPINIONS OF ATTORNEY GENERAL

Regarding the designation of funds for political parties by 1998 taxpayers, where a third party was erroneously included on the income tax forms, see opinion of Attorney General to Gary O. Bartlett, Executive Secretary-Director (now the Executive Director), State Board of Elections, N.C. General Assembly, 1999 N.C.A.G. 16 (6/14/99).

§ 163-278.42. Distribution of campaign funds; legitimate expenses permitted.

(a) In a general election year in which a presidential election is held, every State chairman of a political party shall disburse fifty percent (50%) of all funds received from the North Carolina Political Parties Financing Fund to that political party. The remaining fifty percent (50%) of such funds shall be allocated by the special committee established by subsection (d) of this section and used for one or more of the purposes permitted by subsection (e) of this section. Any candidate may elect to decline in whole or in part any funds that the party chooses to distribute to the candidate.

(b) In a general election year in which there is not a presidential election, every State chairman of a political party shall disburse fifty percent (50%) of all funds received from the Political Parties Fund to that political party. The remaining fifty percent (50%) of such funds shall be allocated by the special committee established in subsection (d) of this section and used for one or more of the purposes permitted by subsection (e) of this section. Any candidate may elect to decline in whole or in part any funds that the party chooses to distribute to the candidate.

(c) In each year in which no general election is held, every State chairman of a political party shall disburse all funds received from the Political Parties Fund to that political party.

(d) The allocation of the remaining fifty percent (50%) of the funds under subsections (a) or (b) of this section shall be made by a committee composed of the State Chairman of that political party, the Treasurer of that party, the Congressional District Chairmen of that party, and a number of persons that shall not exceed the number of congressional districts in North Carolina appointed by the State Chairman of that party, and the State Chairman shall serve as Chairman of this committee. The allocation of funds shall be in the sole discretion of the committee, but must be for a purpose permitted by subsection (e) of this section and if allocated to a candidate, shall be disbursed by the State Chairman of that party only to the Treasurer of that candidate or committee appointed under Article 22A of this Chapter or under the Federal Election Campaign Act of 1971, Chapter 14 of Title 2, United States Code.

(e) A political party shall expend funds distributed from the Political Parties Fund or from the "Presidential Election Year Candidates Fund" only for legitimate campaign expenses. By way of illustration but not by way of limitation, the following are examples of legitimate campaign expenses:

(1) Radio, television, newspaper, and billboard advertising for and on behalf of a political party or candidate;
(2) Leaflets, fliers, buttons, and stickers;
(3) Campaign staff salaries, provided each staff member is listed by name and by the amount paid as salary and the amount paid as campaign expense reimbursement;
(4) Travel expenses, lodging and food for candidate and staff;
(4a) Expenses to ensure compliance with federal and State campaign finance and reporting laws;
(4b) Contributions to or expenses on behalf of candidates of that political party;
(5) Party headquarters operations related to upcoming general elections, including the purchase, maintenance and programming of computers to provide lists of voters, party workers, officers, committee members and participants in party functions, patterns of voting and other data for use in general election campaigns and party activities and functions prior thereto, the establishment and updating computer file systems of voter registration lists, State, district, county and precinct

officers and committee member lists, party clubs or organization lists, the organizing of voter registration, fund raising and get-out-the-vote programs at the county level when conducted by State party personnel, and the preparation of reports required to be filed by State and federal laws and systems needed to prepare the same and keep records incident thereto.

(f) All moneys and funds previously designated by taxpayers being held by the North Carolina Secretary of Revenue and being held by the North Carolina State Treasurer which moneys and funds have not been disbursed or delivered to a political party as of June 16, 1978, when disbursed shall be allocated by the State Chairman of the political party as follows: sixty-two and one-half percent (62 1/2%) of such funds to the political party for legitimate general election campaign expenditures; thirty-seven and one-half percent (37 1/2%) to the eligible candidates as determined by the committee established under this Article.

(g) It shall be unlawful for any political party to use either directly or indirectly any part of funds distributed from the Political Parties Fund or the Presidential Election Year Candidates Fund of any political party for the support or assistance either directly or indirectly of any candidate in a primary election, for support or assistance relating to the selection of a candidate at a political convention or by the executive committee of a party, for the payment or repayment of any debt or obligation of whatsoever kind or nature incurred by any person, candidate or political committee in a primary election, the selection of a candidate at a political convention or by the executive committee of a party, or for the support, promotion or opposition of a national, State or local referendum, bond election or constitutional amendment. (1977, 2nd Sess., c. 1298, s. 2; 1983, c. 700, ss. 1-4; 1985 (Reg. Sess., 1986), c. 866; 1987 (Reg. Sess., 1988), c. 1063, s. 3; 1991, c. 397, s. 1; c. 636, s. 20(b); 1991 (Reg. Sess., 1992), c. 1032, s. 10B; 1993, c. 553, s. 70; 2009-534, s. 10.1.)

Effect of Amendments. — Session Laws 2009-534, s. 10.1, effective December 1, 2009, substituted "a number of persons that shall not exceed the number of congressional districts in North Carolina" for "two persons" in the first sentence of subsection (d).

§ 163-278.43. Annual report to State Board of Elections; suspension of disbursements; willful violations a misdemeanor; adoption of rules; reporting by candidates and political committees.

(a) The State chairman of each political party receiving funds from the Political Parties Fund or the Presidential Election Year Candidates Fund or both shall maintain a full and complete record of the party's receipts and any and all subsequent expenditures and disbursements thereof, and such shall be substantiated by any records, receipts, and information that the Executive Director of the State Board of Elections shall require. Such record shall be centrally located and shall be readily available at reasonable hours for public inspection.

(b) By December 31 of each year, the State chairman of each political party receiving funds from the Political Parties Fund or a Presidential Election Year Candidates Fund in the 12 preceding months shall file with the State Board of Elections an itemized statement reporting all receipts, expenditures and disbursements from the date of the last report and attached to such report shall be the verification of such chairman that all such funds received were expended in accordance with the provisions of this Article. If the Executive Secretary of the State Board of Elections determines and finds as a fact that any such funds were not disbursed or expended in accordance with this Article, he shall order such political party to reimburse the amount improperly expended or disbursed to the General Fund of the State and such political party shall not receive further disbursements from the Political Parties Fund or a Presidential Election Year Candidates Fund until such reimbursement has been accomplished in full. A copy of any such order shall be forwarded to the State Treasurer, which shall constitute notice to him to suspend further disbursements from the campaign fund.

(c) Repealed by Session Laws 1985, c. 259.

(c1) The State Board shall review each application and certify that the political party is eligible to receive the funds requested. The State Board shall establish rules for the administration and enforcement of this Article.

(c2) The treasurer of any political committee or candidate receiving any funds from the Political Parties Fund or a Presidential Election Year Candidates Fund through a political party shall report such receipts as contributions according to the method and timetable set forth in Article 22A of this Chapter. The treasurer shall report disbursements of such funds as expenditures or loans according to the method and timetable set forth in Article 22A of this Chapter. The reports shall be made to the proper board of elections according to Article 22A of this Chapter. There is no requirement that a candidate or a political committee other than a political party shall maintain funds from the Political Parties Fund or a Presidential Election Year Candidates Fund in a separate account.

(d) Repealed by Session Laws 1985, c. 259. (1977, 2nd Sess., c. 1298, s. 2; 1979, c. 926, s. 1; 1985, c. 259; 1987 (Reg. Sess., 1988), c. 1063, s. 3; 1991, c. 347, s. 2; c. 397, s. 1; 1991 (Reg. Sess., 1992), c. 1032, s. 10C.)

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

§ 163-278.44. Crime; punishment.

Any individual person, candidate, political committee, or treasurer who willfully and intentionally violates any of the provisions of this Article, shall be guilty of a Class 2 misdemeanor. (1977, 2nd Sess., c. 1298, s. 2; 1987, c. 565, s. 18; 1993, c. 539, s. 1119; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 163-278.45. Definitions.

The terms "candidate," "expend," "individual," "person," "political committee," and "treasurer" as used in this Article shall be as defined in G.S. 163-278.6. (1977, 2nd Sess., c. 1298, s. 2.)

Article 22C.

Appropriations from the North Carolina Candidates Financing Fund.

§§ 163-278.46 through 163-278.57: Repealed by Session Laws 2002-158, s. 5, effective January 1, 2003.

Editor's Note. — Session Laws 2002-158, s. 15, contains a severability clause.

Session Laws 2002-158, s. 15.1, states that nothing in this act obligates the General Assembly to appropriate funds to implement the provisions of the act now or in the future.

§§ 163-278.58 through 163-278.60: Reserved for future codification purposes.

Article 22D.

The North Carolina Public Campaign Fund.

§ 163-278.61. Purpose of the North Carolina Public Campaign Fund.

The purpose of this Article is to ensure the fairness of democratic elections in North Carolina and to protect the constitutional rights of voters and candidates from the detrimental effects of increasingly large amounts of money being raised and spent to influence the outcome of elections, those effects being especially problematic in elections of the judiciary, since impartiality is uniquely important to the integrity and credibility of the courts. Accordingly, this Article establishes the North Carolina Public Campaign Fund as an alternative source of campaign financing for candidates who demonstrate public support and voluntarily accept strict fund-raising and spending limits. This Article is available to candidates for justice of the Supreme Court and judge of the Court of Appeals in elections to be held in 2004 and thereafter. (2002-158, s. 1; 2005-276, s. 23A.1(d).)

Editor's Note. — Session Laws 2002-158, s. 15, contains a severability clause.

Session Laws 2002-158, s. 15.1, states that nothing in this act obligates the General Assembly to appropriate funds to implement the provisions of the act now or in the future.

Session Laws 2002-158, s. 16, made this Article effective October 10, 2002, provided that distributions from the Fund shall begin in the 2004 election year.

CASE NOTES

Cited in N.C. Right to Life Comm. Fund v. Leake, 524 F.3d 427, 2008 U.S. App. LEXIS 9413 (4th Cir. 2008).

§ 163-278.62. Definitions.

The following definitions apply in this Article:

(1) Board. — The State Board of Elections.

(2) Candidate. — An individual who becomes a candidate as described in G.S. 163-278.6(4). The term includes a political committee authorized by the candidate for that candidate's election.

(3) Certified candidate. — A candidate running for office who chooses to receive campaign funds from the Fund and who is certified under G.S. 163-278.64(c).

(4) Contested primary and contested general election. — An election in which there are more candidates than the number to be elected. A distribution from the Fund pursuant to this Article is not a "contribution" and is not subject to the limitations of G.S. 163-278.13 or the prohibitions of G.S. 163-278.15 or G.S. 163-278.19.

(5) Contribution. — Defined in G.S. 163-278.6. A distribution from the Fund pursuant to this Article is not a "contribution" and is not subject to the limitations of G.S. 163-278.13 or the prohibitions of G.S. 163-278.15 or 163-278.19.

(5a) Electioneering communication. — As defined in G.S. 163-278.80 and G.S. 163-278.90, except that it is made during the period beginning 30 days before absentee ballots become available for a primary and ending on primary election day and during the period 60 days before absentee ballots become available for a general election and ending on general election day.

(6) Expenditure. — Defined in G.S. 163-278.6.

(7) Fund. — The North Carolina Public Campaign Fund established in G.S. 163-278.63.

(8) Independent expenditure. — Defined in G.S. 163-278.6.

(9) Maximum qualifying contributions. — An amount of qualifying contributions equal to 60 times the filing fee for candidacy for the office.

(10) Minimum qualifying contributions. — An amount of qualifying contributions equal to 30 times the filing fee for candidacy for the office.

(11) Nonparticipating candidate. — A candidate running for office who is not seeking to be certified under G.S. 163-278.64(c).

(12) Office. — A position on the North Carolina Court of Appeals or North Carolina Supreme Court.

(13) Participating candidate. — A candidate for office who has filed a declaration of intent to participate under G.S. 163-278.64.

(14) Political committee. — Defined in G.S. 163-278.6.

(15) Qualifying contribution. — A contribution of not less than ten dollars ($10.00) and not more than five hundred dollars ($500.00) in the form prescribed for noncash monetary contributions in G.S. 163-278.14(b) to the candidate or the candidate's committee that meets both of the following conditions:

a. Made by an individual who is a registered voter in this State at the time of the submittal of the report specified in G.S. 163-278.64(c).

b. Made during the qualifying period and obtained with the approval of the candidate or candidate's committee.

(16) Qualifying period. — The period beginning September 1 in the year before the election and ending on the day of the primary of the election year.

(17) Referendum committee. — Defined in G.S. 163-278.6.

(18) Trigger for matching funds. — The dollar amount at which matching funds are released for certified candidates. In the case of a primary, the trigger equals the maximum qualifying contributions for participating candidates. In the case of a contested general election, the trigger equals the base level of funding available under G.S. 163-278.65(b)(4). (2002-158, s. 1; 2005-276, s. 23A.1(d); 2007-510, ss. 1(c), 1(d); 2009-543, s. 1.)

Effect of Amendments. — Session Laws 2009-543, s. 1, effective August 28, 2009, substituted "form prescribed for noncash monetary contributions in G.S. 163-278.14(b)" for "form of a check or money order" in the introductory paragraph of subdivision (15); and rewrote subdivision (15)a.

CASE NOTES

Cited in N.C. Right to Life Comm. Fund v. Leake, 524 F.3d 427, 2008 U.S. App. LEXIS 9413 (4th Cir. 2008).

§ 163-278.63. North Carolina Public Campaign Fund established; sources of funding.

(a) Establishment of Fund. — The North Carolina Public Campaign Fund is established to finance the election campaigns of certified candidates for office and to pay administrative and enforcement costs of the Board related to this Article. The Fund is a special, dedicated, nonlapsing, nonreverting fund. All expenses of administering this Article, including production and distribution of the Voter Guide required by G.S. 163-278.69 and personnel and other costs incurred by the Board, including public education about the Fund, shall be paid from the Fund and not from the General Fund. Any interest generated by the Fund is credited to the Fund. The Board shall administer the Fund.

(b) Sources of Funding. — Money received from all the following sources must be deposited in the Fund:

(1) Money from the North Carolina Candidates Financing Fund.
(2) Designations made to the Public Campaign Fund by individual taxpayers pursuant to G.S. 105-159.2.
(3) Repealed by Session Laws 2005-276, s. 23A.1(c), effective January 1, 2006.
(4) Public Campaign Fund revenues distributed for an election that remain unspent or uncommitted at the time the recipient is no longer a certified candidate in the election.
(5) Money ordered returned to the Public Campaign Fund in accordance with G.S. 163-278.70.
(6) Voluntary donations made directly to the Public Campaign Fund. Corporations, other business entities, labor unions, and professional associations may make donations to the Fund.
(7) Money collected from the fifty-dollar ($50.00) surcharge on attorney membership fees in G.S. 84-34.

(c) Determination of Fund Amount. — By October 1, 2003, and every two years thereafter, the Board, in conjunction with the Advisory Council for the Public Campaign Financing Fund, shall prepare and provide to the Joint Legislative Commission on Governmental Operations of the General Assembly a report documenting, evaluating, and making recommendations relating to the administration, implementation, and enforcement of this Article. In its report, the Board shall set out the funds received to date and the expected needs of the Fund for the next election. (2002-158, s. 1; 2005-276, s. 23A.1 (c), (d); 2006-192, s. 14.1.)

§ 163-278.64. Requirements for participation; certification of candidates.

(a) Declaration of Intent to Participate. — Any individual choosing to receive campaign funds from the Fund shall first file with the Board a declaration of intent to participate in the act as a candidate for a stated office. The declaration of intent shall be filed before or during the qualifying period and before collecting any qualifying contributions. In the declaration, the candidate shall swear or affirm that only one political committee, identified with its treasurer, shall handle all contributions, expenditures, and obligations for the participating candidate and that the candidate will comply with the contribution and expenditure limits set forth in subsection (d) of this section and all other requirements set forth in this Article or adopted by the Board. Failure to comply is a violation of this Article.

(b) Demonstration of Support of Candidacy. — Participating candidates who seek certification to receive campaign funds from the Fund shall first, during the qualifying period, obtain qualifying contributions from at least 350 registered voters in an aggregate sum that at least equals the amount of minimum qualifying contributions described in G.S. 163-278.62(10) but that does not exceed the amount of maximum qualifying contributions described in G.S. 163-278.62(9).

No payment, gift, anything of value, or the opportunity to win anything of value shall be given in exchange for a qualifying contribution.

(c) Certification of Candidates. — Upon receipt of a submittal of the record of demonstrated support by a participating candidate, the Board shall determine whether or not the candidate has complied with all the following requirements:

(1) Signed and filed a declaration of intent to participate in this Article.

(2) Submitted a report itemizing the appropriate number of qualifying contributions received from registered voters, which the Board shall verify through a random sample or other means it adopts. The report shall include the county of residence of each registered voter listed.

(3) Filed a valid notice of candidacy pursuant to Article 25 of this Chapter.

(4) Otherwise met the requirements for participation in this Article.

The Board shall certify candidates complying with the requirements of this section as soon as possible and no later than five business days after receipt of a satisfactory record of demonstrated support.

(d) Restrictions on Contributions and Expenditures for Participating and Certified Candidates. — The following restrictions shall apply to contributions and expenditures with respect to participating and certified candidates:

(1) Beginning January 1 of the year before the election and before the filing of a declaration of intent, a candidate for office may accept in contributions up to ten thousand dollars ($10,000) from sources and in amounts permitted by Article 22A of this Chapter and may expend up to ten thousand dollars ($10,000) for any campaign purpose. A candidate who exceeds either of these limits shall be ineligible to file a declaration of intent or receive funds from the Public Campaign Fund.

(2) From the filing of a declaration of intent through the end of the qualifying period, a candidate may accept only qualifying contributions, contributions under ten dollars ($10.00) from North Carolina voters, and personal and family contributions permitted under subdivision (4) of this subsection. The total contributions the candidate may accept during this period shall not exceed the maximum qualifying contributions for that candidate. In addition to these contributions, the candidate may only expend during this period the remaining money raised pursuant to subdivision (1) of this subsection and possible matching funds received pursuant to G.S. 163-278.67. Except for personal and family contributions permitted under subdivision (4) of this subsection, multiple contributions from the same contributor to the same candidate shall not exceed five hundred dollars ($500.00).

(3) After the qualifying period and through the date of the general election, the candidate shall expend only the funds the candidate receives from the Fund pursuant to G.S. 163-278.65(b)(4) plus any funds remaining from the qualifying period and possible matching funds.

(4) During the qualifying period, the candidate may contribute up to one thousand dollars ($1,000) of that candidate's own money to the campaign. Debt incurred by the candidate for a campaign expenditure shall count toward that limit. The candidate may accept in contributions one thousand dollars ($1,000) from each member of that candidate's family consisting of spouse, parent, child, brother, and sister. Up to five hundred dollars ($500.00) of a contribution from the candidate's family member may be treated as a qualifying contribution if it meets the requirements of G.S. 163-278.62(15)a. and b.

(5) A candidate and the candidate's committee shall limit the use of all revenues permitted by this subsection to expenditures for campaign-

related purposes only. The Board shall publish guidelines outlining permissible campaign-related expenditures. In establishing those guidelines, the Board shall differentiate expenditures that reasonably further a candidate's campaign from expenditures for personal use that would be incurred in the absence of the candidacy. In establishing the guidelines, the Board shall review relevant provisions of G.S. 163-278.42(e), the Federal Election Campaign Act, and rules adopted pursuant to it, and similar provisions in other states.

(6) Any contribution received by a participating or certified candidate that falls outside that permitted by this subsection shall be returned to the donor as soon as practicable. Contributions intentionally made, solicited, or accepted in violation of this Article are subject to civil penalties as specified in G.S. 163-278.70. The funds involved shall be forfeited to the Civil Penalty and Forfeiture Fund.

(7) A candidate shall return to the Fund any amount distributed for an election that is unspent and uncommitted at the date of the election, or at the time the individual ceases to be a certified candidate, whichever occurs first. For accounting purposes, all qualifying, personal, and family contributions shall be considered spent before revenue from the Fund is spent or committed.

(e) Revocation. — A candidate may revoke, in writing to the Board, a decision to participate in the Public Campaign Fund at any time before the deadline set by the Board for the candidate's submission of information for the Voter Guide described in G.S. 163-278.69. After a timely revocation, that candidate may accept and expend outside the limits of this Article without violating this Article. Within 10 days after revocation, a candidate shall return to the Board all money received from the Fund. (2002-158, s. 1; 2004-203, s. 60; 2005-276, s. 23A.1(d); 2005-430, ss. 4, 5; 2007-510, s. 1(c); 2009-543, ss. 2, 3.)

Effect of Amendments. — Session Laws 2009-543, ss. 2, 3 effective August 28, 2009, substituted "No payment, gift, anything of value, or the opportunity to win anything of value" for "No payment, gift, or anything of value" at the beginning of the second paragraph of subsection (b); and added the last sentence in subdivisions (d)(2) and (d)(4).

CASE NOTES

Cited in N.C. Right to Life Comm. Fund v. Leake, 524 F.3d 427, 2008 U.S. App. LEXIS 9413 (4th Cir. 2008).

§ 163-278.64A. Special participation provisions for candidates in vacancy elections.

(a) Participation Provisions Modified. — Candidates involved in elections described in G.S. 163-329 may participate in the Fund subject to the provisions of G.S. 163-278.64 as modified by this section. The Board shall adapt other provisions of this Article, including G.S. 163-278.67, to those elections.

(b) Qualifying. — The State Board of Elections shall designate a special qualifying period of no less than four weeks for these candidates, beginning at the close of the notice-of-candidacy filing period. To receive certification, a participating candidate shall raise at least 225 qualifying contributions, totaling at least 20 times the amount of the filing fee for the office, for a four-week qualifying period. If the State Board of Elections sets a longer qualifying period, then for each additional week that the qualifying period extends beyond four weeks, the minimum number of qualifying contributions required for certification shall increase by 25, and the minimum amount of the qualifying contributions shall increase by two times the filing fee. The minimum qualifying contributions shall not exceed the limit set by G.S. 163-278.64(b).

(c) Allocations. — Certified candidates shall receive one percent (1%) of the funding to which they would be eligible under G.S. 163-278.65 times the number of calendar days between the end of the special qualifying period and the day of the general election. That amount shall not exceed one hundred percent (100%) of the funding to which they would be eligible under G.S. 163-278.65. (2006-192, s. 10.)

Editor's Note. — Session Laws 2006-192, s. 19, made this section effective August 3, 2006.

§ 163-278.65. Distribution from the Fund.

(a) Timing of Fund Distribution. — The Board shall distribute to a certified candidate revenue from the Fund in an amount determined under subdivision (b)(4) of this section within five business days after the certified candidate's name is approved to appear on the ballot in a contested general election, but no earlier than five business days after the primary.

(b) Amount of Fund Distribution. — By August 1, 2003, and no less frequently than every two years thereafter, the Board shall determine the amount of funds, rounded to the nearest one hundred dollars ($100.00), to be distributed to certified candidates as follows:

(1) Uncontested primaries. — No funds shall be distributed.
(2) Contested primaries. — No funds shall be distributed except as provided in G.S. 163-278.67.
(3) Uncontested general elections. — No funds shall be distributed.
(4) Contested general elections. — Funds shall be distributed to a certified candidate for a position on the Court of Appeals in an amount equal to 125 times the candidate's filing fee as set forth in G.S. 163-107. Funds shall be distributed to a certified candidate for a position on the Supreme Court in an amount equal to 175 times the candidate's filing fee as set forth in G.S. 163-107.

(c) Method of Fund Distribution. — The Board, in consultation with the State Treasurer and the State Controller, shall develop a rapid, reliable method of conveying funds to certified candidates. In all cases, the Board shall distribute funds to certified candidates in a manner that is expeditious, ensures accountability, and safeguards the integrity of the Fund. If the money in the Fund is insufficient to fully fund all certified candidates, then the available money shall be distributed proportionally, according to each candidate's eligible funding, and the candidate may raise additional money in the same manner as a noncertified candidate for the same office up to the unfunded amount of the candidate's eligible funding. (2002-158, s. 1; 2006-192, s. 11.)

CASE NOTES

Cited in N.C. Right to Life Comm. Fund v. Leake, 524 F.3d 427, 2008 U.S. App. LEXIS 9413 (4th Cir. 2008).

§ 163-278.66. Reporting requirements.

(a) Reporting by Noncertified Candidates and Other Entities. — Any noncertified candidate with a certified opponent shall report total contributions received to the Board by facsimile machine or electronically within 24 hours after the total amount of contributions received exceeds eighty percent (80%) of the trigger for matching funds as defined in G.S. 163-278.62(18). Any entity making independent expenditures in support of or opposition to a certified candidate or in support of a candidate opposing a certified candidate, or paying for electioneering communications, referring to one of those candidates, shall report the total expenditures or payments made to the Board by facsimile machine or electronically within 24 hours after the total amount of expenditures or payments made for the purpose of making the independent expenditures or electioneering communications exceeds five thousand dollars ($5,000). After the initial 24-hour filing, the noncertified candidate or other reporting entity shall comply with an expedited reporting schedule. The schedule and forms for reports required by this subsection shall be supplied by the Board.

(b) Reporting by Participating and Certified Candidates. — Notwithstanding other provisions of law, participating and certified candidates shall report any money received, including all previously unreported qualifying contributions, all campaign expenditures, obligations, and related activities to the Board according to procedures developed by the Board. A certified candidate who ceases to be certified or ceases to be a candidate or who loses an election shall file a final report with the Board and return any unspent revenues received from the Fund. In developing these procedures, the Board shall utilize existing campaign reporting procedures whenever practical.

(c) Timely Access to Reports. — The Board shall ensure prompt public access to the reports received in accordance with this Article. The Board may utilize electronic means of reporting and storing information. (2002-158, s. 1; 2003-278, s. 2; 2006-192, s. 12; 2007-510, s. 1(a), (c); 2008-150, s. 10.2(a); 2009-570, s. 25.)

Editor's Note. — The catchline to subsection (a) of this section read: "Reporting by Noncertified Candidates and Independent Expenditure Entities" in Session Laws 2007-510, s. 1(a). It was amended by Session Laws 2008-150, s. 10.2(a), to substitute "Reporting by Noncertified Candidates and Other Entities" for "Reporting by Participating and Certified Candidates." Subsection (a) has been set out as amended at the direction of the Revisor of Statutes.

Effect of Amendments. — Session Laws 2008-150, s. 10.2(a), effective August 2, 2008, rewrote subsection (a).

Session Laws 2009-570, s. 25, effective August 28, 2009, rewrote the subsection (a) heading, which formerly read: "Noncertified and Independent Expenditure Entities".

CASE NOTES

Constitutionality. — Reporting requirements under the Judicial Campaign Reform Act, G.S. 163-278.66(a), did not violate the First Amendment because the reporting requirements clearly demonstrated a substantial relation to the important state interests of providing the electorate with information, deterring actual corruption and avoiding any appearance thereof, and gathering the data necessary to enforce more substantive electioneering restrictions. N.C. Right to Life Comm. Fund v. Leake, 524 F.3d 427, 2008 U.S. App. LEXIS 9413 (4th Cir. 2008).

§ 163-278.67. Matching funds.

(a) When Matching Funds Become Available. — When any report or group of reports shows that "funds in opposition to a certified candidate or in support of an opponent to that candidate" as described in this section, exceed the trigger for matching funds as defined in G.S. 163-278.62(18), the Board shall issue immediately to that certified candidate an additional amount equal to the reported excess within the limits set forth in this section. "Funds in opposition to a certified candidate or in support of an opponent to that candidate" shall be equal to the sum of subdivisions (1) and (2) as follows:

(1) The greater of the following:

a. Campaign expenditures or obligations made, or funds raised or borrowed, whichever is greater, reported by any one nonparticipating candidate who is an opponent of a certified candidate. Where a certified candidate has more than one nonparticipating candidate as an opponent, the measure shall be taken from the nonparticipating candidate showing the highest relevant dollar amount.

b. The funds distributed in accordance with G.S. 163-278.65(b) to a certified opponent of the certified candidate.

(2) The aggregate total of all expenditures and payments reported in accordance with G.S. 163-278.66(a) of entities making independent expenditures or electioneering communications in opposition to the certified candidate or in support of any opponent of that certified candidate.

(b) Limit on Matching Funds Before Date of Primary. — Total matching funds to a certified candidate before the date of the primary shall be limited to an amount equal to two times the maximum qualifying contributions for the office sought. Matching funds are available to a certified candidate with an opponent in the primary or to a certified candidate who is clearly referred to in expenditures reportable under G.S. 163-278.99A made in opposition to that candidate.

(c) Limit on Matching Funds in Contested General Election. — Total matching funds to a certified candidate in a contested general election shall be limited to an amount equal to two times the amount described in G.S. 163-278.65(b)(4).

(c1) Expedited Distribution of Matching Funds. — When a candidate becomes entitled to any amount of matching funds under subsection (a) of this section, the Board shall authorize the issuance of that amount to the candidate as soon as practicable. The Department of Administration shall transfer that amount to the candidate as soon as practicable and in no event later than 12 hours after receiving notice from the Board that the candidate has become entitled to it. The Department of Administration shall develop a method of rapidly transferring funds to a candidate or otherwise fulfilling the requirements of this subsection in conjunction with the Board. The candidate shall return to the Board as soon as practicable any amount of the matching funds that the candidate has not spent at the date of the election or at the time the individual ceases to be a certified candidate, whichever occurs first.

(d) Determinations by Board. — In the case of electioneering communications, the Board shall determine which candidate, if any, is entitled to receive matching funds as a result of the communication. The Board shall issue matching funds based on the communication only if it ascertains that the communication is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate. In making its determination, the Board shall not consider evidence external to the communication itself of the intent of the sponsor or the effect of the communication. The Board shall notify each candidate it determines is entitled to receive matching funds based on those communications, the sponsor of those communications, and any candidate who is an opponent of the candidate it determines is entitled to the matching funds. The Board shall give the sponsor of the communication and any opposing candidate an adequate opportunity to rebut the determination of the Board. In considering the rebuttal, all candidates in the race and the sponsor shall be given adequate and equal opportunity to be heard. The Board shall adopt procedures for implementing this subsection, balancing in those procedures adequacy of opportunity to rebut and adequacy and equality of opportunity to be heard on the rebuttal with the need to expedite the decision on awarding matching funds. The Board shall distribute the matching funds, if any, at the conclusion of its process.

(e) Proportional Measuring of Multicandidate Communications. — In calculating the amount of matching funds a certified candidate is eligible to receive under this section, the Board shall include the proportion of expenditures, obligations, or payments for multicandidate communications that pertain to the candidate.

(f) No Matching Funds for Certain Communications Involving All Candidates. — No matching funds are available under this section as a result of an expenditure that supports all candidates for the same office or opposes all candidates for the same office. No matching funds are available under this section as a result of an electioneering communication that the Board ascertains is susceptible of no reasonable interpretation other than as an appeal to vote for all candidates for the same office or to vote against all candidates for the same office. (2002-158, s. 1; 2007-510, s. 1(b); 2008-150, s. 7(b); 2009-543, ss. 4, 5.)

Editor's Note. — Session Laws 2007-510, s. 3(a), provides: "There is appropriated from the General Fund to the State Board of Elections for the 2007-2008 fiscal year the sum of twenty-five thousand dollars ($25,000) for the implementation of this act."

Effect of Amendments. — Session Laws 2008-150, s. 7(b), effective August 2, 2008, added subsection (c1).

Session Laws 2009-543, ss. 4 and 5, effective August 28, 2009, in subsection (b), substituted "Before Date of Primary" for "in Contested Primary" in the subsection heading, substituted "before the date of the primary" for " in a contested primary" in the first sentence, and added the second sentence; and added subsection (f).

CASE NOTES

Constitutionality. — Provision for providing matching funds set forth in G.S. 163-278.67 did not violate the First Amendment because the Judicial Campaign Reform Act, G.S. 163-278.61 et seq., did not coerce candidates into opting into the public financing system, and, to the extent that the plaintiffs (or those similarly situated) were in fact deterred by G.S. 163-278.67 from spending in excess of the trigger amounts, the deterrence resulted from a strategic, political choice, not from a threat of government censure or prosecution. N.C. Right to Life Comm. Fund v. Leake, 524 F.3d 427, 2008 U.S. App. LEXIS 9413 (4th Cir. 2008).

§ 163-278.68. Enforcement and administration.

(a) Enforcement by the Board. — The Board, with the advice of the Advisory Council for the Public Campaign Fund, shall administer the provisions of this Article.

(b) Advisory Council for the Public Campaign Fund. — There is established under the Board the Advisory Council for the Public Campaign Fund to advise the Board on the rules, procedures, and opinions it adopts for the enforcement and administration of this Article and on the funding needs and operation of the Public Campaign Fund. The Advisory Council shall consist of five members to be appointed as follows:

(1) The Governor shall name two members from a list of individuals nominated by the State Chair of the political party with which the greatest number of registered voters is affiliated. The State Chair of that party shall submit to the Governor the names of five nominees.

(2) The Governor shall name two members from a list of individuals nominated by the State Chair of the political party with which the second greatest number of registered voters is affiliated. The State

Chair of that party shall submit to the Governor the names of five nominees.

(3) The Board shall name one member by unanimous vote of all members of the Board. If the Board cannot reach unanimity on the appointment of that member, the Advisory Council shall consist of the remaining members.

No individual shall be eligible to be a member of the Advisory Council who would be ineligible to serve on a county board of elections in accordance with G.S. 163-30. The initial members shall be appointed by December 1, 2002. Of the initial appointees, two are appointed for one-year terms, two are appointed for two-year terms, and one is appointed for a three-year term according to random lot. Thereafter, appointees are appointed to serve four-year terms. An individual may not serve more than two full terms, except that regardless of the time of appointment each term shall end on December 31. A member shall continue on the Advisory Council beyond the expired term until a successor is appointed. The appointed members receive the legislative per diem pursuant to G.S. 120-3.1. One of the Advisory Council members shall be elected by the members as Chair. A vacancy during an unexpired term shall be filled in the same manner as the regular appointment for that term, but a vacancy appointment is only for the unexpired portion of the term.

(c) Appeals. — The initial decision on an issue concerning qualification, certification, or distribution of funds under this Article shall be made by the Executive Director of the Board. The procedure for challenging that decision is as follows:

(1) An individual or entity aggrieved by a decision by the Executive Director of the Board may appeal to the full Board within three business days of the decision. The appeal shall be in writing and shall set forth the reasons for the appeal.

(2) Within five business days after an appeal is properly made, and after due notice is given to the parties, the Board shall hold a hearing. The appellant has the burden of providing evidence to demonstrate that the decision of the Executive Director was improper. The Board shall rule on the appeal within three business days after the completion of the hearing.

(d) Board to Adopt Rules and Issue Opinions. — The Board shall adopt rules and issue opinions to ensure effective administration of this Article. Such rules and opinions shall include, but not be limited to, procedures for obtaining qualifying contributions, certification of candidates, addressing circumstances involving special elections, vacancies, recounts, withdrawals, or replacements, collection of revenues for the Fund, distribution of Fund revenue to certified candidates, return of unspent Fund disbursements, and compliance with this Article. The Board shall adopt procedures for the distribution of matching money that further the purpose and avoid the subversion of G.S. 163-278.67. For races involving special elections, recounts, vacancies, withdrawals, or replacement candidates, the Board shall establish procedures for qualification, certification, disbursement of Fund revenues, and return of unspent Fund revenues. The Board shall fulfill each of these duties in consultation with the Advisory Council on the Public Campaign Fund.

(e) Report to the Public. — The Advisory Council for the Public Campaign Fund shall issue a report by March 1, 2005, and every two years thereafter that evaluates and makes recommendations about the implementation of this Article and the feasibility of expanding its provisions to include other candidates for State office based on the experience of the Fund and the experience of similar programs in other states. The Advisory Council shall also evaluate and make recommendations regarding how to address activities that could undermine the purpose of this Article, including spending that appears to target candidates receiving money from the Fund but that does not meet the definition of "independent expenditures." (2002-158, s. 1; 2005-276, s. 23A.1(d); 2006-192, s. 13; 2007-510, s. 1(c).)

§ 163-278.69. Voter education.

(a) Judicial Voter Guide. — The Board shall publish a Judicial Voter Guide that explains the functions of the appellate courts and the laws concerning the election of appellate judges, the purpose and function of the Public Campaign Fund, and the laws concerning voter registration. The Board shall distribute the Guide to as many voting-age individuals in the State as practical, through a mailing to all residences or other means it deems effective. The distribution shall occur no more than 28 days nor fewer than seven days before the one-stop voting period provided in G.S. 163-227.2 for the primary and no more than 28 days nor fewer than seven days before the one-stop voting period provided in G.S. 163-227.2 for the general election.

(b) Candidate Information. — The Judicial Voter Guide shall include information concerning all candidates for the Supreme Court and the Court of Appeals, as provided by those candidates according to a format provided to the candidates by the Board. The Board shall request information for the Guide from each candidate according to the following format:

(1) Place of residence.
(2) Education.
(3) Occupation.
(4) Employer.
(5) Date admitted to the bar.
(6) Legal/judicial experience.
(7) Candidate statement. Concerning that statement, the Board shall send to the candidates instructions as follows: "Your statement may include information such as your qualifications, your endorsements, your ratings, why you are seeking judicial office, why you would make a good judge, what distinguishes you from your opponent(s), your acceptance of spending and fund-raising limits to qualify to receive funds from the Public Campaign Fund, and any other information relevant to your candidacy. The State Board of Elections will reject any portion of any statement which it determines contains obscene, profane, or defamatory language. The candidate shall have three days to resubmit the candidate statement if the Board rejects a portion of the statement.

The entire entry for a candidate shall be limited to 250 words.

(c) Disclaimer. — The Judicial Voter Guide shall contain the following statement: "Statements by candidates do not express or reflect the opinions of the State Board of Elections." (2002-158, s. 1; 2005-276, s. 23A.1(d); 2005-430, s. 6; 2006-192, s. 14; 2007-391, s. 4(a); 2008-187, s. 33(a); 2009-543, s. 6.)

Editor's Note. — Session Laws 2007-391, s. 1(c), was amended by Session Laws 2008-198, s. 33(a), to eliminate any confusion as to effective dates of the 2007 act. Session Laws 2007-391, s. 4(a), which substituted "28 days" for "14 days" twice in the last sentence of subsection (a), is effective August 19, 2007.

Effect of Amendments. — Session Laws 2009-543, s. 6, effective August 28, 2009, substituted "Candidate statement" for "Candidate statement, limited to 150 words" at the beginning of subdivision (b)(7); and added the last sentence of subsection (b).

CASE NOTES

Cited in N.C. Right to Life Comm. Fund v. Leake, 524 F.3d 427, 2008 U.S. App. LEXIS 9413 (4th Cir. 2008).

§ 163-278.70. Civil penalty.

In addition to any other penalties that may be applicable, any individual, political committee, or other entity that violates any provision of this Article is subject to a civil penalty of up to ten thousand dollars ($10,000) per violation or three times the amount of any financial transactions involved in the violation, whichever is greater. In addition to any fine, for good cause shown, a candidate found in violation of this Article may be required to return to the Fund all amounts distributed to the candidate from the Fund. If the Board makes a determination that a violation of this Article has occurred, the Board shall calculate and assess the amount of the civil penalty and shall notify the entity that is assessed the civil penalty of the amount that has been assessed. The Board shall then proceed in the manner prescribed in G.S. 163-278.34. In determining whether or not a candidate is in violation of this Article, the Board may consider as a mitigating factor any circumstances out of the candidate's control. (2002-158, s. 1.)

§§ 163-278.71 through 163-278.79: Reserved for future codification purposes.

ARTICLE 22E.

Electioneering Communications.

§ 163-278.80. Definitions.

As used in this Article, the following terms have the following definitions:

(1) The term "disclosure date" means either of the following:

a. The first date during any calendar year when an electioneering communication is aired after an entity has incurred expenses for the direct costs of producing or airing electioneering communications aggregating in excess of ten thousand dollars ($10,000).

b. Any other date during that calendar year by which an entity has incurred expenses for the direct costs of producing or airing electioneering communications aggregating in excess of ten thousand dollars ($10,000) since the most recent disclosure date for that calendar year.

(2) The term "electioneering communication" means any broadcast, cable, or satellite communication that has all the following characteristics:

a. Refers to a clearly identified candidate for a statewide office or the General Assembly.

b. Is aired within one of the following time periods:

1. 60 days before a general or special election for the office sought by the candidate, or
2. 30 days before a primary election or a convention of a political party that has authority to nominate a candidate for the office sought by the candidate.

c. Is targeted to the relevant electorate.

(3) The term "electioneering communication" does not include any of the following:

a. A communication appearing in a news story, commentary, or editorial distributed through the facilities of any broadcasting station, unless those facilities are owned or controlled by any political party, political committee, or candidate.

b. A communication that constitutes an expenditure or independent expenditure under Article 22A of this Chapter.

c. A communication that constitutes a candidate debate or forum conducted pursuant to rules adopted by the Board or that solely promotes that debate or forum and is made by or on behalf of the person sponsoring the debate or forum.

d. A communication made while the General Assembly is in session which, incidental to advocacy for or against a specific piece of legislation pending before the General Assembly, urges the audience to communicate with a member or members of the General Assembly concerning that piece of legislation.

e. A communication that meets all of the following criteria:

1. Does not mention any election, candidacy, political party, opposing candidate, or voting by the general public.
2. Does not take a position on the candidate's character or qualifications and fitness for office.
3. Proposes a commercial transaction.

(4) The term "prohibited source" means any corporation, insurance company, labor union, or professional association. The term "prohibited source" does not include an entity that meets all the criteria set forth in G.S. 163-278.19(f).

(5) The term "targeted to the relevant electorate" means a communication which refers to a clearly identified candidate for statewide office or the General Assembly and which can be received by 50,000 or more individuals in the State in the case of a candidacy for statewide office and 7,500 or more individuals in the district in the case of a candidacy for General Assembly.

(6) The term "501(c)(4) organization" means either of the following:

a. An organization described in section 501(c)(4) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of that Code.

b. An organization that has submitted an application to the Internal Revenue Service for determination of its status as an organization described in sub-subdivision a. of this subdivision.

(7) Except as otherwise provided in this Article, the definitions in Article 22A of this Chapter apply in this Article. (2004-125, s. 1; 2006-182, s. 1(a); 2009-534, s. 7(a), (b).)

Editor's Note. — Session Laws 2004-125, s. 7, provides: "This act is effective when it becomes law [July 20, 2004], except as otherwise provided in this act, and except that any criminal penalty resulting from this act becomes effective October 1, 2004."

Session Laws 2004-125, s. 6 is a severability clause.

Effect of Amendments. — Session Laws 2009-534, s. 7(a) and (b), effective December 1, 2009, substituted "Is aired" for "Is made" at the beginning of subdivision (2)b; and added subdivision (3)e.

§ 163-278.81. Disclosure of Electioneering Communications.

(a) Statement Required. — Every individual, committee, association, or any other organization or group of individuals that incurs an expense for the direct costs of producing or airing electioneering communications in an aggregate amount in excess of ten thousand dollars ($10,000) during any calendar year shall, within 24 hours of each disclosure date, file with the Board a statement containing the information described in subsection (b) of this section.

(b) Contents of Statement. — Each statement required to be filed by this section shall be made under the penalty of perjury in G.S. 14-209 and shall contain the following information:

(1) The identification of the entity incurring the expense, of any entity sharing or exercising direction or control over the activities of that entity, and of the custodian of the books and accounts of the entity incurring the expense.

(2) The principal place of business of the entity incurring the expense if the entity is not an individual.

(3) The amount of each expense incurred of more than one thousand dollars ($1,000) during the period covered by the statement and the identification of the entity to whom the expense was incurred.

(4) The elections to which the electioneering communications pertain and the names, if known, of the candidates identified or to be identified.

(5) The names and addresses of all entities that provided funds or anything of value whatsoever in an aggregate amount of more than one thousand dollars ($1,000) during the period beginning on the first day of the preceding calendar year and ending on the disclosure date to a segregated bank account that consists of funds provided solely by entities other than prohibited sources. Nothing in this subdivision is to be construed as a prohibition on the use of funds in such a segregated account for a purpose other than electioneering communications. If the provider is an individual, the statement shall also contain the principal occupation of the provider. The "principal occupation of the provider" shall mean the same as the "principal occupation of the contributor" in G.S. 163-278.11.

(6) Repealed by Session Laws 2005-430, s. 9(a), effective December 1, 2005, and applicable to all contributions and expenditures made or accepted on or after that date. (2004-125, s. 1; 2005-430, s. 9(a); 2006-182, s. 2(a).)

§ 163-278.82. Prohibition of corporate and labor disbursements for electioneering communications.

(a) Prohibition. — No prohibited source may make any disbursement for the costs of producing or airing any electioneering communication. No individual, committee, association, or any other organization or group of individuals, including but not limited to, a political organization (as defined in section 527(e)(1) of the Internal Revenue Code of 1986), which has received any funds or anything of value whatsoever from a prohibited source may make any disbursement for the costs of producing or airing any electioneering communication, unless that individual, committee, association, or other organization or group of individuals maintains a segregated bank account that consists of funds provided solely by entities other than prohibited sources. For purposes of this section, the term "funds or anything of value whatsoever" shall not include monies paid to an individual, committee, association, or other organization or group of individuals for services rendered or other payment of debt owed. It shall be unlawful for any person or entity to create, establish, or organize more than one political organization (as defined in section 527(c)(1) of the Internal Revenue Code) with the intent to avoid or evade the prohibitions on disbursements for electioneering communications from prohibited sources or the reporting requirements contained in this Article.

(b) Direct or Indirect Disbursement. — An electioneering communication shall be treated as made by a prohibited source if the prohibited source directly or indirectly disburses any amount for any of the costs of the communication.

(c) Segregated Fund. — Any disbursement for an electioneering communication made from an account must be made from a segregated account into which no funds from a prohibited source have been directly or indirectly introduced.

(d) Limitation on Prohibition. — The prohibition in this section shall not apply unless the electioneering communication at issue is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate. (2004-125, s. 1; 2005-430, s. 9(b); 2006-182, s. 3(a); 2008-150, s. 10.3(a).)

Effect of Amendments. — Session Laws 2008-150, s. 10.3(a), effective August 2, 2008, added subsection (d).

§ 163-278.83. Penalties.

Except as otherwise provided in this Article, a violation of this Article is a Class 2 misdemeanor. The State Board of Elections has the same authority to compel from any individual, committee, association, or any other organization or group of individuals covered by this Article the disclosures required by this Article that the Board has to compel the disclosures required by Article 22A of this Chapter. The civil penalties and remedies in G.S. 163-278.34 shall apply to violations of this Article, and where those provisions apply to violations involving contributions and expenditures they shall apply in the same manner to payments and disbursements in violation of G.S. 163-278.82. (2004-125, s. 1; 2006-259, s. 29(a).)

Editor's Note. — Session Laws 2004-125, s. 7, provides that any criminal penalty resulting from this act becomes effective October 1, 2004.

§ 163-278.84. Determination of electioneering communication.

(a) Any individual, committee, association, or any other organization or group of individuals that produces a communication to be aired to the relevant electorate in the time periods under G.S. 163-278.80(2)b. may, but is not required to, ask the State Board for a determination as to whether or not that communication is an electioneering communication prior to the airing of that communication.

(b) The State Board shall establish a process for determination as to whether a communication is an electioneering communication prior to the airing of that communication when it is requested under subsection (a) of this section. The responsibility for the determination may be delegated to the Executive Director. If the responsibility is delegated to the Executive Director, the process established by the State Board shall include an opportunity for immediate appeal to the State Board of the determination by the Executive Director. (2009-534, s. 7(c).)

Editor's Note. — Session Laws 2009-534, s. 11, made this section effective December 1, 2009.

§§ 163-278.85 through 163-278.89: Reserved for future codification purposes.

ARTICLE 22F.

Mass Mailings and Telephone Banks: Electioneering Communications.

§ 163-278.90. Definitions.

As used in this Article, the following terms have the following definitions:

(1) The term "disclosure date" means either of the following:

a. The first date during any calendar year when an electioneering communication is transmitted after an entity has incurred expenses for the direct costs of producing or transmitting electioneering communications aggregating in excess of ten thousand dollars ($10,000).

b. Any other date during that calendar year by which an entity has incurred expenses for the direct costs of producing or transmitting electioneering communications aggregating in excess of ten thousand dollars ($10,000) since the most recent disclosure date for that calendar year.

(2) The term "electioneering communication" means any mass mailing or telephone bank that has all the following characteristics:

a. Refers to a clearly identified candidate for a statewide office or the General Assembly.

b. Is transmitted within one`of the following time periods:

1. 60 days before a general or special an election for the office sought by the candidate, or

2. 30 days before a primary election or a convention of a political party that has authority to nominate a candidate for the office sought by the candidate.

c. Is targeted to the relevant electorate.

(3) The term "electioneering communication" does not include any of the following:

a. A communication appearing in a news story, commentary, or editorial distributed through any newspaper or periodical, unless that publication is owned or controlled by any political party, political committee, or candidate.

b. A communication that constitutes an expenditure or independent expenditure under Article 22A of this Chapter.

c. A communication that constitutes a candidate debate or forum conducted pursuant to rules adopted by the Board or that solely promotes that debate or forum and is made by or on behalf of the person sponsoring the debate or forum.

d. A communication that is distributed by a corporation solely to its shareholders or employees, or by a labor union or professional association solely to its members.

e. A communication made while the General Assembly is in session which, incidental to advocacy for or against a specific piece of legislation pending before the General Assembly, urges the audience to communicate with a member or members of the General Assembly concerning that piece of legislation.

f. A communication that meets all of the following criteria:

1. Does not mention any election, candidacy, political party, opposing candidate, or voting by the general public.

2. Does not take a position on the candidate's character or qualifications and fitness for office.

3. Proposes a commercial transaction.

(4) The term "mass mailing" means any mailing by United States mail or facsimile. Part 1A of Article 22A of this Chapter has its own internal definition of "mass mailing" under the definition of "print media," and that definition does not apply in this Article.

(5) The term "prohibited source" means any corporation, insurance company, labor union, or professional association. The term "prohibited source" does not include an entity that meets all the criteria set forth in G.S. 163-278.19(f).

(5a) The term "race" means a ballot item, as defined in G.S. 163-165(2), in which the voters are to choose between or among candidates.

(6) The term "targeted to the relevant electorate" means:

a. With respect to a statewide race:

1. Transmitting, by mail or facsimile to a cumulative total of 50,000 or more addresses in the State, items identifying one or more candidates in the same race within any 30-day period; or

2. Making a cumulative total of 50,000 or more telephone calls in the State identifying one or more candidates in the same race within any 30-day period.

b. With respect to a race for the General Assembly:

1. Transmitting, by mail or facsimile to a cumulative total of 2,500 or more addresses in the district, items identifying one or more candidates in the same race within any 30-day period; or

2. Making a cumulative total of 2,500 or more telephone calls in the district identifying one or more candidates in the same race within any 30-day period.

(7) The term "telephone bank" means telephone calls that are targeted to the relevant electorate, except when those telephone calls are made by volunteer workers, whether or not the design of the telephone bank system, development of calling instructions, or training of volunteers was done by paid professionals.

(8) The term "501(c)(4) organization" means either of the following:

a. An organization described in section 501(c)(4) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of that Code.

b. An organization that has submitted an application to the Internal Revenue Service for determination of its status as an organization described in sub-subdivision a. of this subdivision.

(9) Except as otherwise provided in this Article, the definitions in Article 22A of this Chapter apply in this Article. (2004-125, s. 2; 2006-182, s. 1(b); 2009-534, s. 8(a), (b).)

Editor's Note. — Session Laws 2004-125, s. 7, provides: "This act is effective when it becomes law [July 20, 2004], except as otherwise provided in this act, and except that any criminal penalty resulting from this act becomes effective October 1, 2004."

Session Laws 2004-125, s. 6, is a severability clause.

Effect of Amendments. — Session Laws 2009-534, s. 8(a) and (b), effective December 1, 2009, substituted "Is transmitted" for "Is made" at the beginning of subdivision (2)b; and added subdivision (3)f.

§ 163-278.91. Disclosure of Electioneering Communications.

(a) Statement Required. — Every individual, committee, association, or any other organization or group of individuals who incurs an expense for the direct costs of producing or transmitting electioneering communications in an aggregate amount in excess of ten thousand dollars ($10,000) during any calendar year shall, within 24 hours of each disclosure date, file with the Board a statement containing the information described in subsection (b) of this section.

(b) Contents of Statement. — Each statement required to be filed by this section shall be made under the penalty of perjury in G.S. 14-209 and shall contain the following information:

(1) The identification of the entity incurring the expense, of any entity sharing or exercising direction or control over the activities of that entity, and of the custodian of the books and accounts of the entity incurring the expense.

(2) The principal place of business of the entity incurring the expense if the entity is not an individual.

(3) The amount of each expense incurred of more than one thousand dollars ($1,000) during the period covered by the statement and the identification of the entity to whom the expense was incurred.

(4) The elections to which the electioneering communications pertain and the names, if known, of the candidates identified or to be identified.

(5) The names and addresses of all entities that provided funds or anything of value whatsoever in an aggregate amount of more than one thousand dollars ($1,000) during the period beginning on the first day of the preceding calendar year and ending on the disclosure date to a segregated bank account that consists of funds provided solely by entities other than prohibited sources. Nothing in this subdivision is to be construed as a prohibition on the use of funds in such a segregated account for a purpose other than electioneering communications. If the provider is an individual, the statement shall also contain the principal occupation of the provider. The "principal occupation of the provider" shall mean the same as the "principal occupation of the contributor" in G.S. 163-278.11.

(6) Repealed by Session Laws 2005-430, s. 9(c), effective December 1, 2005, and applicable to all contributions and expenditures made or accepted on or after that date. (2004-125, s. 2; 2005-430, s. 9(c); 2006-182, s. 2(b).)

§ 163-278.92. Prohibition of corporate and labor disbursements for electioneering communications.

(a) Prohibition. — No prohibited source may make any disbursement for the costs of producing or transmitting any electioneering communication. No individual, committee, association, or any other organization or group of individuals, including but not limited to, a political organization (as defined in section 527(e)(1) of the Internal Revenue Code of 1986), which has received any funds or anything of value whatsoever from a prohibited source may make any disbursement for the costs of producing or transmitting any electioneering communication, unless that individual, committee, association, or other organization or group of individuals maintains a segregated bank account that consists of funds provided solely by entities other than prohibited sources. For purposes of this section, the term "funds or anything of value whatsoever" shall not include monies paid to an individual, committee, association, or other organization or group of individuals for services rendered or other payment of debt owed. It shall be unlawful for any person or entity to create, establish, or organize more than one political organization (as defined in section 527(c)(1) of the Internal Revenue Code) with the intent to avoid or evade the prohibitions on disbursements for electioneering communications from prohibited sources or the reporting requirements contained in this Article.

(b) Direct or Indirect Disbursement. — An electioneering communication shall be treated as made by a prohibited source if the prohibited source directly or indirectly disburses any amount for any of the costs of the communication.

(c) Segregated Fund. — Any disbursement for an electioneering communication made from an account must be made from a segregated account into which no funds from a prohibited source have been directly or indirectly introduced.

(d) Limitation on Prohibition. — The prohibition in this section shall not apply unless the electioneering communication at issue is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate. (2004-125, s. 2; 2005-430, s. 9(d); 2006-182, s. 3(b); 2008-150, s. 10.3(b).)

Effect of Amendments. — Session Laws 2008-150, s. 10.3(b), effective August 2, 2008, added subsection (d).

§ 163-278.93. Penalties.

Except as otherwise provided in this Article, a violation of this Article is a Class 2 misdemeanor. The State Board of Elections has the same authority to compel from any individual, committee, association, or any other organization or group of individuals covered by this Article the disclosures required by this Article that the Board has to compel the disclosures required by Article 22A of this Chapter. The civil penalties and remedies in G.S. 163-278.34 shall apply to violations of this Article, and where those provisions apply to violations involving contributions and expenditures they shall apply in the same manner to payments and disbursements in violation of G.S. 163-278.92. (2004-125, s. 2; 2006-259, s. 29(b).)

Editor's Note. — Session Laws 2004-125, s. 7, provides that any criminal penalty resulting from this act becomes effective October 1, 2004.

§ 163-278.94. Determination of electioneering communication.

(a) Any individual, committee, association, or any other organization or group of individuals that produces a communication to be distributed to the relevant electorate in the time periods under G.S. 163-278.90(2)b. may, but is not required to, ask the State Board for a determination as to whether or not that communication is an electioneering communication prior to the airing of that communication.

(b) The State Board shall establish a process for determination as to whether a communication is an electioneering communication prior to the airing of that communication when it is requested under subsection (a) of this section. The responsibility for the determination may be delegated to the Executive Director. If the responsibility is delegated to the Executive Director, the process established by the State Board shall include an opportunity for immediate appeal to the State Board of the determination by the Executive Director. (2009-534, s. 8(c).)

Editor's Note. — Session Laws 2009-534, s. 11, made this section effective December 1, 2009.

ARTICLE 22J.

The Voter-Owned Elections Act.

§ 163-278.95. Purpose and establishment of Voter-Owned Elections Act.

The purpose of this Article is to ensure the vitality and fairness of democratic elections in North Carolina to the end that any eligible citizen of this State can realistically choose to seek and run for public office. It is also the purpose of this Article to protect the constitutional rights of voters and candidates from the detrimental effects of increasingly large amounts of money being raised and spent in North Carolina to influence the outcome of elections. It is essential to the public interest that the potential for corruption or the appearance of corruption is minimized and that the equal and meaningful participation of all citizens in the democratic process is ensured. Accordingly, this Article establishes the North Carolina Voter-Owned Elections Fund as an alternative source of campaign financing for candidates who obtain a sufficient number of qualifying contributions from registered voters and who voluntarily accept strict fund-raising and spending limits. This Article is available to candidates for the Council of State offices of Auditor, Superintendent of Public Instruction, and Commissioner of Insurance in elections to be held in 2008 and thereafter. (2007-484, s. 43.8(c); 2007-540, s. 1.)

Editor's Note. — Session Laws 2007-540, s. 6, as amended by Session Laws 2007-484, s. 43.8(c), made this Article effective August 31, 2007, and applicable to elections for Auditor, Superintendent of Public Instruction, and Commissioner of Insurance in 2008 and thereafter.

Session Laws 2007-540, s. 1, enacted Article 22J of Chapter 163, consisting of G.S. 163-278.95 through 163-278.99E. This Article has been set out to follow Article 22F, consisting of G.S. 163-278.90 through 163-278.94, and to precede Article 22G, consisting of G.S. 163-278.100 through 163-278.109, in order to maintain sequential numerical order, at the direction of the Revisor of Statutes.

Session Laws 2007-540, s. 4, is a severability clause.

§ 163-278.96. Definitions.

The following definitions apply in this Article:

(1) Board. — The State Board of Elections.

(2) Campaign-related expenditure. — An expenditure that benefits the candidate's current campaign in accordance with guidelines established by the Board.

(3) Candidate. — An individual who becomes a candidate as described in G.S. 163-278.6(4). The term includes a "candidate campaign committee" as defined in G.S. 163-278.38Z(3).

(4) Certified candidate. — A candidate for office who chooses to receive campaign funds from the Fund and who is certified under G.S. 163-278.98(c).

(5) Contested primary and contested general election. — An election in which there are more candidates than the number to be elected.

(6) Contribution. — Defined in G.S. 163-278.6. A distribution from the Fund pursuant to this Article is not a "contribution" and is not subject to the limitations of G.S. 163-278.13 or the prohibitions of G.S. 163-278.15 or G.S. 163-278.19. Instead of being subject to G.S.

163-278.16B, distributions are subject to the guidelines issued by the Board pursuant to G.S. 163-278.98(e)(5).

(6a) Electioneering communication. — As defined in G.S. 163-278.80 and G.S. 163-278.90, except that it is made during the period beginning 30 days before absentee ballots become available for a primary and ending on primary election day and during the period 60 days before absentee ballots become available for a general election and ending on general election day.

(7) Expenditure. — Defined in G.S. 163-278.6.

(8) Fund. — The North Carolina Voter-Owned Elections Fund established in G.S. 163-278.97.

(9) Independent expenditure. — Defined in G.S. 163-278.6.

(10) Maximum qualifying contributions. — If the candidate has an uncontested primary, an amount equal to 100 times the filing fee for the office sought. If the candidate has a contested primary, 200 times the filing fee for the office sought.

(11) Nonparticipating candidate. — A candidate for office who is not seeking to be certified under G.S. 163-278.98(c).

(12) Office. — The Council of State offices of Auditor, Superintendent of Public Instruction, and Commissioner of Insurance.

(13) Participating candidate. — A candidate for office who has filed a declaration of intent to participate under G.S. 163-278.98(a).

(14) Political committee. — Defined in G.S. 163-278.6.

(15) Qualifying contribution. — A contribution of not less than ten dollars ($10.00) and not more than two hundred dollars ($200.00) in the form of a check or money order to the candidate that meets both of the following conditions:
  a. Made by any registered voter in this State.
  b. Made only during the qualifying period and obtained with the approval of the candidate or candidate's committee.

(16) Qualifying period. — The period beginning September 1 in the year before the election and ending on the day of the primary.

(17) Trigger for matching funds. — The dollar amount at which matching funds are released under G.S. 163-278.99B for certified candidates. In the case of a contested primary, the trigger equals the maximum qualifying contributions for the candidate. In the case of a contested general election, the trigger equals the base level of funding available under G.S. 163-278.99(b)(4). (2007-484, ss. 43.8(a), (c); 2007-540, s. 1.)

Editor's Note. — Session Laws 2007-540, s. 6, as amended by Session Laws 2007-484, s. 43.8(c), made this Article effective August 31, 2007, and applicable to elections for Auditor, Superintendent of Public Instruction, and Commissioner of Insurance in 2008 and thereafter.

§ 163-278.97. Voter-Owned Elections Fund established; sources of funding.

(a) Establishment of Fund. — The North Carolina Voter-Owned Elections Fund is established to finance the election campaigns of certified candidates for office and to pay administrative and enforcement costs of the Board related to this Article. The Fund is a special, dedicated, nonlapsing, nonreverting fund. Any interest generated by the Fund is credited to the Fund. The Board shall administer the Fund.

(b) Sources of Funding. — Money received from all the following sources must be deposited in the Fund:

(1) Unspent Fund revenues distributed for an election that remain unspent or uncommitted at the time the recipient is no longer a certified candidate in the election.
(2) Money ordered returned to the Fund in accordance with G.S. 163-278.99D.
(3) Money paid to the Fund equal to excess contributions as provided in G.S. 163-278.98(e)(1).
(4) Voluntary donations made directly to the Fund.
(5) Appropriations from the General Fund.

(c) Evaluation and Determination of Fund Amount. — By January 1, 2011, and every four years thereafter, the Board, in conjunction with the Advisory Council established under G.S. 163-278.68(b), shall prepare and provide to the Joint Legislative Commission on Governmental Operations of the General Assembly a report documenting, evaluating, and making recommendations relating to the administration, implementation, and enforcement of this Article. In its report, the Board shall set out the funds received to date and the expected needs of the Fund during the next election cycle and make recommendations about the feasibility of expanding its provisions to include other candidates for State office based on the experience of this Article and the experience of similar programs in North Carolina and other states. The Board shall also evaluate and make recommendations regarding how to address activities that could undermine the purpose of this Article, including spending that appears to target candidates but is not reached by regulation. (2007-484, s. 43.8(c); 2007-540, s. 1.)

Editor's Note. — Session Laws 2007-540, s. 5, provides: "There is appropriated from the General Fund to the State Board of Elections the sum of one million dollars ($1,000,000) for the 2007-2008 fiscal year and the sum of three million five hundred eighty thousand dollars ($3,580,000) for the 2008-2009 fiscal year for the implementation of this act."

Session Laws 2007-540, s. 6, as amended by Session Laws 2007-484, s. 43.8(c), provides in part that the State Board of Elections shall make the kind of report required in G.S. 163-278.97(c), as enacted by Session Laws 2007-540, s. 1, as soon as feasible before the 2008 election.

§ 163-278.98. Requirements for participation.

(a) Declaration of Intent to Participate. — Any individual choosing to receive campaign funds from the Fund shall first file with the Board a declaration of intent to participate in the program established by this Article as a candidate for a stated office. The declaration of intent shall be filed before or during the qualifying period and before collecting any qualifying contributions. In the declaration, the candidate shall swear or affirm that only one political committee, identified with its treasurer, shall handle all contributions, campaign-related expenditures, and obligations for the participating candidate and that the candidate will comply with the contribution and expenditure limits set forth in subsection (e) of this section and all other requirements set forth in this Article or adopted by the Board. Failure to comply is a violation of this Article.

(b) Demonstration of Support of Candidacy. — In order to be certified, participating candidates must obtain qualifying contributions from at least 750 registered voters in this State. The qualifying contributions shall be equal to at least 25 times the amount of the filing fee for the office. No payment, gift, or anything of value shall be given in exchange for a qualifying contribution.

(c) Certification of Candidates. — Upon receipt of a submittal of the record of qualifying contributions by a participating candidate, the Board shall determine whether or not the candidate has:

(1) Filed a completed declaration of intent to participate in this Article.

(2) Submitted a report itemizing the appropriate number of qualifying contributions received from registered voters, which the Board shall verify through a random sample or other means it adopts. The report shall include the county of residence of each registered voter listed.

(3) Filed a notice of candidacy with the State Board of Elections as a candidate for the office.

(4) Otherwise met the requirements for participation in this Article.

The Board shall certify candidates complying with the requirements of this section as soon as possible and no later than five business days after receipt of a satisfactory record of qualifying contributions.

(d) Final Report for Qualifying Contributions. — No later than five business days after the end of the qualifying period, all participating candidates shall submit a report to the Board of all previously unreported qualifying contributions, in accordance with procedures developed by the Board. Within seven business days after submittal of the final report, the Board shall determine, through a random audit or other means it adopts, whether the contributions abide by the definition of qualifying contributions, whether they must be returned to the donor, and whether they exceed the maximum amount of qualifying contributions.

(e) Restrictions on Contributions and Expenditures for Participating and Certified Candidates. — The following restrictions shall apply to contributions and expenditures with respect to participating and certified candidates:

(1) Beginning August 1 of the year before the election and before filing a declaration of intent, a candidate shall limit campaign-related expenditures to twenty thousand dollars ($20,000) and shall not accept more than twenty thousand dollars ($20,000) from sources and in amounts permitted by Article 22A of this Chapter. A candidate who exceeds either of these limits shall be ineligible to file a declaration of intent or receive funds from the Fund. However, the acceptance of contributions in excess of that twenty thousand dollar ($20,000) limit does not render the candidate ineligible if the candidate pays to the Board an amount equal to the contributions accepted by the candidate in excess of that limit. The Board shall deposit all such payments into the Fund.

(2) From the filing of a declaration of intent through the end of the qualifying period, a candidate may accept only qualifying contributions, contributions under ten dollars ($10.00) from North Carolina voters, in-kind party contributions as permitted in subdivision (4) of this subsection, and personal and family contributions permitted under subdivision (4a) of this subsection. The total contributions the candidate may accept during this period shall not exceed the maximum qualifying contributions for that candidate. In addition to these contributions, the candidate may only expend during this period the remaining money raised pursuant to subdivision (1) of this subsection and possible matching funds received pursuant to G.S. 163-278.99B. If the candidate has any remaining money that was raised as contributions before August 1 of the year before the election, the candidate may not expend that money after filing the declaration of intent, except for purposes permitted under subdivision (2), (3), (6), (7), or (8) of G.S. 163-278.16B(a).

(3) After the qualifying period and through the date of the general election, the candidate shall cease campaign-related fund-raising activities and shall expend only the funds the candidate receives from the Fund pursuant to G.S. 163-278.99(b) plus any funds remaining from the qualifying period and possible matching funds.

(4) In addition to the amounts above, a candidate may accept in-kind contributions from political party executive committees, up to an

aggregate value of thirty thousand dollars ($30,000) for the election cycle.

(4a) During the qualifying period, the candidate may contribute up to one thousand dollars ($1,000) of that candidate's own money to the campaign. Debt incurred by the candidate for a campaign expenditure shall count toward that limit. The candidate may accept in contributions one thousand dollars ($1,000) from each member of that candidate's family consisting of spouse, parent, child, brother, and sister.

(5) A candidate and the candidate's committee shall limit the use of all revenues permitted by this subsection to expenditures for campaign-related purposes only. The Board shall publish guidelines outlining permissible campaign-related expenditures.

(6) Except as provided in subdivision (1) of this subsection, any contribution received by a participating or certified candidate that falls outside that permitted by this subsection shall be returned to the donor as soon as practicable. Contributions intentionally made, solicited, or accepted in violation of this Article are subject to civil penalties as specified in G.S. 163-278.99D. The funds involved shall be forfeited to the Civil Penalty and Forfeiture Fund.

(7) A candidate shall return to the Fund any amount distributed for an election that is unspent and uncommitted at the date of the election or at the time the individual ceases to be a certified candidate, whichever occurs first. For accounting purposes, all qualifying, personal, and family contributions shall be considered spent before revenue from the Fund is spent or committed.

(f) Revocation. — A candidate may revoke, in writing to the Board, a decision to participate in the Fund at any time. After a revocation, that candidate may accept and expend outside the limits of this Article without violating this Article. Within 10 days after revocation, a candidate shall return to the Board all money received from the Fund. (2007-484, s. 43.8(c); 2007-540, s. 1.)

Editor's Note. — Sesion Laws 2007-540, s. 6, as amended by Session Laws 2007-484, s. 43.8(c), provides in part: "For purposes of the 2008 election, the beginning date for the voluntary funding limitation as enacted in G.S. 163-278.98(e)(1) and (2) in Section 1 of this act shall be set administratively by the State Board of Elections."

§ 163-278.99. Distribution from the Fund.

(a) Timing of Fund Distribution. — The Board shall distribute to a certified candidate revenue from the Fund in an amount determined under subdivision (b)(4) of this section as follows:

(1) One-third of the amount within five business days after the certified candidate's name is approved to appear on the ballot in a contested general election, but no earlier than five business days after the primary.

(2) The remainder of the amount on August 1 before the general election.

(b) Amount of Fund Distribution. — By August 1, 2011, and no less frequently than every four years thereafter, the Board shall determine the amount of funds, rounded to the nearest one hundred dollars ($100.00), to be distributed to certified candidates as follows:

(1) Uncontested primaries. — No funds shall be distributed.

(2) Contested primaries. — No funds shall be distributed except as provided in G.S. 163-278.99B.

(3) Uncontested general elections. — No funds shall be distributed.

(4) Contested general elections. — The amount of funds to be distributed to a candidate is the average amount of campaign-related expendi-

tures made by all candidates who won the immediately preceding three general elections for that office, but not less than three hundred thousand dollars ($300,000). For purposes of this subsection, "campaign-related expenditures" does not include loan repayments and contributions to a candidate, political committee, or political party.

(c) Method of Fund Distribution. — The Board, in consultation with the State Treasurer and the State Controller, shall develop a rapid, reliable method of conveying funds to certified candidates. In all cases, the Board shall distribute funds to certified candidates in a manner that is expeditious, ensures accountability, and safeguards the integrity of the Fund. If the money in the Fund is insufficient to fully fund all certified candidates, then the available money shall be distributed proportionally, according to each candidate's eligible funding, and the candidate may raise additional money in the same manner as a nonparticipating candidate for the same office up to the unfunded amount of the candidate's eligible funding. (2007-484, s. 43.8(c); 2007-540, s. 1.)

Editor's Note. — Session Laws 2007-540, s. 6, as amended by Session Laws 2007-484, s. 43.8(c), provides in part that the State Board of Elections shall make the determination required in G.S. 163-278.99(b), as enacted by Session Laws 2007-540, s. 1, as soon as feasible before the 2008 election.

§ 163-278.99A. Reporting requirements.

(a) Reporting by Noncertified Candidates and Other Entities. — Any nonparticipating candidate with a certified opponent shall report total contributions received to the Board by facsimile machine or electronically within 24 hours after the total amount of contributions received exceeds eighty percent (80%) of the trigger for matching funds as defined in G.S. 163-278.96(17). Any entity making independent expenditures in support of or in opposition to a certified candidate, or in support of a candidate opposing a certified candidate, or paying for electioneering communications referring to one of those candidates, shall report the total funds received, spent, or obligated for those expenditures or payments to the Board by facsimile machine or electronically within 24 hours after the total amount of expenditures or obligations made, or funds raised or borrowed, for the purpose of making the independent expenditures or electioneering communications exceeds five thousand dollars ($5,000). After the initial 24-hour filing, the nonparticipating candidate or other reporting entity shall comply with an expedited reporting schedule. The schedule and forms for reports required by this subsection shall be supplied by the Board.

(b) Reporting by Participating and Certified Candidates. — Notwithstanding other provisions of law, participating and certified candidates shall report any money received and all campaign expenditures, obligations, and related activities to the Board according to procedures developed by the Board. Upon the filing of a final report for any losing primary election, special election, or general election, each candidate who has revenues from the Fund remaining unspent shall return those revenues to the Board. In developing these procedures, the Board shall utilize existing campaign reporting procedures wherever practicable.

(c) Timely Access to Reports. — The Board shall ensure prompt public access to the reports received in accordance with this Article. The Board may utilize electronic means of reporting and storing information. (2007-484, s. 43.8(c); 2007-540, s. 1; 2008-150, s. 10.2(b); 2009-570, s. 26.)

Editor's Note. — Session Laws 2007-540, s. 6, as amended by Session Laws 2007-484, s. 43.8(c), made this Article effective August 31, 2007, and applicable to elections for Auditor, Superintendent of Public Instruction, and Commissioner of Insurance in 2008 and thereafter.

The bracketed word "be" has been inserted in subsection (a) at the direction of the Revisor of Statutes.

Effect of Amendments. — Session Laws 2008-150, s. 10.2(b), effective August 2, 2008, rewrote subsection (a).

Session Laws 2009-570, s. 26, effective August 28, 2009, substituted "shall be supplied by the Board" for "shall supplied by the Board" at the end of subsection (a).

§ 163-278.99B. Matching funds.

(a) When Matching Funds Become Available. — When any report or group of reports shows that "funds in opposition to a certified candidate or in support of an opponent to that candidate" as described in this section exceed the trigger for matching funds as defined in G.S. 163-278.96(17), the Board shall issue immediately to that certified candidate an additional amount equal to the reported excess within the limits set forth in this section. "Funds in opposition to a certified candidate or in support of an opponent to that candidate" shall be equal to the sum of subdivisions (1) and (2) as follows:

(1) The greater of the following:
  a. Campaign expenditures or obligations made, or funds raised or borrowed, whichever is greater, reported by any one nonparticipating opponent of a certified candidate. Where a certified candidate has more than one nonparticipating opponent, the measure shall be taken from the nonparticipating candidate showing the highest relevant dollar amount.
  b. The funds distributed in accordance with G.S. 163-278.99(b) to a certified opponent of the certified candidate.

(2) The aggregate total of all expenditures and payments reported in accordance with G.S. 163-278.99A(a) of entities making independent expenditures or electioneering communications in opposition to the certified candidate or in support of any opponent of that certified candidate.

(b) Limit on Matching Funds in Contested Primary. — Total matching funds to a certified candidate in a contested primary shall be limited to an amount equal to the maximum qualifying contributions for a candidate with a contested primary.

(c) Limit on Matching Funds in Contested General Election. — Total matching funds to a certified candidate in a contested general election shall be limited to an amount equal to two times the amount described in G.S. 163-278.99(b)(4).

(d) Determinations by Board. — In the case of electioneering communications, the Board shall determine which candidate, if any, is entitled to receive matching funds as a result of the communication. The Board shall issue matching funds based on the communication only if it ascertains that the communication is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate. In making its determination, the Board shall not consider evidence external to the communication itself of the intent of the sponsor or the effect of the communication. The Board shall notify each candidate it determines is entitled to receive matching funds based on those communications, the sponsor of those communications, and any candidate who is an opponent of the candidate it determines is entitled to the matching funds. The Board shall give the sponsor of the communication and any opposing candidate an adequate opportunity to rebut the determination of the Board. In considering the rebuttal, all candidates in the race and the sponsor shall be given adequate and equal opportunity to be heard. The Board shall adopt procedures for implementing this subsection, balancing in those procedures adequacy of opportunity to rebut and adequacy and equality of opportunity to be heard on the rebuttal with the need to expedite the decision on awarding matching funds. The Board shall distribute the matching funds, if any, at the conclusion of its process.

(e) Proportional Measuring of Multicandidate Communications. — In calculating the amount of matching funds a certified candidate is eligible to receive under this section, the Board shall include the proportion of expenditures, obligations, or payments for multicandidate communications that pertains to the candidate. (2007-484, ss. 43.8(b)-(d); 2007-540, s. 1.)

Editor's Note. — Session Laws 2007-540, s. 6, as amended by Session Laws 2007-484, s. 43.8(c), made this Article effective August 31, 2007, and applicable to elections for Auditor, Superintendent of Public Instruction, and Commissioner of Insurance in 2008 and thereafter.

§ 163-278.99C. Unaffiliated and new-party candidates.

Unaffiliated candidates certified pursuant to G.S. 163-122 and new-party candidates certified pursuant to G.S. 163-98 shall be eligible for revenues from the Fund in the same amounts and at the same time as specified in G.S. 163-278.99. For unaffiliated candidates and new-party candidates not certified to appear on the ballot by noon on the deadline set in G.S. 163-106(c) for candidate filing in the election year, the deadline for seeking certification to receive revenue from the Fund is noon on the first business day of July of the election year. (2007-484, s. 43.8(c); 2007-540, s. 1.)

Editor's Note. — Session Laws 2007-540, s. 6, as amended by Session Laws 2007-484, s. 43.8(c), made this Article effective August 31, 2007, and applicable to elections for Auditor, Superintendent of Public Instruction, and Commissioner of Insurance in 2008 and thereafter.

§ 163-278.99D. Enforcement by the Board; civil penalty.

In addition to any other penalties that may be applicable, any individual, political committee, or other entity that violates any provision of this Article is subject to a civil penalty of up to ten thousand dollars ($10,000) per violation or three times the amount of any financial transactions involved in the violation, whichever is greater. In addition to any fine, for good cause shown, a candidate found in violation of this Article may be required to return to the Fund all amounts distributed to the candidate from the Fund. If the Board makes a determination that a violation of this Article has occurred, the Board shall calculate and assess the amount of the civil penalty and shall notify the entity that is assessed the civil penalty of the amount that has been assessed. The Board shall then proceed in the manner prescribed in G.S. 163-278.34. In determining whether or not a candidate is in violation of this Article, the Board may consider as a mitigating factor any circumstances out of the candidate's control. (2007-484, s. 43.8(c); 2007-540, s. 1.)

Editor's Note. — Session Laws 2007-540, s. 6, as amended by Session Laws 2007-484, s. 43.8(c), made this Article effective August 31, 2007, and applicable to elections for Auditor, Superintendent of Public Instruction, and Commissioner of Insurance in 2008 and thereafter.

§ 163-278.99E. Voter education.

(a) Voter Guide. — The Board shall publish a Voter Guide that explains the functions of office as defined in G.S. 163-278.96(12) and the laws concerning the election of the Council of State, the purpose and function of the Fund, and the laws concerning voter registration. The Board shall distribute the Guide to as many voting-age individuals in the State as practical, through a mailing to all residences or other means it deems effective. The State Board of Elections shall maintain a list of the addresses from which mailed Voter Guides are returned as undeliverable. That list shall be available for public inspection. The distribution shall occur no more than 28 days nor fewer than seven days before the one-stop voting period provided in G.S. 163-227.2 for the primary and no more than 28 days nor fewer than seven days before the one-stop voting period provided in G.S. 163-227.2 for the general election.

(b) Candidate Information. — The Voter Guide shall include information concerning all candidates for office as defined in G.S. 163-278.96(12), as provided by those candidates according to a format provided to the candidates by the Board. The Board shall request information for the Guide from each candidate according to the following format:

(1) Place of residence.
(2) Education.
(3) Occupation.
(4) Employer.
(5) Previous elective offices held.
(6) Endorsements, limited to 50 words. Concerning endorsements, the Board shall send to the candidates instructions as follows: "In order to have an endorsement published, you must provide written confirmation to the Board from the endorsing person or organization that you received that person's or organization's endorsement."
(7) Candidate statement, limited to 150 words. Concerning that statement, the Board shall send to the candidates instructions as follows: "Your statement may include information such as your qualifications, your endorsements, why you would make a good elected official, what distinguishes you from your opponent(s), and any other information relevant to your candidacy. The State Board of Elections will reject any portion of any statement which it determines contains obscene, profane, or defamatory language. The candidate shall have three days to resubmit the candidate statement if the Board rejects a portion of the statement."

(c) Disclaimer. — The Voter Guide shall contain the following statement: "Statements by candidates do not express or reflect the opinions of the State Board of Elections."

(d) Relationship to the Judicial Voter Guide. — The Board may publish the Voter Guide in conjunction with the Judicial Voter Guide described in G.S. 163-278.69. (2007-391, s. 4(b); 2007-484, s. 43.8(c); 2007-540, s. 1; 2008-187, s. 33(a).)

Editor's Note. — Session Laws 2007-391, s. 4(b), amended G.S. 163-278.99E as enacted by House Bill 1517 of the 2007 Session of the General Assembly, contingent on that act becoming law. House Bill 1517 was enacted as Session Laws 2007-540.

Session Laws 2007-540, s. 6, as amended by Session Laws 2007-484, s. 43.8(c), made this Article effective August 31, 2007, and applicable to elections for Auditor, Superintendent of Public Instruction, and Commissioner of Insurance in 2008 and thereafter.

Session Laws 2007-391, s. 1(c), was amended by Session Laws 2008-187, s. 33(a), to eliminate any confusion as to effective dates of the 2007 act. Session Laws 2007-391, s. 4(b), which substituted "28 days" for "14 days" twice in the last sentence of subsection (a), is effective August 19, 2007.

Article 22G.

Candidate-Specific Communications.

§ 163-278.100. Definitions.

As used in this Article, the following terms have the following definitions:

(1) The term "candidate-specific communication" means any broadcast, cable, or satellite communication that has all the following characteristics:

a. Refers to a clearly identified candidate for a statewide office or the General Assembly.

b. Is aired in an even-numbered year after the final date on which a Notice of Candidacy can be filed for the office, pursuant to G.S. 163-106(c) or G.S. 163-323, and through the day on which the general election is conducted, excluding the time period set in the definition for "electioneering communication" in G.S. 163-278.80(2)b.

c. Is targeted to the relevant electorate.

(2) The term "candidate-specific communication" does not include any of the following:

a. A communication appearing in a news story, commentary, or editorial distributed through the facilities of any broadcasting station, unless those facilities are owned or controlled by any political party, political committee, or candidate.

b. A communication that constitutes an expenditure or independent expenditure under Article 22A of this Chapter.

c. A communication that constitutes a candidate debate or forum conducted pursuant to rules adopted by the Board or that solely promotes that debate or forum and is made by or on behalf of the person sponsoring the debate or forum.

d. A communication made while the General Assembly is in session which, incidental to advocacy for or against a specific piece of legislation pending before the General Assembly, urges the audience to communicate with a member or members of the General Assembly concerning that piece of legislation.

e. An electioneering communication as defined in Article 22E of this Chapter.

f. A communication that meets all of the following criteria:

1. Does not mention any election, candidacy, political party, opposing candidate, or voting by the general public.

2. Does not take a position on the candidate's character or qualifications and fitness for office.

3. Proposes a commercial transaction.

(3) The term "disclosure date" means either of the following:

a. The first date during any calendar year when a candidate-specific communication is aired after an entity has incurred expenses for the direct costs of producing or airing candidate-specific communications aggregating in excess of ten thousand dollars ($10,000).

b. Any other date during that calendar year by which an entity has incurred expenses for the direct costs of producing or airing candidate-specific communications aggregating in excess of ten thousand dollars ($10,000) since the most recent disclosure date for that calendar year.

(4) The term "targeted to the relevant electorate" means a communication which refers to a clearly identified candidate for statewide office or the

General Assembly and which can be received by 50,000 or more individuals in the State in the case of a candidacy for statewide office and 7,500 or more individuals in the district in the case of a candidacy for General Assembly.

(5) Except as otherwise provided in this Article, the definitions in Article 22A of this Chapter apply in this Article. (2006-233, s. 1; 2006-259, s. 29(e); 2009-534, s. 9(a), (b).)

Editor's Note. — Session Laws 2006-233, s. 4 made this Article effective January 1, 2007.

Session Laws 2006-233, s. 3, is a severability clause.

Effect of Amendments. — Session Laws 2009-534, s. 9(a) and (b), effective December 1, 2009, substituted "Is aired" for "Is made" at the beginning of subdivision (1)b; and added subdivision (2)f.

§ 163-278.101. Disclosure of candidate-specific communications.

(a) Statement Required. — Every individual, committee, association, or any other organization or group of individuals that incurs an expense for the direct costs of producing or airing candidate-specific communications in an aggregate amount in excess of ten thousand dollars ($10,000) during any calendar year shall, within 24 hours of each disclosure date, file with the Board a statement containing the information described in subsection (b) of this section.

(b) Contents of Statement. — Each statement required to be filed by this section shall be made under the penalty of perjury in G.S. 14-209 and shall contain the following information:

(1) The identification of the entity incurring the expense, of any entity sharing or exercising direction or control over the activities of that entity, and of the custodian of the books and accounts of the entity incurring the expense.

(2) The principal place of business of the entity incurring the expense if the entity is not an individual.

(3) The amount of each expense incurred of more than one thousand dollars ($1,000) during the period covered by the statement and the identification of the entity to whom the expense was incurred.

(4) The candidates in the candidate-specific communications that are identified or are to be identified.

(5) The identity of every provider of funds or anything of value whatsoever to the entity, providing an amount in excess of one thousand dollars ($1,000). If the provider is an individual, the statement shall also contain the principal occupation of the provider. The "principal occupation of the provider" shall mean the same as the "principal occupation of the contributor" in G.S. 163-278.11.

(c) Creating Multiple Organizations. — It shall be unlawful for any person or entity to create, establish, or organize more than one political organization (as defined in section 527(c)(1) of the Internal Revenue Code) with the intent to avoid or evade the reporting requirements contained in this Article. (2006-233, s. 1.)

§ 163-278.102. Penalties.

The State Board of Elections has the same authority to compel from any individual, committee, association, or any other organization or group of individuals covered by this Article the disclosures required by this Article that the Board has to compel the disclosures required by Article 22A of this Chapter. The civil penalties and remedies in G.S. 163-278.34 shall apply to violations of this Article. (2006-233, s. 1; 2006-259, s. 29(c).)

§ 163-278.103. Determination of candidate-specific communication.

(a) Any individual, committee, association, or any other organization or group of individuals that produces a communication to be aired to the relevant electorate in the time periods under G.S. 163-278.100(1)b. may, but is not required to, ask the State Board for a determination as to whether or not that communication is a candidate-specific communication prior to the airing of that communication.

(b) The State Board shall establish a process for determination as to whether a communication is a candidate-specific communication prior to the airing of that communication when it is requested under subsection (a) of this section. The responsibility for the determination may be delegated to the Executive Director. If the responsibility is delegated to the Executive Director, the process established by the State Board shall include an opportunity for immediate appeal to the State Board of the determination by the Executive Director. (2009-534, s. 9(c).)

Editor's Note. — Session Laws 2009-534, s. 11, made this section effective December 1, 2009.

§§ 163-278.104 through 163-278.109: Reserved for future codification purposes.

ARTICLE 22H.

Mass Mailings and Telephone Banks: Candidate-Specific Communications.

§ 163-278.110. Definitions.

As used in this Article, the following terms have the following definitions:

(1) The term "candidate-specific communication" means any mass mailing or telephone bank that has all the following characteristics:
  a. Refers to a clearly identified candidate for a statewide office or the General Assembly.
  b. Is transmitted in an even-numbered year after the final date on which a Notice of Candidacy can be filed for the office, pursuant to G.S. 163-106(c) or G.S. 163-323, and through the day on which the general election is conducted, excluding the time period set in the definition for "electioneering communication" in G.S. 163-278.90(2)b.
  c. Is targeted to the relevant electorate.

(2) The term "candidate-specific communication" does not include any of the following:
  a. A communication appearing in a news story, commentary, or editorial distributed through any newspaper or periodical, unless that publication is owned or controlled by any political party, political committee, or candidate.
  b. A communication that constitutes an expenditure or independent expenditure under Article 22A of this Chapter.
  c. A communication that constitutes a candidate debate or forum conducted pursuant to rules adopted by the Board or that solely promotes that debate or forum and is made by or on behalf of the person sponsoring the debate or forum.

- d. A communication that is distributed by a corporation solely to its shareholders or employees or by a labor union or professional association solely to its members.
- e. A communication made while the General Assembly is in session which, incidental to advocacy for or against a specific piece of legislation pending before the General Assembly, urges the audience to communicate with a member or members of the General Assembly concerning that piece of legislation.
- f. An electioneering communication as defined in Article 22F of this Chapter.
- g. A public opinion poll conducted by a newspaper, periodical, or other news gathering organization.
- h. A communication that meets all of the following criteria:
  1. Does not mention any election, candidacy, political party, opposing candidate, or voting by the general public.
  2. Does not take a position on the candidate's character or qualifications and fitness for office.
  3. Proposes a commercial transaction.

(3) The term "disclosure date" means either of the following:

- a. The first date during any calendar year when a candidate-specific communication is transmitted after an entity has incurred expenses for the direct costs of producing or transmitting candidate-specific communications aggregating in excess of ten thousand dollars ($10,000).
- b. Any other date during that calendar year by which an entity has incurred expenses for the direct costs of producing or transmitting candidate-specific communications aggregating in excess of ten thousand dollars ($10,000) since the most recent disclosure date for that calendar year.

(4) The term "mass mailing" means any mailing by United States mail or facsimile. Part 1A of Article 22A of this Chapter has its own internal definition of "mass mailing" under the definition of "print media," and that definition does not apply in this Article.

(5) The term "race" means a ballot item, as defined in G.S. 163-165(2), in which the voters are to choose between or among candidates.

(6) The term "targeted to the relevant electorate" means:

- a. With respect to a statewide race:
  1. Transmitting, by mail or facsimile to a cumulative total of 50,000 or more addresses in the State, items identifying one or more candidates in the same race within any 30-day period; or
  2. Making a cumulative total of 50,000 or more telephone calls in the State identifying one or more candidates in the same race within any 30-day period.
- b. With respect to a race for the General Assembly:
  1. Transmitting, by mail or facsimile to a cumulative total of 2,500 or more addresses in the district, items identifying one or more candidates in the same race within any 30-day period; or
  2. Making a cumulative total of 2,500 or more telephone calls in the district identifying one or more candidates in the same race within any 30-day period.

(7) The term "telephone bank" means telephone calls that are targeted to the relevant electorate, except when those telephone calls are made by volunteer workers, whether or not the design of the telephone bank system, development of calling instructions, or training of volunteers was done by paid professionals.

(8) Except as otherwise provided in this Article, the definitions in Article 22A of this Chapter apply in this Article. (2006-233, s. 2; 2007-391, s. 31; 2007-510, s. 2; 2008-187, s. 33(a); 2009-534, s. 10(a), (b).)

Editor's Note. — Session Laws 2006-233, s. 4 made this Article effective January 1, 2007.

Session Laws 2006-233, s. 3, is a severability clause.

Session Laws 2007-391, s. 1(c), was amended by Session Laws 2008-198, s. 33(a), to eliminate any confusion as to effective dates of the act.

Session Laws 2007-391, s. 31, which added subdivision (8), is effective August 19, 2007.

Effect of Amendments. — Session Laws 2009-534, s. 10(a) and (b), effective December 1, 2009, substituted "Is transmitted" for "Is made" at the beginning of subdivision (1)b; and added subdivision (2)h.

§ 163-278.111. Disclosure of candidate-specific communications.

(a) Statement Required. — Every individual, committee, association, or any other organization or group of individuals that incurs an expense for the direct costs of producing or transmitting candidate-specific communications in an aggregate amount in excess of ten thousand dollars ($10,000) during any calendar year shall, within 24 hours of each disclosure date, file with the Board a statement containing the information described in subsection (b) of this section.

(b) Contents of Statement. — Each statement required to be filed by this section shall be made under the penalty of perjury in G.S. 14-209 and shall contain the following information:

(1) The identification of the entity incurring the expense, of any entity sharing or exercising direction or control over the activities of that entity, and of the custodian of the books and accounts of the entity incurring the expense.

(2) The principal place of business of the entity incurring the expense if the entity is not an individual.

(3) The amount of each expense incurred of more than one thousand dollars ($1,000) during the period covered by the statement and the identification of the entity to whom the expense was incurred.

(4) The candidates in the candidate-specific communications that are identified or are to be identified.

(5) The identity of every provider of funds or anything of value whatsoever to the entity, providing an amount in excess of one thousand dollars ($1,000). If the provider is an individual, the statement shall also contain the principal occupation of the provider. The "principal occupation of the provider" shall mean the same as the "principal occupation of the contributor" in G.S. 163-278.11.

(c) Creating Multiple Organizations. — It shall be unlawful for any person or entity to create, establish, or organize more than one political organization (as defined in section 527(c)(1) of the Internal Revenue Code) with the intent to avoid or evade the reporting requirements contained in this Article. (2006-233, s. 2.)

§ 163-278.112. Penalties.

The State Board of Elections has the same authority to compel from any individual, committee, association, or any other organization or group of individuals covered by this Article the disclosures required by this Article that the Board has to compel the disclosures required by Article 22A of this Chapter. The civil penalties and remedies in G.S. 163-278.34 shall apply to violations of this Article. (2006-233, s. 2; 2006-259, s. 29(d).)

§ 163-278.113. Determination of candidate-specific communication.

(a) Any individual, committee, association, or any other organization or group of individuals that produces a communication to be distributed to the relevant electorate in the time periods under G.S. 163-278.110(1)b. may, but is not required to, ask the State Board for a determination as to whether or not that communication is a candidate-specific communication prior to the airing of that communication.

(b) The State Board shall establish a process for determination as to whether a communication is a candidate-specific communication prior to the airing of that communication when it is requested under subsection (a) of this section. The responsibility for the determination may be delegated to the Executive Director. If the responsibility is delegated to the Executive Director, the process established by the State Board shall include an opportunity for immediate appeal to the State Board of the determination by the Executive Director. (2009-534, s. 10(c).)

Editor's Note. — Session Laws 2009-534, s. 11, made this section effective on December 1, 2009.

ARTICLE 22I.

Reserved for future codification purposes.

ARTICLES 22K.

Reserved for future codification purposes.

ARTICLE 22L.

Reserved for future codification purposes.

§§ 163-278.114 through 163-278.299: Reserved for future codification purposes.

ARTICLE 22M.

Legal Expense Funds.

§ 163-278.300. Definitions.

As used in this Article, the following terms mean:

(1) Board. — The State Board of Elections.

(2) Renumbered.

(3) Elected officer. — Any individual serving in or seeking a public office. An individual is seeking a public office when that individual has filed any notice, petition, or other document required by law or local act as a condition of election to public office. An individual continues to be an elected officer for purposes of this Article as long as a legal action commenced while the individual was an elected officer continues. If a

legal action is commenced after an individual ceases to serve in or seek public office but the legal action concerns subject matter in the individual's official capacity as an elected officer, for purposes of this Article, that individual is an elected officer as long as that legal action continues.

(4) Expenditure. — An expenditure means any purchase, advance, conveyance, deposit, distribution, transfer of funds, loan, payment, gift, pledge, subscription of money, anything of value whatsoever, and any contract, agreement, promise, or other obligation to make an expenditure, by a legal defense fund for a permitted use as provided in G.S. 163-278.320. An expenditure forgiven by a person or entity to whom it is owed shall be reported as a legal expense donation.

(5) Legal action. — A formal dispute in a judicial, legislative, or administrative forum, including but not limited to, a civil or criminal action filed in a court, a complaint or protest filed with a board of elections, an election contest filed under Article 3 of Chapter 120 of the General Statutes or G.S. 163-182.13A, or a complaint filed with the State Ethics Commission or Legislative Ethics Committee. The term "legal action" also includes investigations made or conducted before the commencement of any formal proceedings. The term "legal action" does not include the election itself or the campaign for election.

(5a) Legal expense donation. — A legal expense donation means any advance, conveyance, deposit, distribution, transfer of funds, loan, payment, gift, subscription of money, or anything of value whatsoever, and any contract, agreement, or other obligation to make a contribution to a legal expense fund for a permitted use as provided in G.S. 163-278.320. The term "legal expense donation" does not include either of the following:

a. The provision of legal services to an elected officer by the State or any of its political subdivisions when those services are authorized or required by law, or

b. The provision of free or pro bono legal advice or legal services, provided that any costs incurred or expenses advanced for which clients are liable under other provisions of law shall be deemed legal expense donations.

(6) Legal expense fund. — Any collection of money for the purpose of funding a legal action, or a potential legal action, taken by or against an elected officer in that elected officer's official capacity.

(7) Official capacity. — Related to or resulting from the campaign for public office or related to or resulting from holding public office. "Official capacity" is not limited to "scope and course of employment" as used in G.S. 143-300.3.

(8) Public office. — As defined in G.S. 163-278.6.

(9) Treasurer. — An individual appointed by an elected officer or other individual or group of individuals collecting money for a legal expense fund. (2007-349, s. 1; 2009-534, s. 2(a).)

Editor's Note. — Session Laws 2007-349, s. 7, made this Article effective January 1, 2008.

The definition in subdivision (5a) was formerly designated as subdivision (2). It has been renumbered at the direction of the Revisor of Statutes to preserve alphabetical order.

Effect of Amendments. — Session Laws 2009-534, s. 2(a), effective December 1, 2009, replaced the former definition of "Contribution" with "Legal expense donation" in subdivision (2); and rewrote subdivision (4).

§ 163-278.301. Creation of legal expense funds.

(a) An elected officer, or another individual or group of individuals on the elected officer's behalf, shall create a legal expense fund if given a legal expense donation, other than from that elected officer's self, spouse, parents, brothers, or sisters, for any of the following purposes:

(1) To fund an existing legal action taken by or against the elected officer in that elected officer's official capacity.

(2) To fund a potential legal action taken by or against an elected officer in that elected officer's official capacity.

(b) This section shall not apply to any payment to the State or any of its political subdivisions.

(c) The legal expense fund shall comply with all provisions of this Article.

(d) If an elected officer funds legal actions entirely from that elected officer's own legal expense donations or those of the elected officer's spouse, parents, brothers, or sisters, that elected officer is not required to create a legal expense fund. If a legal expense fund accepts legal expense donations as described in subsection (a) of this section, that legal expense fund shall report the elected officer's own legal expense donations and those of those family members along with the other legal expense donations in accordance with G.S. 163-278.310.

(e) No more than one legal expense fund shall be created by or for an elected officer for the same legal action. Legal actions arising out of the same set of transactions and occurrences are deemed the same legal action for purposes of this subsection. A legal expense fund created for one legal action or potential legal action may be kept open by or on behalf of the elected officer for subsequent legal actions or potential legal actions.

(f) Contractual arrangements, including liability insurance, or commercial relationships or arrangements made in the normal course of business if not made for the purpose of lobbying, are not "legal expense donations" for purposes of this Article. Use of such contractual arrangements to fund legal actions does not by itself require the elected officer to create a legal expense fund. If a legal expense fund has been created pursuant to subsection (a) of this section, such contractual arrangements shall be reported as expenditures.

(g) A violation of this Article shall be punishable as a Class 1 misdemeanor. (2007-349, s. 1; 2009-534, s. 2(b).)

Editor's Note. — Subsections (d1) through (f) have been renumbered subsections (e) through (g) at the direction of the Revisor of Statutes.

Effect of Amendments. — Session Laws 2009-534, s. 2(b), effective December 1, 2009, substituted "legal expense donation" for "contribution" in the introductory language of subsection (a); substituted "any payment" for "any contribution" in subsection (b); substituted "officer's own legal expense donations or those" for "officer's own contributions or the contributions" in the first sentence of subsection (d); and substituted the remaining uses of "legal expense donations" for "contributions" in subsections (d) and (f).

§§ 163-278.302 through 163-278.305: Reserved for future codification purposes.

§ 163-278.306. Treasurer.

(a) Each legal expense fund shall appoint a treasurer and, under verification, report the name and address of the treasurer to the Board.

(b) A legal expense fund may remove its treasurer. In case of the death, resignation, or removal of its treasurer, the legal expense fund shall appoint a successor within 10 calendar days of the vacancy and certify the name and address of the successor in the same manner provided in the case of an original appointment.

(c) Every treasurer of a legal expense fund shall receive training from the Board as to the duties of the office within three months of appointment and at least once every four years thereafter. (2007-349, s. 1.)

§ 163-278.307. Detailed accounts to be kept by treasurer.

(a) The treasurer of each legal expense fund shall keep detailed accounts, current within seven calendar days after the date of receiving a legal expense donation or making an expenditure, of all legal expense donations received and all expenditures made by or on behalf of the legal expense fund.

(b) Accounts kept by the treasurer of a legal expense fund or the accounts of a treasurer or legal expense fund at any bank or other depository may be inspected by a member, designee, agent, attorney, or employee of the Board who is making an investigation pursuant to G.S. 163-278.22.

(c) For purposes of this section, "detailed accounts" shall mean at least all information required to be included in the quarterly report required under this Article.

(d) When a treasurer shows that best efforts have been used to obtain, maintain, and submit the information required by this Article, any report of the legal expense shall be considered in compliance with this Article and shall not be the basis for criminal prosecution or the imposition of civil penalties. The State Board of Elections shall adopt rules to implement this subsection. (2007-349, s. 1; 2009-534, s. 2(c).)

Effect of Amendments. — Session Laws 2009-534, s. 2(c), effective December 1, 2009, in subsection (a), substituted "legal expense donation" for "contribution" and substituted "legal expense donations" for "contributions".

§ 163-278.308. Reports filed with Board.

(a) The treasurer of each legal expense fund shall file with the Board the following reports:

(1) Organizational report. — The report required under G.S. 163-278.309.

(2) Quarterly report. — The report required under G.S. 163-278.310.

(b) Any report or attachment required by this Article must be filed under certification of the treasurer as true and correct to the best of the knowledge of that officer.

(c) The organizational report shall be filed within 10 calendar days of the creation of the legal expense fund. All quarterly reports shall be filed with the Board no later than 10 business days after the end of each calendar quarter.

(d) Treasurers shall electronically file each report required by this section that shows a cumulative total for the quarter in excess of five thousand dollars ($5,000) in legal expense donations or expenditures, according to rules adopted by the Board. The Board shall provide the software necessary to the treasurer to file the required electronic report at no cost to the legal expense fund.

(e) Any statement required to be filed under this Article shall be signed and certified as true and correct by the treasurer and shall be certified as true and correct to the best of the treasurer's knowledge. The elected officer creating the legal expense fund, or the other individual or group of individuals creating the legal expense fund on the elected officer's behalf, shall certify as true and correct to the best of their knowledge the organizational report and appointment of the treasurer. A certification under this Article shall be treated as under oath, and any individual making a certification under this Article knowing the information to be untrue is guilty of a Class I felony. (2007-349, s. 1; 2009-534, s. 2(d).)

Effect of Amendments. — Session Laws 2009-534, s. 2(d), effective December 1, 2009, substituted "legal expense donations" for "contributions" in the first sentence of subsection (d).

§ 163-278.309. Organizational report.

(a) Each appointed treasurer shall file with the Board a statement of organization that includes all of the following:

(1) The name, address, and purpose of the legal expense fund.

(2) The names, addresses, and relationships of affiliated or connected elected officers, candidates, political committees, referendum committees, political parties, or similar organizations.

(3) The name, address, and position with the legal expense fund of the custodian of books and accounts.

(4) A listing of all banks, safety deposit boxes, or other depositories used, including the names and numbers of all accounts maintained and the numbers of all such safety deposit boxes used. The Board shall keep any account number required by this Article confidential except as necessary to conduct an audit or investigation, except as required by a court of competent jurisdiction, or except as confidentiality is waived by the treasurer. Disclosure of an account number in violation of this subdivision shall not give rise to a civil cause of action. This limitation of liability does not apply to the disclosure of account numbers in violation of this subdivision as a result of gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable.

(5) The name or names and address or addresses of any assistant treasurers appointed by the treasurer. Such assistant treasurers shall be authorized to act in the name of the treasurer, who shall be fully responsible for any act or acts committed by an assistant treasurer, and the treasurer shall be fully liable for any violation of this Article committed by any assistant treasurer.

(6) Any other information which might be requested by the Board that deals with the legal expense fund organization.

(b) Any change in information previously submitted in a statement of organization shall be reported to the Board within 10 calendar days following the change. (2007-349, s. 1.)

§ 163-278.310. Quarterly report.

The treasurer of each legal expense fund shall be required to file a quarterly report with the Board containing all of the following:

(1) Legal expense donations. — The name and complete mailing address of each donor, the amount of the legal expense donation, the principal occupation of the donor, and the date the legal expense donation was received. The total sum of all legal expense donations to date shall also be plainly exhibited. The treasurer is not required to report the name of any donor making a total legal expense donation of fifty dollars ($50.00) or less in a calendar quarter, but shall instead report the fact that the treasurer has received a total legal expense donation of fifty dollars ($50.00) or less, the amount of the legal expense donation, and the date of receipt.

(2) Expenditures. — A list of all expenditures made by or on behalf of the legal expense fund. The report shall list the name and complete mailing address of each payee, the amount paid, the purpose, and the date such payment was made. The total sum of all expenditures to

date shall also be plainly exhibited. The payee shall be the entity to whom the legal expense fund is obligated to make the expenditure. If the expenditure is to a financial institution for revolving credit or a reimbursement for a payment to a financial institution for revolving credit, the statement shall also include a specific itemization of the goods and services purchased with the revolving credit. If the obligation is for more than one good or service, the statement shall include a specific itemization of the obligation so as to provide a reasonable understanding of the obligation.

(3) Loans. — All proceeds from loans shall be recorded separately with a detailed analysis reflecting the amount of the loan, the source, the period, the rate of interest, and the security pledged, if any, and all makers and endorsers. (2007-349, s. 1; 2009-534, s. 2(e).)

Effect of Amendments. — Session Laws 2009-534, s. 2(e), effective December 1, 2009, throughout subdivision (1), substituted "legal expense donation" and "legal expense donations" for "contribution" and "contributions," respectively, and substituted "donor" for "contributor" twice.

§§ 163-278.311 through 163-278.315: Reserved for future codification purposes.

§ 163-278.316. Limitations on legal expense donations.

(a) No entity shall make, and no treasurer shall accept, any monetary legal expense donation in excess of fifty dollars ($50.00) unless such legal expense donation is in the form of a check, draft, money order, credit card charge, debit, or other noncash method that can be subject to written verification. No legal expense donation in the form of check, draft, money order, credit card charge, debit, or other noncash method may be made or accepted unless it contains a specific designation of the intended donee chosen by the donor.

(b) The State Board of Elections may adopt rules as to the reporting and verification of any method of legal expense donation payment allowed under this Article. For legal expense donations by money order, the State Board shall adopt rules to ensure an audit trail for every legal expense donation so that the identity of the donor can be determined.

(c) For any legal expense donation made by credit card, the credit card account number of a donor is not a public record.

(d) No legal expense fund shall accept legal expense donations from a corporation, labor union, insurance company, professional association, or business entity in excess of four thousand dollars ($4,000) per calendar year. No legal expense fund shall accept legal expense donations from a corporation which when totaled with legal expense donations to the same legal expense fund for the same calendar year from any affiliated corporation exceed the per calendar year legal expense donation limits for that legal expense fund. No legal expense fund shall accept legal expense donations from a labor union which when totaled with legal expense donations to the same legal expense fund for the same calendar year from any affiliated labor union exceed the per calendar year legal expense donation limits for that legal expense fund. No legal expense fund shall accept legal expense donations from an insurance company which when totaled with legal expense donations to the same legal expense fund for the same calendar year from any affiliated insurance company exceed the per calendar year legal expense donation limits for that legal expense fund. No legal expense fund shall accept legal expense donations from a professional association which when totaled with legal expense donations to the same legal expense fund for the same calendar year from any affiliated professional association exceed the per calendar year legal expense donation limits for that legal expense fund. No legal expense fund shall accept legal expense donations from a business entity which when totaled with legal expense donations to the same legal expense fund for the same calendar year from any affiliated business entity exceed the per calendar year legal expense donation limits for that legal expense fund. The definitions of corporation, labor union, insurance company, professional association, and business entity are the same as those in G.S. 163-278.6. This subsection does not apply to political committees created pursuant to G.S. 163-278.19(b), except that no legal expense fund shall accept a legal expense donation which would be a violation of G.S. 163-278.13B if accepted by a candidate or political committee. This subsection does not apply to corporations permitted to make contributions in G.S. 163-278.19(f).

(e) No entity shall make a legal expense donation to a legal expense fund that the legal expense fund could not accept under subsection (d) of this section. (2007-349, s. 1; 2009-534, s. 2(f).)

Effect of Amendments. — Session Laws 2009-534, s. 2(f), effective December 1, 2009, substituted "legal expense donation" for "contribution" and "legal expense donations" for "contributions" throughout the section; substituted "donee chosen by the donor" for "contributee chosen by the contributor" at the end of subsection (a); and substituted "donor" for "contributor" in subsections (b) and (c).

§§ 163-278.317 through 163-278.319: Reserved for future codification purposes.

§ 163-278.320. Permitted uses of legal expense funds.

(a) A legal expense fund may be used for reasonable expenses actually incurred by the elected officer in relation to a legal action or potential legal action brought by or against the elected officer in that elected officer's official capacity. The elected officer's campaign itself shall not be funded from a legal expense fund.

(b) Upon closing a legal expense account, the treasurer shall distribute the remaining monies in the legal expense fund to any of the following:

(1) The Indigent Persons' Attorney Fee Fund under Article 36 of Chapter 7A of the General Statutes.

(2) The North Carolina State Bar for the provision of civil legal services for indigents.

(3) Payments to an organization described in section 170(c) of the Internal Revenue Code of 1986 (26 U.S.C. § 170(c)), provided that the candidate or the candidate's spouse, children, parents, brothers, or sisters are not employed by the organization.

(4) To return all or a portion of a legal expense donation to the donor.

(5) Payment to the Escheat Fund established by Chapter 116B of the General Statutes. (2007-349, s. 1; 2009-534, s. 2(g).)

Effect of Amendments. — Session Laws 2009-534, s. 2(g), effective December 1, 2009, substituted "Payments" for "Contributions" in subdivision (b)(3); and substituted "legal expense donation to the donor" for "contribution to the contributor" in subdivision (b)(4).

§§ 163-278.321 through 163-278.329: Reserved for future codification purposes.

SUBCHAPTER IX. MUNICIPAL ELECTIONS.

ARTICLE 23.

Municipal Election Procedure.

§ 163-279. Time of municipal primaries and elections.

(a) Primaries and elections for offices filled by election of the people in cities, towns, incorporated villages, and special districts shall be held in 1973 and every two or four years thereafter as provided by municipal charter on the following days:

(1) If the election is nonpartisan and decided by simple plurality, the election shall be held on Tuesday after the first Monday in November.

(2) If the election is partisan, the election shall be held on Tuesday after the first Monday in November, the first primary shall be held on the second Tuesday after Labor Day, and the second primary, if required, shall be held on the fourth Tuesday before the election.

(3) If the election is nonpartisan and the nonpartisan primary method of election is used, the election shall be held on Tuesday after the first Monday in November and the nonpartisan primary shall be held on the fourth Tuesday before the election.

(4) If the election is nonpartisan and the election and runoff election method of election is used, the election shall be held on the fourth Tuesday before the Tuesday after the first Monday in November, and the runoff election, if required, shall be held on Tuesday after the first Monday in November.

(b) Notwithstanding the provisions of subsection (a), the next regular municipal primary and election in Winston-Salem shall be held at the time of the primary and election for county officers in 1974, officers elected at that time shall serve terms of office expiring on the first Monday in December, 1977. Beginning in 1977, municipal primaries and elections in Winston-Salem shall be held at the time provided in this section.

(c) Officers of sanitary districts elected in 1970 shall hold office until the first Monday in December, 1973, notwithstanding G.S. 130-126. Beginning in 1973, sanitary district elections shall be held at the times provided in this section or in G.S. 130A-50(b1). (1971, c. 835, s. 1; 1973, c. 1115; 1987, c. 22, s. 2; 2006-192, s. 3.)

Local Modification. — Rockingham: 1993, c. 15, s. 2; 2005-307, s. 5; city of Albemarle: 1987 (Reg. Sess., 1988), c. 881, s. 3; (As to Article 23) town of Walkertown: 1983 (Reg. Sess., 1984), c. 936; (As to Article 23) Charlotte-Mecklenburg Board of Education: 1993, c. 167, s. 1.

Editor's Note. — Section 130-126, referred to in subsection (c) of this section, was repealed by Session Laws 1983, c. 891, s. 1. As to sanitary districts, see now G.S. 130A-47 et seq.

CASE NOTES

Cited in McDowell v. Edmisten, 523 F. Supp. 416 (E.D.N.C. 1981).

§ 163-280. Municipal boards of elections.

(a) In each city that is authorized and elects to conduct its own elections in the manner provided by G.S. 163-285, there shall be a municipal board of elections consisting of three persons of good moral character who are registered voters of the city. Members of the municipal board of elections shall be appointed by the city council at its regularly scheduled meeting held next before June 1 in each year preceding each regular municipal primary or election, and their terms of office shall be for two years beginning June 1 and until their successors are appointed and qualify. In municipalities where there are registered voters of more than one party, not more than two members of the municipal board of elections shall belong to the same political party, if the municipal officers are elected on a nonpartisan or partisan basis.

No person shall serve as a member of a municipal board of elections who holds any elective office, who is a candidate for any elective public office, who is a member of a county board of elections, or who is serving as campaign manager for any candidate in any election.

(b) On the Monday before the filing period opens for elections in that municipality, the newly appointed members of the municipal board of elections shall meet at the city hall or some other place specified by the city council and shall take the following oath of office:

> "I ____________ , do solemnly swear (or affirm) that I will support the Constitution of the United States; that I will be faithful and bear true allegiance to the State of North Carolina, and to the constitutional powers and authorities which are or may be established for the government thereof; that I will endeavor to support, maintain, and defend the Constitution of said State, not inconsistent with the Constitution of the United States; and that I will well and truly execute the duties of the office of member of the ____________ municipal board of elections to the best of my knowledge and ability, according to law. So help me, God."

After each member has taken the oath, the board shall organize by electing one of its members chairman and another member secretary of the board.

(c) On the Monday following the seventh Saturday before each regular municipal primary or election, the municipal board of elections shall meet and appoint precinct chief judges and judges of elections. The municipal board of elections may then or at any time thereafter appoint a supervisor of elections, who shall have all of the powers and duties of a director of elections to a county board of elections. The board may hold other meetings at such times and places as the chairman of the board, or any two members thereof, may direct, for the performance of duties prescribed by law. A majority of the members shall constitute a quorum for the transaction of business.

(d) The municipal board of elections shall keep minutes recording all proceedings and findings at each of its meetings. The minutes shall be recorded in a book which shall be kept in the board office if there be one, otherwise, the minute book shall remain in the custody of the secretary of the board.

(e) The compensation of members of the municipal board of elections shall be fixed by the city council.

(f) Municipal boards of elections shall have, with respect to municipal elections, all of the powers conferred on county boards of elections by G.S. 163-33 and G.S. 163-34 with respect to national, State, district, and county elections.

(g) No municipal, county, State or national chairman of any political party shall have the right to recommend to the city council the names of any person for appointment to membership on a municipal board of elections.

(h) Whenever a vacancy occurs in the membership of any municipal board of elections for any cause, the appointing city council shall fill the vacancy within 30 days of when it occurs.

(i) The city council with power to appoint a member of a municipal board of elections or the State Board of Elections may remove a member of a municipal board of elections for incompetency, neglect or failure to perform duties, fraud, or any other satisfactory cause. Before exercising this removal power, the city council or the State Board of Elections shall notify the municipal board member affected and give him an opportunity to be heard. (1971, c. 835, s. 1; 1973, c. 793, ss. 75-79; c. 1223, s. 8; 1975, c. 19, s. 70; 1977, c. 626, s. 1; 1983, c. 644, s. 3; 1985, c. 599, s. 4; c. 768, s. 27; 1993 (Reg. Sess., 1994), c. 762, s. 59; 1995, c. 243, s. 1.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 61, effective January 1, 1995, provides: "Any person who on December 31, 1994, was a registrar under G.S. 163-41 shall be a chief judge under G.S. 163-41."

§ 163-280.1. Municipal boards of elections abolished.

Municipal boards of elections in all municipalities other than the City of Morganton, the Town of Granite Falls, the Town of Old Fort, and the Town of Rhodhiss, whether created by general statute or by local act, are abolished. The terms of all members of all such municipal boards of elections which are abolished by this section, and all precinct officials appointed by such municipal boards of elections, if those terms have not expired prior to January 1, 2002, expire January 1, 2002. (2001-374, s. 1.)

Editor's Note. — Session Laws 2001-374, s. 4, provides: "The State Board of Elections shall inspect the operations of the municipal boards of elections in the City of Morganton, the Town of Granite Falls, the Town of Old Fort, and the Town of Rhodhiss during September, October, or November of 2001. The State Board shall make subsequent inspections as needed. Those municipalities shall cooperate with the State Board fully. If an inspection generates findings that election laws or regulations have been violated, the State Board shall take appropriate action under G.S. 163-304 or other applicable law."

Session Laws 2001-374, s. 5, provides: "This act prevails over local acts."

§ 163-281. Municipal precinct election officials.

(a) Chief Judges and Judges. — At the meeting required by G.S. 163-280(c), the municipal board of elections shall appoint one person to act as chief judge and two other persons to act as judges of election for each precinct in the city. Not more than one judge in each precinct where there are registered voters of more than one political party shall belong to the same political party as the chief judge, if the municipal elections are on a nonpartisan or partisan basis. If the city and county precincts are identical and the board so chooses, it may decline to exercise its power to appoint precinct chief judge and judges, in which event the persons appointed by the county board of elections as precinct chief judge and judges in each precinct within the city shall serve as such for municipal elections under authority and subject to the supervision and control of the municipal board of elections. Nothing herein shall prohibit a municipal board of elections from using the chief judge and judges of election appointed by the county board of elections in those precincts which are not identical provided the county board of elections agrees, in writing, to such arrangement. Chief judges and judges shall be appointed for terms of two years. Except as modified by this Article, municipal precinct chief judge and judges shall meet all of the qualifications, perform all the duties, and have all of the powers imposed and conferred on county precinct chief judge and judges by G.S. 163-41(a), 163-47, and 163-48. Municipal precinct chief judge and judges shall not have the powers and duties with respect to registration of voters prescribed by G.S. 163-47(b). Immediately after appointing chief judge and judges as herein provided, the municipal board of elections shall publish the names of the persons appointed in some newspaper having a general circulation in the city, or in lieu thereof, by posting at the city hall or some other prominent place within the city, and shall notify each person appointed of his appointment. Notice may additionally be made on a radio or television station or both, but such notice shall be in addition to the newspaper and other required notice.

(b) Assistants at Polls. — Municipal boards of elections shall have the same authority to appoint assistants to aid the chief judge and judges as is conferred on county boards of elections by G.S. 163-42.

(c) Ballot Counters. — Municipal boards of elections shall have the same authority to appoint ballot counters as is conferred on county boards of elections by G.S. 163-43.

(d) Markers. — Municipal boards of elections shall not appoint markers, and markers shall not be used in municipal elections.

(e) Observers. — In cities holding partisan municipal elections, the chairman of each political party in the county shall have the same authority to appoint observers for municipal elections as he has for county elections under G.S. 163-45.

(f) Compensation. — Precinct officials and assistants appointed under this section shall be paid such sums as the city council may fix. County precinct officials and assistants serving in municipal elections in default of appointment of precinct officials by the municipal board of elections shall be compensated by the city in the sums specified in G.S. 163-46.

(g) Party Chairman Not to Recommend Persons for Appointment. — No municipal, county, State or national chairman of any political party shall have the right to recommend to the municipal board of elections the name of any person for appointment as a precinct chief judge, judge of elections, assistant or ballot counter.

(h) Designation of Precincts in Which Officials to Serve. — The municipal board of elections may designate the precinct in which each chief judge, judge, assistant, ballot counter, or observer or other officers of elections shall serve; and, after notice and hearing, may remove any chief judge, judge, assistant, ballot counter, observer, supervisor of elections or other officers of elections appointed by it for incompetency, failure to discharge the duties of office, failure to qualify within the time prescribed by law, fraud, or for any other satisfactory cause.

(i) Powers and Duties. — Except as otherwise provided in this Chapter, precinct assistants, ballot counters, observers, and supervisors of elections and other officers of elections appointed by the municipal board of elections shall have the same powers and duties with respect to municipal elections as precinct assistants, ballot counters, observers, and supervisors of elections and other officers of elections appointed by county boards of elections. (1971, c. 835, s. 1; 1973, c. 793, ss. 80-83, 94; c. 1223, s. 9; 1977, c. 626, s. 1; 1989, c. 93, s. 8; 1993 (Reg. Sess., 1994), c. 762, s. 60.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 61, effective January 1, 1995, provides: "Any person who on December 31, 1994, was a registrar under G.S. 163-41 shall be a chief judge under G.S. 163-41."

CASE NOTES

Registrars (now chief judges) are not required to be freeholders. Town of Hendersonville v. Jordan, 150 N.C. 35, 63 S.E. 167 (1908), decided under former provisions.

§ 163-282. Residency defined for voting in municipal elections.

The rules for determining residency within a municipality shall be the same as prescribed in G.S. 163-57 for determining county residency. No person shall be entitled to reside in more than one city or town at the same time. (1971, c. 835, s. 1.)

§ 163-283. Right to participate or vote in party primary.

No person shall be entitled to vote or otherwise participate in the primary election of any political party unless that person complies with all of the following:

(1) Is a registered voter.

(2) Has declared and has had recorded on the registration book or record the fact that the voter affiliates with the political party in whose primary the voter proposes to vote or participate.

(3) Is in good faith a member of that party.

Notwithstanding the previous paragraph, any unaffiliated voter who is authorized under G.S. 163-119 may also vote in the primary if the voter is otherwise eligible to vote in that primary except for subdivisions (2) and (3) of the previous paragraph.

Any person who will become qualified by age to register and vote in the general election for which the primary is held, even though not so qualified by the date of the primary election, shall be entitled to register while the registration books are open during the regular registration period prior to the primary and then to vote in the primary after being registered, provided however, under full-time and permanent registration, such an individual may register not earlier than 60 days nor later than the last day for making application to register under G.S. 163-82.6(c) prior to the primary. In addition, persons who will become qualified by age to register and vote in the general election for which the primary is held, who do not register during the special period may register to vote after such period as if they were qualified on the basis of age, but until they are qualified by age to vote, they may vote only in primary elections. Such a person also may register and vote in the primary and general election pursuant to G.S. 163-82.6A(f). (1971, c. 835, s. 1; 1983, c. 331, s. 5; 1987, c. 408, s. 5; c. 457, s. 2; 1991 (Reg. Sess., 1992), c. 1032, s. 8; 1993 (Reg. Sess., 1994), c. 762, s. 62; 2008-150, s. 5(c); 2009-541, s. 24.)

Editor's Note. — The amendment to this section by Session Laws 2008-150, s. 5(c), included replacing a citation to G.S. 163-116 with a citation to G.S. 163-119. However, the substitution had been made previously.

Effect of Amendments. — Session Laws 2008-150, s. 5(c), effective August 2, 2008, in the second paragraph, substituted "G.S. 163-119" for "G.S. 163-116"; and in the third paragraph, deleted "or residence" following "qualified by age" near the beginning.

Session Laws 2009-541, s. 24, effective August 28, 2009, in the first paragraph, substituted "unless that person complies with all of the following" for "unless he", substituted "'the voter" for "he" twice in subdivision (2), and made punctuation changes in subdivisions (1) and (2); and added the last sentence of the last paragraph.

§ 163-283.1. Voting in nonpartisan primary.

Any person who will become qualified by age to register and vote in the general election for which a nonpartisan primary is held, even though not so qualified by the date of the primary, shall be entitled to register for the primary and general election prior to the primary and then to vote in the primary after being registered. Such a person may register not earlier than 60 days nor later than the last day for making application to register under G.S. 163-82.6(c) prior to the primary. Such a person also may register and vote in the primary and general election pursuant to G.S. 163-82.6A(f). (2009-541, s. 25.)

Editor's Note. — Session Laws 2009-541, s. 32, made this section effective on August 28, 2009.

§ 163-284. Mandatory administration by county boards of elections.

(a) No later than 30 days after January 1, 1973, every municipality which conducts its elections on a partisan basis, and every special district shall deliver its registration books to the county board of elections which shall, forthwith, assume the responsibility for administration of the registration and election process in such municipalities and special districts. The county boards of elections shall have authority to compare the registration books of such municipalities and special districts with the county registration books. Any person found to be registered for municipal or special district elections but not registered on the county registration records shall be required to register with the county board of elections in order to maintain his municipal or special district registration. The county board of elections shall forthwith notify any such person by mail to the address appearing on the municipal or special district registration records that he must reregister. The county board of elections shall have authority to require maps or definitive outlines of the boundaries constituting such municipality or special district and shall be immediately advised of any change or relocation of such boundaries.

(b) The registration of voters and the conduct of all elections in municipalities and special districts covered under this section shall be under the authority of the county board of elections. Any contested election or allegations of irregularities shall be made to the county board of elections and appeals from such rulings may be made to the State Board of Elections under existing statutory provisions and rules or regulations adopted by the State Board of Elections.

Each municipality and special district shall reimburse the county board of elections for the actual cost involved in the administration required under (a) and (b) of this section. (1971, c. 835, s. 1; 1973, c. 793, s. 84.)

§ 163-284.1. Special district elections conducted by county.

All elections held in and for a sanitary district, fire district or other special district, including school administrative units, shall be conducted by the county board of elections notwithstanding the fact that the taxes of the special district may be levied by a city. (1971, c. 835, s. 1.)

§ 163-285. Administration by county board of elections; optional by Morganton, Granite Falls, Old Fort, and Rhodhiss.

(a) The City of Morganton, the Town of Old Fort, the Town of Granite Falls, and the Town of Rhodhiss may conduct their own elections, or they may request the county board of elections of the county in which they are located to conduct their elections. A county board of elections shall conduct the elections of each municipality so requesting and the municipality shall pay the cost thereof according to a formula mutually agreed upon by the county board of elections and the municipal council. The elections for any other municipality shall be conducted by the county board of elections, and the municipality shall pay the cost thereof according to a formula mutually agreed upon by the county board of elections and the municipal council. If a mutual agreement cannot be reached, then the State Board of Elections shall prescribe the agreement, to which both parties are bound.

(1) The elections of municipalities which lie in more than one county shall be conducted either (i) by the county in which the greater number of the municipality's citizens reside, according to the most recent federal census of population, or (ii) jointly by the boards of elections of each county in which such municipality is located, as may be mutually agreed upon by the county boards of elections so affected, or (iii) in the case of the City of Morganton or the Towns of Old Fort, Granite Falls, or Rhodhiss, by a municipal board of elections appointed by the governing body of the municipality. The State Board of Elections shall have authority to promulgate regulations for more detailed administration and conduct of municipal elections by county or municipal boards of elections for municipalities situated in more than one county.

(2) Any municipality electing to have its elections conducted by the county board of elections as provided by this section, shall do so no later than January 1, 1973 provided, however, the county board of elections shall be entitled to 90 days' notice prior to the effective date decided upon by the municipality. For efficient administration the State Board of Elections shall have the authority to delay the effective date of all such agreements under this section and shall set a date certain on which such agreements shall commence. The State Board of Elections shall also have the authority to permit any municipality to exercise the options under this Article subsequent to the deadline stated in this section.

(3) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 63.

(b) The county board of elections shall have authority to require maps or definitive outlines of the boundaries constituting any municipality or special district whose elections that county board administers and shall be immediately advised of any change or relocation of such boundaries.

(c) The term "special district" includes a sanitary district, fire district, or school administrative unit, notwithstanding the fact that the taxes of the special district may be levied by a municipality.

(d) All election results of elections held under this Article shall be reported to the State Board within 30 days of the certification of the election. (1971, c. 835, s. 1; 1973, c. 171; 1993 (Reg. Sess., 1994), c. 762, s. 63; 2001-374, s. 2; 2007-391, s. 38; 2008-187, s. 33(a).)

Local Modification. — Edgecombe, Nash, Wilson: 1985 (Reg. Sess., 1986), c. 988.

Editor's Note. — Session Laws 2007-391, s. 1(c), was amended by Session Laws 2008-198, s. 33(a), to eliminate any confusion as to effective dates of the 2007 act. Session Laws 2007-391, s. 38, which added subsection (d), is effective August 19, 2007.

§ 163-286. Conduct of municipal and special district elections; application of Chapter 163.

(a) To the extent that the laws, rules and procedures applicable to the conduct of primary, general and special elections by county boards of elections under Articles 3, 4, 5, 6, 7A, 8, 9, 10, 11, 12, 13, 14, 15, 19 and 22 of this Chapter are not inconsistent with provisions of this Article, those laws, rules and procedures shall apply to municipal and special district elections and their conduct by the board of elections conducting those elections. The State Board of Elections shall have the same authority over all such elections as it has over county and State elections under those Articles.

(b) Any city, town or incorporated village which elects to conduct its own elections, under the provisions of G.S. 163-285, shall comply with the requirements contained in G.S. 163-280 and G.S. 163-281. (1971, c. 835, s. 1; 1973, c. 793, s. 85; 1993 (Reg. Sess., 1994), c. 762, s. 64.)

§ 163-287. Special elections; procedure for calling.

Any city, whether its elections are conducted by the county board of elections or the municipal board of elections, or any special district shall have authority to call special elections as permitted by law. Prior to calling a special election, the city council or the governing body of the special district shall adopt a resolution specifying the details of the election, and forthwith deliver the resolution to the appropriate board of elections. The resolution shall call on the board of elections to conduct the election described in the resolution and shall state the date on which the special election is to be conducted. The special election may be held at the same time as any other State, county or municipal primary, election or special election or referendum, but may not otherwise be held within the period of time beginning 30 days before and ending 30 days after the date of any other primary, election, special election or referendum held for that city or special district.

Legal notice of the special election shall be published no less than 45 days prior to the special election. The appropriate board of elections shall be responsible for publishing the legal notice. The notice shall state the date and time of the special election, the issue to be submitted to the voters, and the precincts in which the election will be held. This paragraph shall not apply to bond elections. (1971, c. 835, s. 1; 1973, c. 793, s. 86; 1993 (Reg. Sess., 1994), c. 762, s. 65.)

§ 163-288. Registration for city elections; county and municipal boards of elections.

Regardless of whether the municipal election is conducted by the county board of elections or by a municipal board of elections, the registration record of the county board of elections shall be the official registration record for voters to vote in all elections, city, district, county, State or national. (1971, c. 835, s. 1; 1973, c. 793, s. 87; 1981, c. 33, s. 5; 1991 (Reg. Sess., 1992), c. 1032, s. 7; 1993 (Reg. Sess., 1994), c. 762, s. 66.)

§ 163-288.1. Activating voters for newly annexed or incorporated areas.

(a) Whenever any new city or special district is incorporated or whenever an existing city or district annexes any territory, the city or special district shall cause a map of the corporate or district limits to be prepared from the boundary descriptions in the act, charter or other document creating the city or district or authorizing or implementing the annexation. The map shall be delivered to the county or municipal board of elections conducting the elections for the city or special district. The board of elections shall then activate for city or district elections each voter eligible to vote in the city or district who is registered to vote in the county to the extent that residence addresses shown on the county registration certificates can be identified as within the limits of the city or special district. Each voter whose registration is thus activated for city or special district elections shall be so notified by mail. The cost of preparing the map of the newly incorporated city or special district or of the newly annexed area, and of activating voters eligible to vote therein, shall be paid by the city or special district. In lieu of the procedures set forth in this section, the county board of elections may use either of the methods of registration of voters set out in G.S. 163-288.2 when activating voters pursuant to the incorporation of a new city or election of city officials or both under authority of an act of the General Assembly or when activating voters after an annexation of new territory by a city or special district under Chapter 160A, Article 4A, or other general or local law.

(b) Each voter whose registration is changed by the county or municipal board of elections in any manner pursuant to any annexation or expunction under this subsection shall be so notified by mail.

(c) The State Board of Elections shall have authority to adopt regulations for the more detailed administration of this section. (1971, c. 835, s. 1; 1973, c. 793, s. 88; 1977, c. 752, s. 1.)

§ 163-288.1A. Activating voters when charter revised.

Whenever a city has not held the most recent two elections required by its charter or this Chapter, and the General Assembly amends the charter of that city and provides that the county board of elections shall conduct the elections of that city, voters shall be activated for the elections of that city in accordance with G.S. 163-288.1 or G.S. 163-288.2. In such a case, the county shall prepare the map required by G.S. 163-288.1(a). (1985, c. 350.)

§ 163-288.2. Registration in area proposed for incorporation or annexed.

(a) Whenever the General Assembly incorporates a new city and provides in the act of incorporation for a referendum on the question of incorporation or for a special election for town officials or for both, or whenever an existing city or special district annexes new territory under the provisions of Chapter 160A, Article 4A, or other general or local law, the board of elections of the county in which the proposed city is located or in which the newly annexed territory is located shall determine those individuals eligible to vote in the referendum or special election or in the city or special district elections. In determining the eligible voters the board may, in its discretion, use either of the following methods:

METHOD A. — The board of elections shall prepare a list of those registered voters residing within the proposed city or newly annexed territory. The board shall make this list available for public inspection in its office for a two-week period ending on the twenty-fifth day before the day of the referendum or special election, or the next scheduled city or special district election. During this period, any voter resident within the proposed city or newly annexed territory and not included on the list may cause his name to be added to the list. At least one week and no more than two weeks before the day the period of public inspection is to begin, the board shall cause notice of the list's availability to be posted in at least two prominent places within the proposed city or newly annexed territory and may cause the notice to be published in a newspaper of general circulation within the county. The notice shall state that the list has been prepared, that only those persons listed may vote in the referendum or special election, that the list will be available for public inspection in the board's office, that any qualified voter not included on the list may cause his name to be added to the list during the two-week period of public inspection, and that persons in newly annexed territory should present themselves so their registration records may be activated for voting in city or special district elections in the newly annexed territory. Notice may additionally be made on a radio or television station or both, but such notice shall be in addition to the newspaper and other required notice.

METHOD B. — The board of elections shall conduct a special registration of eligible persons desiring to vote in the referendum or special election or in the newly annexed territory. The registration records shall be open for a two-week period (except Sundays) ending on the twenty-fifth day before the day of the referendum or special election or the next scheduled city or special district election. On the two Saturdays during that two- week period, the records shall be located at the voting place for the referendum or special election or the next scheduled city or special district election; on the other days it may, in the discretion of the board, be kept at the voting place, at the office of the board, or at the place of business of a person designated by the board to conduct the special registration. At least one week and no more than two weeks before the day the period of special registration is to begin, the board shall cause notice of the registration to be posted in at least two prominent places within the proposed city or newly annexed territory and may cause the notice to be published in a newspaper of general circulation within the county. The notice shall state the purpose and times of the special registration, the location of the registration records, that only those persons registered in the special registration may vote in the referendum or special election, and that persons in newly annexed territory should present themselves so their registration records may be activated for voting in city or special district elections in the newly annexed territory. Notice may additionally be made on a radio or television station or both, but such notice shall be in addition to the newspaper and other required notice.

(b) Only those persons registered pursuant to this section may vote in the referendum or special election, provided, however, that in cases where voters are activated under either Method A or B to vote in a city or special district that annexes territory, the city or special district shall permit them to vote in the city or special district's election and shall, as well, permit other voters to vote in such elections who did not register under the provisions of this section if they are otherwise registered, qualified and eligible to vote in the same. (1973, c. 551; 1977, c. 752, s. 2; 1981, c. 33, s. 6; 1989, c. 93, s. 9; 1991 (Reg. Sess., 1992), c. 1032, s. 9; 1993 (Reg. Sess., 1994), c. 762, s. 67.)

Local Modification. — Alamance County Board of Elections: 1998-151, s. 9.6; Union County Board of Elections: 1998-151, s. 9.6.

Legal Periodicals. — For survey of 1977 administrative law affecting state government, see 56 N.C.L. Rev. 867 (1978).

§ 163-288.3. Payment of cost of elections on question of formation of a new municipality or special district.

Whenever a referendum or election is held on the question of incorporation of a new municipality or the formation of a special district, the cost of the election shall be paid by the new municipality or special district in the event the voters approve of incorporation or creation and the new municipality or special district is established. If the voters disapprove and the new municipality or special district is not established, the cost of the election shall be paid by the county. The cost of the election shall be advanced by the county, which shall be reimbursed within 18 months of the date of election, by the municipality or special district if it is established. (1981, c. 786, s. 1.)

§ 163-289. Right to challenge; challenge procedure.

(a) The rules governing challenges in municipal elections shall be the same as are now applicable to challenges made in a county election, provided however, any voter who challenges another voter's right to vote in any municipal or special district election must reside in such municipality or special district.

(b) Whenever a challenge is made pursuant to this section, the appropriate board of elections shall process such challenge in accordance with the provisions of Article 8 of Chapter 163 of the General Statutes as such Article is applicable.

(c) If a municipal board of elections sustains a challenge on the grounds that a voter registered to vote in the municipality is not a resident of the municipality, it shall forthwith certify its decision to the county board of elections of the county or counties in which the municipality lies, and the voter's registration for municipal elections shall be expunged from the county registration records. (1971, c. 835, s. 1; 1973, c. 793, s. 89.)

§ 163-290. Alternative methods of determining the results of municipal elections.

(a) Each city, town, village, and special district in this State shall operate under one of the following alternative methods of nominating candidates for and determining the results of its elections:

(1) The partisan primary and election method set out in G.S. 163-291.
(2) The nonpartisan primary and election method set out in G.S. 163-294.
(3) The nonpartisan plurality method set out in G.S. 163-292.
(4) The nonpartisan election and runoff election method set out in G.S. 163-293.

(b) Each city whose charter provides for partisan municipal elections as of January 1, 1972, shall operate under the partisan primary and election method until such time as its charter is amended to provide for nonpartisan elections. Each city, town, village, and special district whose elections are by charter or general law nonpartisan may select the nonpartisan primary and election method, the nonpartisan plurality method, or the nonpartisan election and runoff election method by resolution of the municipal governing board adopted and filed with the State Board of Elections not later than 5:00 P.M. Monday, January 31, 1972, except that a city whose charter provides for a nonpartisan primary as of January 1, 1972, may not select the plurality method unless its charter is so amended. If the municipal governing board does not exercise its option to select another choice before that time, the municipality shall operate under the method specified in the following table:

Cities, towns and villages of less than 5,000	Plurality
Cities, towns and villages of 5,000 or more	Election and Runoff Election
Special districts	Plurality

After January 31, 1972, each city, town and village may change its method of election from one to another of the methods set out in subsection (a) by act of the General Assembly or in the manner provided by law for amendment of its charter. (1971, c. 835, s. 1.)

CASE NOTES

Cited in McDowell v. Edmisten, 523 F. Supp. 416 (E.D.N.C. 1981).

ARTICLE 24.

Conduct of Municipal Elections.

§ 163-291. Partisan primaries and elections.

The nomination of candidates for office in cities, towns, villages, and special districts whose elections are conducted on a partisan basis shall be governed by the provisions of this Chapter applicable to the nomination of county officers, and the terms "county board of elections," "chairman of the county board of elections," "county officers," and similar terms shall be construed with respect to municipal elections to mean the appropriate municipal officers and candidates, except that:

(1) The dates of primary and election shall be as provided in G.S. 163-279.

(2) A candidate seeking party nomination for municipal or district office shall file notice of candidacy with the board of elections no earlier than 12:00 noon on the first Friday in July and no later than 12:00 noon on the third Friday in July preceding the election, except:

a. In the year following a federal decennial census, a candidate seeking party nomination for municipal or district office in any city which elects members of its governing board on a district basis, or requires that candidates reside in a district in order to run, shall file his notice of candidacy with the board of elections no earlier than 12:00 noon on the fourth Monday in July and no later than 12:00 noon on the second Friday in August preceding the election; and

b. In the second year following a federal decennial census, if the election is held then under G.S. 160A-23.1, a candidate seeking party nomination for municipal or district office shall file his notice of candidacy with the board of elections at the same time as notices of candidacy for county officers are required to be filed under G.S. 163-106.

No person may file a notice of candidacy for more than one municipal office at the same election. If a person has filed a notice of candidacy for one office with the county board of elections under this section, then a notice of candidacy may not later be filed for any other municipal office for that election unless the notice of candidacy for the first office is withdrawn first.

(3) The filing fee for municipal and district primaries shall be fixed by the governing board not later than the day before candidates are permitted to begin filing notices of candidacy. There shall be a minimum filing fee of five dollars ($5.00). The governing board shall have the authority to set the filing fee at not less than five dollars ($5.00) nor more than one percent (1%) of the annual salary of the office sought unless one percent (1%) of the annual salary of the office sought is less than five dollars ($5.00), in which case the minimum filing fee of five dollars ($5.00) will be charged. The fee shall be paid to the board of elections at the time notice of candidacy is filed.

(4) The municipal ballot may not be combined with any other ballot.

(5) The canvass of the primary and second primary shall be held on the seventh day following the primary or second primary. In accepting the filing of complaints concerning the conduct of an election, a board of elections shall be subject to the rules concerning Sundays and holidays set forth in G.S. 103-5.

(6) Candidates having the right to demand a second primary shall do so not later than 12:00 noon on the Thursday following the canvass of the

first primary. (1971, c. 835, s. 1; 1973, c. 870, s. 1; 1975, c. 370, s. 2; 1983, c. 330, s. 2; 1985, c. 599, ss. 2, 3; 1989 (Reg. Sess., 1990), c. 1012, s. 3; 1995 (Reg. Sess., 1996), c. 553, s. 2; 1999-227, s. 5; 2003-278, s. 10(e), (f); 2006-192, s. 4; 2009-414, s. 2.)

Local Modification. — City of Albemarle: 1987 (Reg. Sess., 1988), c. 881, s. 4; (as to Art. 24) town of Walkertown: 1983 (Reg. Sess., 1984), c. 936; (As to Article 24) Charlotte-Mecklenburg Board of Education: 1993, c. 167, s. 1; Vance County Board of Education: 1987 (Reg. Sess., 1988), c. 974, ss. 3, 4.

Instant Runoff Voting Pilot Program. — Session Laws 2006-192, s. 1(a) and (b), provides: "(a) The State Board of Elections shall select local jurisdictions in which to conduct a pilot program during the 2007 and 2008 elections for local offices using instant runoff voting. The State Board shall select:

"(1) Up to 10 cities for the 2007 elections.

"(2) Up to 10 counties for the 2008 elections.

"In selecting those local jurisdictions, the State Board shall seek diversity of population size, regional location, and demographic composition. The pilot shall be conducted only with the concurrence of the county board of elections that conducts elections for the local jurisdiction. If a city is selected that has voters in more than one county, the concurrence of all the county boards of elections that conduct that city's elections is required. The pilot program shall consist of using instant runoff voting as the method for determining the winner or winners of a partisan primary or a nonpartisan election that normally uses nonpartisan election and runoff or nonpartisan primary and election. Instant runoff voting may also be used to determine results in an election where nonpartisan plurality elections are normally used, but only if the governing board of the local jurisdiction concurs.

"As used in this section, 'instant runoff voting' means a system in which voters rank up to three of the candidates by order of preference, first, second, or third. If the candidate with the most first-choice votes receives the threshold of victory of the first-choice votes, that candidate wins. If no candidate receives the threshold of victory of first-choice votes, the two candidates with the greatest number of first-choice votes advance to a second round of counting. In this round, each ballot counts as a vote for whichever of the two final candidates is ranked highest by the voter. The candidate with the most votes in the second round wins the election.

"The threshold of victory of first-choice votes for a partisan primary shall be forty percent (40%) plus one vote. The threshold of victory for a nonpartisan election and runoff or nonpartisan primary and election shall be a majority of the vote. The threshold of victory in a contest that normally uses nonpartisan plurality shall be determined by the State Board with the concurrence of the county board of elections and the local governing board.

"If more than one seat is to be filled in the same race, the voter votes the same way as if one seat were to be filled. The counting is the same as when one seat is to be filled, with one or two rounds as needed, except that counting is done separately for each seat to be filled. The first counting results in the first winner. Then the second count proceeds without the name of the first winner. This process results in the second winner. For each additional seat to be filled, an additional count is done without the names of the candidates who have already won.

"Other details of instant runoff voting are as described in House Bill 1024 (First Edition) of the 2005 Regular Session of the General Assembly, with modifications the State Board deems necessary, in primaries and/or elections for city offices, for county offices, or for both. Those modifications may include giving the voter more than three choices in case of multiseat contests. The State Board shall not use instant runoff voting in a primary or election for an office unless the entire electorate for the office uses the same method.

"(b) The State Board of Elections shall closely monitor the pilot program established in this section and report its findings and recommendations to the 2007 General Assembly."

Session Laws 2008-150, s. 3(a), as amended by Session Laws 2009-541, s. 30(a), provides: "The State Board of Elections is authorized to select elections for offices of local government in which to use instant runoff voting in up to 10 local jurisdictions in each of the following years: 2009, 2010, and 2011. The selection of jurisdictions and administration of instant runoff voting shall follow the provisions of Section 1(a) of Session Law 2006-192, except that the local governing board that is the subject of the election must approve participation in the pilot and must hold at least one public hearing on the pilot before approving it, with notice of the hearing published at least 10 days before the hearing. The local governing board also must agree to cooperate with the county board of elections and the Board in the development and implementation of a plan to educate candidates and voters about how to use the runoff voting method. In a multiseat contest, the Board shall modify the method used for instant runoff voting in single-seat contests to apply its essential principles suitably to that election. In the case of a board of education election where the 'local governing board' must be asked to authorize instant runoff voting because nonpartisan plurality elections are normally used, the 'local governing board' is the board of education itself. If instant runoff voting is used in place of the nonpartisan election and runoff method as described in G.S. 163-293, the county board of elections, with the approval of the local governing board, may hold the election on the first Tuesday after the first Monday in November. The State Board of Elections, in consultation with the School of Government at the University of North Carolina, shall by January 1, 2009, develop for the pilot program authorized in this section goals, standards consistent with general election law, and criteria for implementation and evaluation. The pilot program shall be conducted according to those goals, standards, and criteria. The term 'ranked choice voting' shall have the same meaning as, and may be used as a substitute for, the term 'instant runoff voting' in describing the pilot."

Session Laws 2009-541, s. 30(b), provides: "This section is effective when it becomes law. The requirement for holding a public hearing applies only to primaries and elections held on and after January 1, 2010, but a local governing board may give notice of and conduct a public hearing to satisfy the requirement before January 1, 2010."

Editor's Note. — Session Laws 1989, c. 1012, s. 3, as amended by 1999-227, s. 3 contains findings of the General Assembly regarding the challenges of using census data for redistricting, in light of the possibility that census-related litigation may not be resolved until the middle of the redistricting process, or perhaps even while filing is already open for municipal offices in cities with a district system.

Effect of Amendments. — Session Laws 2009-414, s. 2, effective August 5, 2009, in subdivision (2)a, substituted "the year following a federal decennial census" for "2001"; and in subdivision (2)b, substituted "the second year following a federal decennial census" for "2002."

§ 163-292. Determination of election results in cities using the plurality method.

In conducting nonpartisan elections and using the plurality method, elections shall be determined in accordance with the following rules:

(1) When more than one person is seeking election to a single office, the candidate who receives the highest number of votes shall be declared elected.

(2) When more persons are seeking election to two or more offices (constituting a group) than there are offices to be filled, those candidates receiving the highest number of votes, equal in number to the number of offices to be filled, shall be declared elected.

(3) If two or more candidates receiving the highest number of votes each receive the same number of votes, the board of elections shall determine the winner by lot. (1971, c. 835, s. 1.)

CASE NOTES

Cited in NAACP v. City of Statesville, 606 F. Supp. 569 (W.D.N.C. 1985).

§ 163-293. Determination of election results in cities using the election and runoff election method.

(a) Except as otherwise provided in this section, nonpartisan municipal elections in cities using the election and runoff election method shall be determined by a majority of the votes cast. A majority within the meaning of this section shall be determined as follows:

(1) When more than one person is seeking election to a single office, the majority shall be ascertained by dividing the total vote cast for all candidates by two. Any excess of the sum so ascertained shall be a majority, and the candidate who obtains a majority shall be declared elected.

(2) When more persons are seeking election to two or more offices (constituting a group) than there are offices to be filled, the majority shall be ascertained by dividing the total vote cast for all candidates by the number of offices to be filled, and by dividing the result by two. Any excess of the sum so ascertained shall be a majority, and the candidates who obtain a majority shall be declared elected. If more candidates obtain a majority than there are offices to be filled, those having the highest vote (equal to the number of offices to be filled) shall be declared elected.

(b) If no candidate for a single office receives a majority of the votes cast, or if an insufficient number of candidates receives a majority of the votes cast for a group of offices, a runoff election shall be held as herein provided:

(1) If no candidate for a single office receives a majority of the votes cast, the candidate receiving the highest number of votes shall be declared elected unless the candidate receiving the second highest number of votes requests a runoff election in accordance with subsection (c) of this section. In the runoff election only the names of the two candidates who received the highest and next highest number of votes shall be printed on the ballot.

(2) If candidates for two or more offices (constituting a group) are to be selected and aspirants for some or all of the positions within the group do not receive a majority of the votes, those candidates equal in number to the positions remaining to be filled and having the highest number of votes shall be declared elected unless some one or all of the candidates equal in number to the positions remaining to be filled and having the second highest number of votes shall request a runoff election in accordance with subsection (c) of this section. In the runoff election to elect candidates for the positions in the group remaining to be filled, the names of all those candidates receiving the highest number of votes and demanding a runoff election shall be printed on the ballot.

(c) The canvass of the first election shall be held on the seventh day after the election. A candidate entitled to a runoff election may do so by filing a written request for a runoff election with the board of elections no later than 12:00 noon on the Thursday after the result of the first election has been officially declared. In accepting the filing of complaints concerning the conduct of an election, a board of elections shall be subject to the rules concerning Sundays and holidays set forth in G.S. 103-5.

(d) Tie votes; how determined:

(1) If there is a tie for the highest number of votes in a first election, the board of elections shall conduct a recount and declare the results. If the recount shows a tie vote, a runoff election between the two shall be held unless one of the candidates, within three days after the result of the recount has been officially declared, files a written notice of withdrawal with the board of elections. Should that be done, the remaining candidate shall be declared elected.

(2) If one candidate receives the highest number of votes cast in a first election, but short of a majority, and there is a tie between two or more of the other candidates receiving the second highest number of votes, the board of elections shall declare the candidate having the highest number of votes to be elected, unless all but one of the tied candidates give written notice of withdrawal to the board of elections within three days after the result of the first election has been officially declared. If all but one of the tied candidates withdraw within the prescribed three-day period, and the remaining candidate demands a runoff election in accordance with subsection (c) of this section, a runoff

election shall be held between the candidate who received the highest vote and the remaining candidate who received the second highest vote.

(e) Runoff elections shall be held on the date fixed in G.S. 163-279(a)(4). Persons whose registrations become valid between the date of the first election and the runoff election shall be entitled to vote in the runoff election, but in all other respects the runoff election shall be held under the laws, rules, and regulations provided for the first election.

(f) A second runoff election shall not be held. The candidates receiving the highest number of votes in a runoff election shall be elected. If in a runoff election there is a tie for the highest number of votes between two candidates, the board of elections shall determine the winner by lot. (1971, c. 835, s. 1; 1973, c. 793, s. 90; 1995 (Reg. Sess., 1996), c. 553, s. 3; 2003-278, s. 10(g).)

Local Modification. — Jackson: 1991, c. 170, s. 1; Madison: 1991, c. 249, s. 4 (contingent on referendum); city of Reidsville: 1993, c. 306, s. 2; McDowell County Board of Education: 1987, c. 322; Yancy County Board of Education: 1985, c. 135.

CASE NOTES

Cited in NAACP v. City of Statesville, 606 F. Supp. 569 (W.D.N.C. 1985).

§ 163-294. Determination of election results in cities using nonpartisan primaries.

(a) In cities whose elections are nonpartisan and who use the nonpartisan primary and election method, there shall be a primary to narrow the field of candidates to two candidates for each position to be filled if, when the filing period closes, there are more than two candidates for a single office or the number of candidates for a group of offices exceeds twice the number of positions to be filled. If only one or two candidates file for a single office, no primary shall be held for that office and the candidates shall be declared nominated. If the number of candidates for a group of offices does not exceed twice the number of positions to be filled, no primary shall be held for those offices and the candidates shall be declared nominated.

(b) In the primary, the two candidates for a single office receiving the highest number of votes, and those candidates for a group of offices receiving the highest number of votes, equal to twice the number of positions to be filled, shall be declared nominated. In both the primary and election, a voter should not mark more names for any office than there are positions to be filled by election. If two or more candidates receiving the highest number of votes each received the same number of votes, the board of elections shall determine their relative ranking by lot, and shall declare the nominees accordingly. The canvass of the primary shall be held on the seventh day following the primary. In accepting the filing of complaints concerning the conduct of an election, a board of elections shall be subject to the rules concerning Sundays and holidays set forth in G.S. 103-5.

(c) In the election, the names of those candidates declared nominated without a primary and those candidates nominated in the primary shall be placed on the ballot. The candidate for a single office receiving the highest number of votes shall be elected. Those candidates for a group of offices receiving the highest number of votes, equal in number to the number of positions to be filled, shall be elected. If two candidates receiving the highest number of votes each received the same number of votes, the board of elections shall determine the winner by lot. (1971, c. 835, s. 1; 1991, c. 341, s. 1; 1995 (Reg. Sess., 1996), c. 553, s. 4; 2001-460, s. 6; 2003-278, s. 10(h).)

§ 163-294.1. Death of candidates or elected officers.

(a) This section shall apply only to municipal and special district elections.

(b) If a candidate for political party nomination for office dies, becomes disqualified, or withdraws before the primary but after the ballots have been printed, the provisions of G.S. 163-112 shall govern.

If a candidate for nomination in a nonpartisan municipal primary dies, becomes disqualified, or withdraws before the primary but after the ballots have been printed, the board of elections shall determine whether or not there is time to reprint the ballots. If the board determines that there is not enough time to reprint the ballots, the deceased or disqualified candidate's name shall remain on the ballots. If he receives enough votes for nomination, such votes shall be disregarded and the candidate receiving the next highest number of votes below the number necessary for nomination shall be declared nominated. If the death or disqualification of the candidate leaves only two candidates for each office to be filled, the nonpartisan primary shall not be held and all candidates shall be declared nominees.

If a nominee for political party nomination dies, becomes disqualified, or withdraws after the primary and before election day, the provisions of G.S. 163-114 shall govern.

If a candidate in a nonpartisan election dies, becomes disqualified, or withdraws before election day and after the ballots have been printed, the board of elections shall determine whether there is enough time to reprint the ballots. If there is not enough time to reprint the ballots, and should the deceased or disqualified candidate receive enough votes to be elected, the board of elections shall declare the office vacant, and it shall be filled as provided by law.

(c) If a person elected to any city office dies, becomes disqualified, or resigns on or after election day and before he has qualified by taking the oath of office, the office shall be deemed vacant, and shall be filled as provided by law.

(d) A vacancy that occurs in a municipal or special district elective office shall be filled by the governing body as provided in G.S. 160A-63. In the case of a special district, the words "city council" as used in G.S. 160A-63, shall mean the governing body of the special district. (1971, c. 835, s. 1; 1985, c. 619.)

§ 163-294.2. Notice of candidacy and filing fee in nonpartisan municipal elections.

(a) Each person offering himself as a candidate for election to any municipal office in municipalities whose elections are nonpartisan shall do so by filing a notice of candidacy with the board of elections in the following form, inserting the words in parentheses when appropriate:

"Date __________;

I hereby file notice that I am a candidate for election to the office of __________ (at large) (for the __________ Ward) in the regular municipal election to be held in ______________ on _______, ________

(municipality)

Signed ____________________

(Name of Candidate)

Witness: ______________________________

For the Board of Elections"

The notice of candidacy shall be either signed in the presence of the chairman or secretary of the board of elections or the director of elections of that county, or signed and acknowledged before an officer authorized to take acknowledgments who shall certify the notice under seal. An acknowledged and certified notice may be mailed to the board of elections. The candidate shall sign the notice of candidacy with his legal name and, in his discretion, any nickname by which he is commonly known, in the form that he wishes it to appear upon the ballot but substantially as follows: "Richard D. (Dick) Roc." A candidate may also, in lieu of his legal first name and legal middle initial or middle name (if any) sign his nickname, provided that he appends to the notice of candidacy an affidavit that he has been commonly known by that nickname for at least five years prior to the date of making the affidavit, and notwithstanding the previous sentence, if the candidate has used his nickname in lieu of first and middle names as permitted by this sentence, unless another candidate for the same office who files a notice of candidacy has the same last name, the nickname shall be printed on the ballot immediately before the candidate's surname but shall not be enclosed by parentheses. If another candidate for the same office who filed a notice of candidacy has the same last name, then the candidate's name shall be printed on the ballot in accordance with the next sentence of this subsection. The candidate shall also include with the affidavit the way his name (as permitted by law) should be listed on the ballot if another candidate with the same last name files a notice of candidacy for that office.

(b) Only persons who are registered to vote in the municipality shall be permitted to file notice of candidacy for election to municipal office. The board of elections shall inspect the voter registration lists immediately upon receipt of the notice of candidacy and shall cancel the notice of candidacy of any candidate who is not eligible to vote in the election. The board shall give notice of cancellation to any candidate whose notice of candidacy has been cancelled under this subsection by mail or by having the notice served on him by the county sheriff.

(c) Candidates seeking municipal office shall file their notices of candidacy with the board of elections no earlier than 12:00 noon on the first Friday in July and no later than 12:00 noon on the third Friday in July preceding the election, except:

(1) In the year following a federal decennial census, candidates seeking municipal office in any city which elects members of its governing board on a district basis, or requires that candidates reside in a district in order to run, shall file their notices of candidacy with the board of elections no earlier than 12:00 noon on the fourth Monday in July and no later than 12:00 noon on the second Friday in August preceding the election; and

(2) In the second year following a federal decennial census, if the election is held then under G.S. 160A-23.1, candidates seeking municipal office shall file their notices of candidacy with the board of elections at the same time as notices of candidacy for county officers are required to be filed under G.S. 163-106.

Notices of candidacy which are mailed must be received by the board of elections before the filing deadline regardless of the time they were deposited in the mails.

(d) Any person may withdraw his notice of candidacy at any time prior to the filing deadline prescribed in subsection (c), and shall be entitled to a refund of his filing fee if he does so.

(e) The filing fee for the primary or election shall be fixed by the governing board not later than the day before candidates are permitted to begin filing notices of candidacy. There shall be a minimum filing fee of five dollars ($5.00). The governing board shall have the authority to set the filing fee at not less than five dollars ($5.00) nor more than one percent (1%) of the annual salary of the office sought unless one percent (1%) of the annual salary of the office sought is less than five dollars ($5.00), in which case the minimum filing fee of five dollars ($5.00) will be charged. The fee shall be paid to the board of elections at the time notice of candidacy is filed.

(f) No person may file a notice of candidacy for more than one municipal office at the same election. If a person has filed a notice of candidacy for one office with the board of elections under this section, then a notice of candidacy may not later be filed for any other municipal office for the election unless the notice of candidacy for the first office is withdrawn first. (1971, c. 835, s. 1; 1973, c. 870, s. 2; 1975, c. 370, s. 2; 1977, c. 265, s. 18; 1981, c. 32, s. 3; 1983, c. 330, s. 3; c. 644, ss. 1, 2; 1985, c. 472, s. 5; c. 558, s. 3; c. 599, s. 1; 1989 (Reg. Sess., 1990), c. 1012, s. 4; 1995, c. 243, s. 1; 1999-227, s. 6; 1999-456, s. 59; 2006-192, s. 5; 2009-414, s. 3.)

Local Modification. — Bethel, Greenville, Farmville, and Newport: 1997-414; Polk: 1983, c. 744, s. 1.1; city of Roanoke Rapids: 1997-101; city of Trinity: 1997-44, s. 5; town of Calabash: 1989, c. 593, s. 6; town of Mills River: 2003-242, s. 3; town of Rimertown: 1999-284, s. 5.1(b); Grandfather village: 1987, c. 419, s. 4; municipalities in Lee County: 1997-449, s. 1

Editor's Note. — Session Laws 1989, c. 1012, s. 3, as amended by 1999-227, s. 3, contains findings of the General Assembly regarding the challenges of using census data for redistricting, in light of the possibility that census-related litigation may not be resolved until the middle of the redistricting process, or perhaps even while filing is already open for municipal offices in cities with a district system.

Effect of Amendments. — Session Laws 2009-414, s. 3, effective August 5, 2009, in subdivision (c)(1), substituted "the year following a federal decennial census" for "2001"; and in subdivision (c)(2), substituted "the second year following a federal decennial census" for "2002."

CASE NOTES

Cited in Farnsworth v. Jones, 114 N.C. App. 182, 441 S.E.2d 597 (1994).

§ 163-294.3. Sole candidates to be voted upon in nonpartisan municipal elections.

Each candidate for municipal office in nonpartisan municipal elections shall be voted upon, even though only one candidate has filed or has been nominated for a given office, in order that the voters may have the opportunity to cast write-in votes under the general election laws. (1971, c. 835, s. 1.)

§ 163-294.4. Failure of candidates to file; death of a candidate before election.

(a) If in a nonpartisan municipal election, when the filing period expires, candidates have not filed for all offices to be filled, the board of elections may extend the filing period for five days.

(b) If at the time the filing period closes only two persons have filed notice of candidacy for election to a single office or only as many persons have filed notices of candidacy for group offices as there are offices to be filled, and thereafter one of the candidates dies before the election and before the ballots are printed, the board of elections shall, upon notification of the death, immediately reopen the filing period for an additional five days during which time additional candidates shall be permitted to file for election. If the ballots have been printed at the time the board of elections receives notice of the candidate's death, the board shall determine whether there will be sufficient time to reprint them before the election if the filing period is reopened for three days. If the board determines that there will be sufficient time to reprint the ballots, it shall reopen the filing period for three days to allow other candidates to file for election.

(c) If the ballots have been printed at the time the board of elections receives notice of a candidate's death, and if the board determines that there is not enough time to reprint the ballots before the election if the filing period is reopened for three days, then, regardless of the number of candidates remaining for the office, the ballots shall not be reprinted and the name of the deceased candidate shall remain on the ballots. If a deceased candidate should poll the highest number of votes in the election, even though short of a majority the board of elections shall declare the office vacant and it shall be filled in the manner provided by law. If no candidate in an election receives a majority of the votes cast and the second highest vote is cast for a deceased candidate, no runoff election shall be held, but the board of elections shall declare the candidate receiving the highest vote to be elected. (1971, c. 835, s. 1.)

§ 163-295. Municipal and special district elections; application of Chapter 163.

To the extent that the laws, rules and procedures applicable to the conduct of primary, general or special elections by county boards of elections under Articles 3, 4, 5, 6, 7A, 8, 9, 10, 11, 11B, 12, 13, 14, 15, 19 and 22 of this Chapter are not inconsistent with the provisions of this Article, those laws, rules and procedures shall apply to municipal and special district elections and their conduct by the board of elections conducting those elections. The State Board of Elections shall have the same authority over all such elections as it has over county and State elections under those Articles. (1971, c. 835, s. 1; 1973, c. 793, s. 91; 1993 (Reg. Sess., 1994), c. 762, s. 68; 2006-155, s. 5.)

§ 163-296. Nomination by petition.

In cities conducting partisan elections, any qualified voter who seeks to have his name printed on the regular municipal election ballot as an unaffiliated candidate may do so in the manner provided in G.S. 163-122, except that the petitions and affidavits shall be filed not later than 12:00 noon on the Friday preceding the seventh Saturday before the election, and the petitions shall be signed by a number of qualified voters of the municipality equal to at least four percent (4%) of the whole number of voters qualified to vote in the municipal election according to the voter registration records of the State Board of Elections as of January 1 of the year in which the general municipal election is held. A person whose name appeared on the ballot in a primary election is not eligible to have his name placed on the regular municipal election ballot as an unaffiliated candidate for the same office in that year. The Board of Elections shall examine and verify the signatures on the petition, and shall certify only the names of signers who are found to be qualified registered voters in the municipality. Provided that in the case where a qualified voter seeks to have his name printed on the regular municipal election ballot as an unaffiliated candidate for election from an election district within the municipality, the petition shall be signed by four percent (4%) of the voters qualified to vote for that office. (1971, c. 835, s. 1; 1979, c. 23, ss. 2, 4, 5; c. 534, ss. 3, 4; 1989, c. 402; 1991, c. 297, s. 2; 2004-127, s. 8(b); 2006-264, s. 21.)

§ 163-297. Structure at voting place; marking off limits of voting place.

Precincts in which municipal primaries and elections are conducted shall conform, in all regards, to the requirements stipulated in G.S. 163-129 and all other provisions contained in Chapter 163 relating to county and State elections. (1971, c. 835, s. 1.)

§ 163-298. Municipal primaries and elections.

The phrases "county board of elections," and "chairman of the board of elections" as used in this Article, with respect to all municipal primaries and elections, shall mean the municipal board of elections and its chairman in those cities and towns which conduct their own elections, and the county board of elections and its chairman in those cities and towns whose elections are conducted by the county board of elections. The words "general election," as used in this Article, shall include regular municipal elections, runoff elections, and nonpartisan primaries, except where specific provision is made for municipal elections and nonpartisan primaries. (1971, c. 835, s. 1.)

§ 163-299. Ballots; municipal primaries and elections.

(a) The ballots printed for use in general and special elections under the provisions of this Article shall contain:

(1) The names of all candidates who have been put in nomination in accordance with the provisions of this Chapter by any political party recognized in this State, or, in nonpartisan municipal elections, the names of all candidates who have filed notices of candidacy or who have been nominated in a nonpartisan primary.

(2) The names of all persons who have qualified as unaffiliated candidates under the provisions of G.S. 163-296.

(3) All questions, issues and propositions to be voted on by the people.

(b) The form of municipal ballots to be used in partisan municipal elections shall be the same as the form prescribed in this Chapter for the county ballot.

(c) The names of candidates for nomination or election in municipal primaries or elections shall be placed on the ballot in strict alphabetical order, unless the municipal governing body has adopted a resolution no later than 60 days prior to a primary or election requesting that candidates' names be rotated on ballots. In the event such a resolution has been adopted, then the board of elections responsible for printing the ballots shall have them printed so that the name of each candidate shall, as far as practicable, occupy alternate positions on the ballot; to that end the name of each candidate shall occupy with reference to the name of every other candidate for the same office, first position, second position and every other position, if any, upon an equal number of ballots, and the ballots shall be distributed among the precinct voting places impartially and without discrimination.

(d) The provisions of Articles 14A and 15A of this Chapter shall apply to ballots used in municipal primaries and elections in the same manner as it is applied to county ballots.

(e) The rules contained in G.S. 163-182.1 and G.S. 163-182.2 for counting primary ballots shall be followed in counting ballots in municipal primaries and nonpartisan primaries.

(f) The requirements contained in G.S. 163-182.2(b) shall apply to all municipal elections.

(g) The county or municipal board of elections shall, in addition to the requirements contained in G.S. 163-182.5 canvass the results in a nonpartisan municipal primary, election or runoff election, and in a special district election, the number of legal votes cast in each precinct for each candidate, the name of each person voted for, and the total number of votes cast in the municipality or special district for each person for each different office. (1971, c. 835, s. 1; 1979, c. 534, s. 4; c. 806; 2001-398, ss. 10 - 12; 2001-460, ss. 7, 8; 2004-127, s. 5.)

§ 163-300. Disposition of duplicate abstracts in municipal elections.

Within nine days after a primary or election is held in any municipality, the chairman of the county or municipal board of elections shall mail to the chairman of the State Board of Elections, the duplicate abstract prepared in accordance with G.S. 163-182.6. One copy shall be retained by the county or municipal board of elections as a permanent record and one copy shall be filed with the city clerk. (1971, c. 835, s. 1; 2001-398, s. 13; 2003-278, s. 10(i).)

§ 163-301. Chairman of election board to furnish certificate of elections.

Not earlier than five days nor later than 10 days after the results of any municipal election have been officially determined and published in accordance with G.S. 163-182.5, the chairman of the county or municipal board of elections shall issue certificates of election, under the hand and seal of the chairman, to all municipal and special district officers. In issuing such certificates of election the chairman shall be restricted by the provisions of G.S. 163-182.14. (1971, c. 835, s. 1; 2001-398, s. 14.)

§ 163-302. Absentee voting.

(a) In any municipal election, including a primary or general election or referendum, conducted by the county board of elections, absentee voting may, upon resolution of the municipal governing body, be permitted. Such resolution must be adopted no later than 60 days prior to an election in order to be effective for that election. Any such resolution shall remain effective for all future elections unless repealed no later than 60 days before an election. A copy of all resolutions adopted under this section shall be filed with the State Board of Elections and the county board of elections conducting the election within 10 days of passage in order to be effective. Absentee voting shall not be permitted in any municipal election unless such election is conducted by the county board of elections. In addition, absentee voting shall be allowed in any referendum on incorporation of a municipality.

(b) The provisions of Articles 20 and 21 of this Chapter shall apply to absentee voting in municipal elections, special district elections, and other elections for an area less than an entire county other than elections for the General Assembly, except that the earliest date by which absentee ballots shall be required to be available for absentee voting in such elections shall be 30 days prior to the primary or election or as quickly following the filing deadline specified in G.S. 163-291(2) or G.S. 163-294.2(c) as the county board of elections is able to secure the official ballots. In elections on incorporation of a municipality not held at the same time as another election in the same area, the county board of elections shall adopt a special schedule of meetings of the county board of elections to approve absentee ballot applications so as to reduce the cost of the process, and to further implement the last paragraph of G.S. 163-230(2)a. If no application has been received since the last meeting, no meeting shall be held of the county board of elections under such schedule unless the meeting is scheduled for another purpose. If another election is being held in the same area on the same day, or elsewhere in the county, the cost of per diem for meetings of the county board of elections to approve absentee ballots shall not be considered a cost of the election to be billed to the municipality being created. (1971, c. 835, s. 1; 1975, c. 370, s. 1; c. 836; 1977, c. 475, s. 1; 1983, c. 324, s. 6; 1991 (Reg. Sess., 1992), c. 933, s. 1.)

Local Modification. — City of Cherryville: 1983 (Reg. Sess., 1984), c. 935; town of Hazelwood: 1987, c. 338, s. 8; town of Mooresville: 1987, c. 359; town of Old Fort: 1993, c. 35, s. 1 (effective July 1, 1993 with respect to all elections held on or after July 1, 1993); town of Waynesville: 1987, c. 338, s. 8; Alamance County Board of Elections: 1998-151, s. 9.6; Union County Board of Elections: 1998-151, s. 9.6.

§ 163-303: Repealed by Session Laws 1977, c. 265, s. 19.

§ 163-304. State Board of Elections to have jurisdiction over municipal elections and election officials, and to advise; emergency and ongoing administration by county board.

(a) Authority and Duty of State Board. — The State Board of Elections shall have the same authority over municipal elections and election officials as it has over county and State elections and election officials. The State Board of Elections shall advise and assist cities, towns, incorporated villages and special districts, municipal boards of elections, their members and legal officers on the conduct and administration of their elections and registration procedure.

The municipal council shall provide written notification to the State Board of Elections of the appointment of each member of its municipal board of elections within five days after the appointment. The municipal board of elections and the municipal council shall provide such other information about the municipal board of elections as the State Board may require. Members of the municipal board of elections and municipal elections officials shall participate in training provided by the State Board pursuant to G.S. 163-82.24. The State Board shall provide the same training, materials, and assistance to municipal boards of elections that it provides to county boards of elections.

The county and municipal boards of elections shall be governed by the same rules for settling controversies with respect to counting ballots or certification of the returns of the vote in any municipal or special district election as are in effect for settling such controversies in county and State elections.

(b) Emergency Administration if Municipal Board Is Not Appointed.— If a municipal council in a municipality that has elected pursuant to G.S. 163-285 to conduct its own elections has not appointed a municipal board of elections and reported the appointments to the Executive Director by June 1 in the year in which the municipal election is to occur, the Executive Director shall notify the municipal council that, unless a municipal board of elections is appointed and the Executive Director notified of its appointment by June 15 of that year, the county board of elections shall be ordered to conduct that municipality's elections that year on an emergency basis. If the municipal council does not so appoint and so notify by June 15, the Executive Director shall order the county board of elections to conduct the municipality's elections that year on an emergency basis.

(c) Emergency Administration Due to Serious Violations.— If a municipal council or municipal board of elections has committed violations of the applicable portions of this Chapter prior to a municipal election and those violations are of such magnitude as to give rise to reasonable doubt as to the ability of the municipal board of elections to conduct that election with competence and fairness, the Executive Director of the State Board, with the approval of at least four members of the State Board, may order the county board of elections to conduct the remainder of that election on an emergency basis. Before an order is made under this subsection, the municipal council and municipal board of elections shall be given an opportunity to be heard by the State Board.

(d) Permanent County Administration.— The State Board of Elections may designate the county board of elections as the permanent agency to conduct a municipality's elections if all the following conditions are met:

(1) In more than one election conducted by that municipality either (i) the municipality's elections have been administered on an emergency basis pursuant to subsection (b) or (c) of this section or (ii) a new election has been ordered because of irregularities in the municipality's administration of the election.
(2) The State Board finds that the interest of the residents of the municipality in fair and competent administration of elections requires that the municipality not conduct its own elections.
(3) The municipal council and municipal board of elections are given an opportunity to be heard before the State Board.
(4) The State Board by a vote of at least four of its members designates the county board of elections as the permanent agency to conduct that municipality's elections.

The municipal council may not elect to conduct its own elections under G.S. 163-285 if the State Board has designated the county board of elections under this subsection as the permanent agency to conduct the municipality's elections.

(e) Reimbursement.— If the county board of elections administers a municipality's elections pursuant to subsection (b), (c), or (d) of this section, the municipality shall reimburse the county board of elections in the manner set forth in G.S. 163-285. (1971, c. 835, s. 1; 1973, c. 793, s. 92; 1999-426, s. 6(a); 2001-319, s. 11; 2001-374, s. 3.)

Cross References. — As to abolishment of municipal boards of elections in all municipalities other than the City of Morganton, the Town of Granite Falls, the Town of Old Fort, and the Town of Rhodhiss, see G.S. 163-280.1.

Editor's Note. — Session Laws 2001-374, s. 4, provides: "The State Board of Elections shall inspect the operations of the municipal boards of elections in the City of Morganton, the Town of Granite Falls, the Town of Old Fort, and the Town of Rhodhiss during September, October, or November of 2001. The State Board shall make subsequent inspections as needed. Those municipalities shall cooperate with the State Board fully. If an inspection generates findings that election laws or regulations have been violated, the State Board shall take appropriate action under G.S. 163-304 or other applicable law."

Session Laws 2001-374, s. 5, provides: "This act prevails over local acts."

§ 163-305. Validation of elections.

All elections, and the results thereof, previously held in and for any municipality, special district, or school administrative unit pursuant to Subchapter IX, Chapter 163, are hereby validated. (1973, c. 492, s. 1.)

§ 163-306. Assumption of office by mayors and councilmen.

Newly elected mayors and councilmen (members of the governing body) shall take office as prescribed by G.S. 160A-68. (1973, c. 866.)

§§ 163-307 through 163-320: Reserved for future codification purposes.

SUBCHAPTER X. ELECTION OF APPELLATE, SUPERIOR, AND DISTRICT COURT JUDGES.

ARTICLE 25.

Nomination and Election of Appellate, Superior, and District Court Judges.

§ 163-321. Applicability.

The nomination and election of justices of the Supreme Court, judges of the Court of Appeals, and superior and district court judges of the General Court of Justice shall be as provided by this Article. (1996, 2nd Ex. Sess., c. 9, s. 7; 2001-403, s. 1; 2002-158, s. 7.)

Editor's Note. — Session Laws 1996, Second Extra Session, c. 9, s. 24, makes this subchapter effective with respect to elections conducted in 1998 and thereafter.

Session Laws 1996, Second Extra Session, c. 9, s. 23, provides: "Part 1 of this act becomes effective only if Parts 1 and 2 of this act are both effective under section 5 of the Voting Rights Act of 1965." Preclearance was received from the U.S. Department of Justice by letter dated October 1, 1996.

Session Laws 2002-158, s. 15, contains a severability clause.

Session Laws 2002-158, s. 15.1, states that nothing in this act obligates the General Assembly to appropriate funds to implement the provisions of the act now or in the future.

§ 163-322. Nonpartisan primary election method.

(a) General. — Except as provided in G.S. 163-329, there shall be a primary to narrow the field of candidates to two candidates for each position to be filled if, when the filing period closes, there are more than two candidates for a single office or the number of candidates for a group of offices exceeds twice the number of positions to be filled. If only one or two candidates file for a single office, no primary shall be held for that office and the candidates shall be declared nominated. If the number of candidates for a group of offices does not exceed twice the number of positions to be filled, no primary shall be held for those offices and the candidates shall be declared nominated.

(b) Determination of Nominees. — In the primary, the two candidates for a single office receiving the highest number of votes, and those candidates for a group of offices receiving the highest number of votes, equal to twice the number of positions to be filled, shall be declared nominated. If two or more candidates receiving the highest number of votes each receive the same number of votes, the State Board of Elections shall determine their relative ranking by lot, and shall declare the nominees accordingly. The canvass of the primary shall be held on the same date as the primary canvass fixed under G.S. 163-182.5. The canvass shall be conducted in accordance with Article 15A of this Chapter.

(c) Determination of Election Winners. — In the election, the names of those candidates declared nominated without a primary and those candidates nominated in the primary shall be placed on the ballot. The candidate for a single office receiving the highest number of votes shall be elected. Those candidates for a group of offices receiving the highest number of votes, equal in number to the number of positions to be filled, shall be elected. If two candidates receiving the highest number of votes each received the same number of votes, the State Board of Elections shall determine the winner by lot. (1996, 2nd Ex. Sess., c. 9, s. 7; 2003-278, s. 10(j).)

§ 163-323. Notice of candidacy.

(a) Form of Notice. — Each person offering to be a candidate for election shall do so by filing a notice of candidacy with the State Board of Elections in the following form, inserting the words in parentheses when appropriate:

Date ________________

I hereby file notice that I am a candidate for election to the office of ______ in the regular election to be held ______, ______.

Signed ________________
(Name of Candidate)

Witness: ________________

The notice of candidacy shall be either signed in the presence of the chairman or secretary of the State Board of Elections, or signed and acknowledged before an officer authorized to take acknowledgments who shall certify the notice under seal. An acknowledged and certified notice may be mailed to the State Board of Elections. In signing a notice of candidacy, the candidate shall use only the candidate's legal name and, in his discretion, any nickname by which commonly known. A candidate may also, in lieu of that candidate's first name and legal middle initial or middle name, if any, sign that candidate's nickname, provided the candidate appends to the notice of candidacy an affidavit that the candidate has been commonly known by that nickname for at least five years prior to the date of making the affidavit. The candidate shall also include with the affidavit the way the candidate's name (as permitted by law) should be listed on the ballot if another candidate with the same last name files a notice of candidacy for that office.

A notice of candidacy signed by an agent or any person other than the candidate himself shall be invalid.

(b) Time for Filing Notice of Candidacy. — Candidates seeking election to the following offices shall file their notice of candidacy with the State Board of Elections no earlier than 12:00 noon on the second Monday in February and no later than 12:00 noon on the last business day in February preceding the election:

Justices of the Supreme Court.
Judges of the Court of Appeals.
Judges of the superior courts.
Judges of the district courts.

(c) Withdrawal of Notice of Candidacy. — Any person who has filed a notice of candidacy for an office shall have the right to withdraw it at any time prior to the date on which the right to file for that office expires under the terms of subsection (b) of this section.

(d) Certificate That Candidate Is Registered Voter. — Candidates shall file along with their notice a certificate signed by the chairman of the board of elections or the director of elections of the county in which they are registered to vote, stating that the person is registered to vote in that county, and if the candidacy is for superior court judge and the county contains more than one superior court district, stating the superior court district of which the person is a resident. In issuing such certificate, the chairman or director shall check the registration records of the county to verify such information. During the period commencing 36 hours immediately preceding the filing deadline, the State Board of Elections shall accept, on a conditional basis, the notice of candidacy of a candidate who has failed to secure the verification ordered herein subject to receipt of verification no later than three days following the filing deadline. The State Board of Elections shall prescribe the form for such certificate, and distribute it to each county board of elections no later than the last Monday in December of each odd-numbered year.

(e) Candidacy for More Than One Office Prohibited. — No person may file a notice of candidacy for more than one office or group of offices described in subsection (b) of this section, or for an office or group of offices described in subsection (b) of this section and an office described in G.S. 163-106(c), for any one election. If a person has filed a notice of candidacy with a board of elections under this section or under G.S. 163-106(c) for one office or group of offices, then a notice of candidacy may not later be filed for any other office or group of offices under this section when the election is on the same date unless the notice of candidacy for the first office is withdrawn under subsection (c) of this section.

(f) Notice of Candidacy for Certain Offices to Indicate Vacancy. — In any election in which there are two or more vacancies for the office of justice of the Supreme Court, judge of the Court of Appeals, or district court judge to be filled by nominations, each candidate shall, at the time of filing notice of candidacy, file with the State Board of Elections a written statement designating the vacancy to which the candidate seeks election. Votes cast for a candidate shall be effective only for election to the vacancy for which the candidate has given notice of candidacy as provided in this subsection.

A person seeking election for a specialized district judgeship established under G.S. 7A-147 shall, at the time of filing notice of candidacy, file with the State Board of Elections a written statement designating the specialized judgeship to which the person seeks nomination.

(g) No person may file a notice of candidacy for superior court judge unless that person is at the time of filing the notice of candidacy a resident of the judicial district as it will exist at the time the person would take office if elected. No person may be nominated as a superior court judge under G.S. 163-114 unless that person is at the time of nomination a resident of the judicial district as it will exist at the time the person would take office if elected. This subsection implements Article IV, Section 9(1) of the North Carolina Constitution which requires regular Superior Court Judges to reside in the district for which elected. (1996, 2nd Ex. Sess., c. 9, s. 7; 1998-217, s. 36(a); 2001-403, s. 1; 2001-466, s. 5.1(b); 2002-158, s. 7; 2002-159, s. 21(g).)

Editor's Note. — Session Laws 2002-158, s. 15, contains a severability clause.

Session Laws 2002-158, s. 15.1, states that nothing in this act obligates the General Assembly to appropriate funds to implement the provisions of the act now or in the future.

CASE NOTES

The trial court properly refused to declare this section and § 163-106 unconstitutional although, taken together, they created a "loophole" which allowed a candidate to run for a superior court seat and another office on the same election day, regardless of the filing periods; the provisions did not create a benefit to lawyers while denying non-lawyers the equal protection of the law, did not remove the election process from the hands of the voters, and did not allow dual officeholding in violation of Art. VI, § 9 of the North Carolina Constitution, although they did allow dual candidacy. Comer v. Ammons, 135 N.C. App. 531, 522 S.E.2d 77, 1999 N.C. App. LEXIS 1179 (1999).

§ 163-324. Filing fees required of candidates; refunds.

(a) Fee Schedule. — At the time of filing a notice of candidacy under this Article, each candidate shall pay to the State Board of Elections a filing fee for the office he seeks in the amount of one percent (1%) of the annual salary of the office sought.

(b) Refund of Fees. — If any person who has filed a notice of candidacy and paid the filing fee prescribed in subsection (a) of this section withdraws his notice of candidacy within the period prescribed in G.S. 163-323(c), he shall be entitled to have the fee he paid refunded. The chairman of the State Board of

Elections shall cause a warrant to be drawn on the State Treasurer for the refund payment.

If any person who has filed a notice of candidacy and paid the filing fee prescribed in subsection (a) of this section dies prior to the date of the election, the personal representative of the estate shall be entitled to have the fee refunded if application is made to the board of elections to which the fee was paid no later than one year after the date of death, and refund shall be made in the same manner as in withdrawal of notice of candidacy. (1996, 2nd Ex. Sess., c. 9, s. 7.)

§ 163-325. Petition in lieu of payment of filing fee.

(a) General. — Any qualified voter who seeks election under this Article may, in lieu of payment of any filing fee required for the office he seeks, file a written petition requesting him to be a candidate for a specified office with the State Board of Elections.

(b) Requirements of Petition; Deadline for Filing. — If the candidate is seeking the office of justice of the Supreme Court, judge of the Court of Appeals, or superior or district court judge, that individual shall file a written petition with the State Board of Elections no later than 12:00 noon on Monday preceding the filing deadline before the primary. If the office is justice of the Supreme Court or judge of the Court of Appeals, the petition shall be signed by 10,000 registered voters in the State. If the office is superior court or district court judge, the petition shall be signed by ten percent (10%) of the registered voters of the election area in which the office will be voted for. The board of elections shall verify the names on the petition, and if the petition and notice of candidacy are found to be sufficient, the candidate's name shall be printed on the appropriate ballot. Petitions must be presented to the county board of elections for verification at least 15 days before the petition is due to be filed with the State Board of Elections. The State Board of Elections may adopt rules to implement this section and to provide standard petition forms. (1996, 2nd Ex. Sess., c. 9, s. 7; 2001-403, s. 1; 2002-158, s. 7.)

Editor's Note. — Session Laws 2002-158, s. 15, contains a severability clause.

Session Laws 2002-158, s. 15.1, states that nothing in this act obligates the General Assembly to appropriate funds to implement the provisions of the act now or in the future.

§ 163-326. Certification of notices of candidacy.

(a) Names of Candidates Sent to Secretary of State. — Within three days after the time for filing notices of candidacy with the State Board of Elections under the provisions of G.S. 163-323(b) has expired, the chairman or secretary of that Board shall certify to the Secretary of State the name and address of each person who has filed with the State Board of Elections, indicating in each instance the office sought.

(b) Notification of Local Boards. — No later than 10 days after the time for filing notices of candidacy under the provisions of G.S. 163-323(b) has expired, the chairman of the State Board of Elections shall certify to the chairman of the county board of elections in each county in the appropriate district the names of candidates for nomination to the offices of justice of the Supreme Court, judge of the Court of Appeals, and superior and district court judge who have filed the required notice and paid the required filing fee or presented the required petition to the State Board of Elections, so that their names may be printed on the official judicial ballot for justice of the Supreme Court, judge of the Court of Appeals, and superior and district court.

(c) Receipt of Notification by County Board. — Within two days after receipt of each of the letters of certification from the chairman of the State Board of

Elections required by subsection (b) of this section, each county elections board chairman shall acknowledge receipt by letter addressed to the chairman of the State Board of Elections. (1996, 2nd Ex. Sess., c. 9, s. 7; 2001-403, s. 1; 2002-158, s. 7.)

Editor's Note. — Session Laws 2002-158, s. 15, contains a severability clause. Session Laws 2002-158, s. 15.1, states that nothing in this act obligates the General Assembly to appropriate funds to implement the provisions of the act now or in the future.

§ 163-327: Repealed by Session Laws 2006-192, s. 9(a), effective August 3, 2006, and applicable to vacancies occurring on or after August 3, 2006.

§ 163-327.1. Rules when vacancies for superior court judge are to be voted on.

If a vacancy occurs in a judicial district for any offices of superior court judge, and on account of the occurrence of such vacancy, there is to be an election for one or more terms in that district to fill the vacancy or vacancies, at that same election in accordance with G.S. 163-9 and Article IV, Section 19 of the North Carolina Constitution, the nomination and election shall be determined by the following special rules in addition to any other provisions of law:

(1) If the vacancy occurs prior to the opening of the filing period under G.S. 163-323(b), nominations shall be made by primary election as provided by this Article, without designation as to the vacancy.

(2) If the vacancy occurs beginning on opening of the filing period under G.S. 163-323(b), and ending on the sixtieth day before the general election, candidate filing shall be as provided by G.S. 163-329 without designation as to the vacancy.

(3) The general election ballot shall contain, without designation as to vacancy, spaces for the election to fill the vacancy where nominations were made or candidates filed under subdivision (1) or (2) of this section. Except as provided in G.S. 163-329, the persons receiving the highest numbers of votes equal to the term or terms to be filled shall be elected to the term or terms. (2001-460, s. 10; 2006-192, s. 8(b).)

§ 163-328. Failure of candidates to file; death or other disqualification of a candidate; no withdrawal from candidacy.

(a) Insufficient Number of Candidates. — If when the filing period expires, candidates have not filed for an office to be filled under this Article, the State Board of Elections shall extend the filing period for five days for any such offices.

(a1) Death or Disqualification of Candidate Before Primary. — If a candidate for nomination in a primary dies or becomes disqualified before the primary but after the ballots have been printed, the State Board of Elections shall determine whether or not there is time to reprint the ballots. If the Board determines that there is not enough time to reprint the ballots, the deceased or disqualified candidate's name shall remain on the ballots. If that candidate receives enough votes for nomination, such votes shall be disregarded and the candidate receiving the next highest number of votes below the number necessary for nomination shall be declared nominated. If the death or disqualification of the candidate leaves only two candidates for each office to be filled, the nonpartisan primary shall not be held and all candidates shall be declared nominees.

(b) Earlier Non-Primary Vacancies; Reopening Filing. — If there is no primary because only one or two candidates have filed for a single office, or the number of candidates filed for a group of offices does not exceed twice the number of positions to be filled, or if a primary has occurred and eliminated candidates, and thereafter a remaining candidate dies or otherwise becomes disqualified before the election and before the ballots are printed, the State Board of Elections shall, upon notification of the death or other disqualification, immediately reopen the filing period for an additional five days during which time additional candidates shall be permitted to file for election. If the ballots have been printed at the time the State Board of Elections receives notice of the candidate's death or other disqualification, the Board shall determine whether there will be sufficient time to reprint them before the election if the filing period is reopened for three days. If the Board determines that there will be sufficient time to reprint the ballots, it shall reopen the filing period for three days to allow other candidates to file for election, and that election shall be conducted as provided in G.S. 163-329(b1).

(c) Later Vacancies; Ballots Not Reprinted. — If the ballots have been printed at the time the State Board of Elections receives notice of a candidate's death or other disqualification, and if the Board determines that there is not enough time to reprint the ballots before the election if the filing period is reopened for three days, then regardless of the number of candidates remaining for the office or group of offices, the ballots shall not be reprinted and the name of the vacated candidate shall remain on the ballots. If a vacated candidate should poll the highest number of votes in the election for a single office or enough votes to be elected to one of a group of offices, the State Board of Elections shall declare the office vacant and it shall be filled in the manner provided by law.

(d) No Withdrawal Permitted of Living, Qualified Candidate After Close of Filing. — After the close of the candidate filing period, a candidate who has filed a notice of candidacy for the office, who has not withdrawn notice before the close of filing as permitted by G.S. 163-323(b), who remains alive, and has not become disqualified for the office may not withdraw his or her candidacy. That candidate's name shall remain on the ballot, any votes cast for the candidacy shall be counted in primary or election, and if the candidate wins, the candidate may fail to qualify by refusing to take the oath of office.

(e) Death, Disqualification, or Failure to Qualify After Election. — If a person elected to the office of justice of the Supreme Court, judge of the Court of Appeals, or superior or district court judge dies or becomes disqualified on or after election day and before he has qualified by taking the oath of office, or fails to qualify by refusing to take the oath of office, the office shall be deemed vacant and shall be filled as provided by law. (1996, 2nd Ex. Sess., c. 9, s. 7; 1999-424, s. 4(b); 2006-192, s. 9(b).)

§ 163-329. Elections to fill vacancy in office created after primary filing period opens.

(a) General. — If a vacancy is created in the office of justice of the Supreme Court, judge of the Court of Appeals, or judge of superior court after the filing period for the primary opens but more than 60 days before the general election, and under the Constitution of North Carolina an election is to be held for that position, such that the office shall be filled in the general election as provided in G.S. 163-9, the election to fill the office for the remainder of the term shall be conducted without a primary using the method provided in subsection (b1) of this section. If a vacancy is created in the office of justice of the Supreme Court, judge of the Court of Appeals, or judge of superior court before the filing period for the primary opens, and under the Constitution of North Carolina an election is to be held for that position, such that the office shall be filled in the general election as provided in G.S. 163-9, the election to fill the office for the remainder of the term shall be conducted in accordance with G.S. 163-322.

(b) Repealed by Session Laws 2006-192, s. 8(a), effective August 3, 2006, and applicable to vacancies occurring on or after that date.

(b1) Method for Vacancy Election. — If a vacancy for the office of justice of the Supreme Court, judge of the Court of Appeals, or judge of the superior court occurs more than 60 days before the general election and after the opening of the filing period for the primary, then the State Board of Elections shall designate a special filing period of one week for candidates for the office. If more than two candidates file and qualify for the office in accordance with G.S. 163-323, then the Board shall conduct the election for the office as follows:

(1) When the vacancy described in this section occurs more than 63 days before the date of the second primary for members of the General Assembly, a special primary shall be held on the same day as the second primary. The two candidates with the most votes in the special primary shall have their names placed on the ballot for the general election held on the same day as the general election for members of the General Assembly.

(2) When the vacancy described in this section occurs less than 64 days before the date of the second primary, a general election for all the candidates shall be held on the same day as the general election for members of the General Assembly and the "instant runoff voting" method shall be used to determine the winner. Under "instant runoff voting," voters rank up to three of the candidates by order of preference, first, second, or third. If the candidate with the greatest number of first-choice votes receives more than fifty percent (50%) of the first-choice votes, that candidate wins. If no candidate receives that minimum number, the two candidates with the greatest number of first-choice votes advance to a second round of counting. In this round, each ballot counts as a vote for whichever of the two final candidates is ranked highest by the voter. The candidate with the most votes in the second round wins the election. If more than one seat is to be filled in the same race, the voter votes the same way as if one seat were to be filled. The counting is the same as when one seat is to be filled, with one or two rounds as needed, except that counting is done separately for each seat to be filled. The first count results in the first winner. Then the second count proceeds without the name of the first winner. This process results in the second winner. For each additional seat to be filled, an additional count is done without the names of the candidates who have already won. In multi-seat contests, the State Board of Elections may give the voter more than three choices.

(3) If two or more candidates receiving the highest number of votes each receive the same number of votes, the board of elections shall resolve the tie in accordance with G.S. 163-182.8.

(c) Applicable Provisions. — Except as provided in this section, the provisions of this Article apply to elections conducted under this section.

(d) Rules. — The State Board of Elections shall adopt rules for the implementation of this section. The rules are not subject to Article 2A of Chapter 150B of the General Statutes. The rules shall include the following:

(1) If after the first-choice candidate is eliminated, a ballot does not indicate one of the uneliminated candidates as an alternative choice, the ballot is exhausted and shall not be counted after the initial round.

(2) The fact that the voter does not designate a second or third choice does not invalidate the voter's higher choice or choices.

(3) The fact that the voter gives more than one ranking to the same candidate shall not invalidate the vote. The highest ranking given a particular candidate shall count as long as the candidate is not eliminated.

(4) In case of a tie between candidates such that two or more candidates have an equal number of first choices and more than two candidates qualify for the second round, instant runoff voting shall be used to determine which two candidates shall advance to the second round. (1996, 2nd Ex. Sess., c. 9, s. 7; 2001-403, s. 12.1; 2002-158, s. 7; 2006-192, s. 8(a).)

Editor's Note. — Session Laws 2001-403, s. 12.1, which amended this section, was contingent on Senate Bill 14 of the 2001 Session becoming law. Senate Bill 14 became law as Session Laws 2001-398.

Session Laws 2002-158, s. 15, contains a severability clause.

Session Laws 2002-158, s. 15.1, states that nothing in this act obligates the General Assembly to appropriate funds to implement the provisions of the act now or in the future.

§ 163-330. Voting in primary.

Any person who will become qualified by age to register and vote in the general election for which the primary is held, even though not so qualified by the date of the primary, shall be entitled to register for the primary and general election prior to the primary and then to vote in the primary after being registered. Such person may register not earlier than 60 days nor later than the last day for making application to register under G.S. 163-82.6(c) prior to the primary. Such a person also may register and vote in the primary and general election pursuant to G.S. 163-82.6A(f). (1996, 2nd Ex. Sess., c. 9, s. 7; 2009-541, s. 26.)

Effect of Amendments. — Session Laws 2009-541, s. 26, effective August 28, 2009, deleted "or residence" following "by age" in the first sentence; and added the last sentence.

§ 163-331. Date of primary.

The primary shall be held on the same date as established for primary elections under G.S. 163-1(b). (1996, 2nd Ex. Sess., c. 9, s. 7.)

§ 163-332. Ballots.

(a) General. — In elections there shall be official ballots. The ballots shall be printed to conform to the requirement of G.S. 163-165.6(c) and to show the name of each person who has filed notice of candidacy, and the office for which each aspirant is a candidate.

Only those who have filed the required notice of candidacy with the proper board of elections, and who have paid the required filing fee or qualified by petition, shall have their names printed on the official primary ballots. Only those candidates properly nominated shall have their names appear on the official general election ballots.

(b) Ballots to Be Furnished by County Board of Elections. — It shall be the duty of the county board of elections to print official ballots for the following offices to be voted for in the primary:

Justice of the Supreme Court.
Judge of the Court of Appeals.
Superior court judge.
District court judge.

In printing ballots, the county board of elections shall be governed by instructions of the State Board of Elections with regard to width, color, kind of paper, form, and size of type.

Three days before the election, the chairman of the county board of elections shall distribute official ballots to the chief judge of each precinct in his county, and the chief judge shall give a receipt for the ballots received. On the day of the primary, it shall be the chief judge's duty to have all the ballots so delivered available for use at the precinct voting place. (1996, 2nd Ex. Sess., c. 9, s. 7; 2001-403, s. 1; 2001-460, s. 9; 2002-158, s. 7.)

Editor's Note. — Session Laws 2002-158, s. 15, contains a severability clause.

Session Laws 2002-158, s. 15.1, states that nothing in this act obligates the General Assembly to appropriate funds to implement the provisions of the act now or in the future.

§ 163-333: Repealed by Session Laws 2001-398, s. 15, effective January 1, 2002.

§ 163-334. Counting of ballots.

Counting of ballots in primaries and elections held under this Article shall be under the same rules as for counting of ballots in nonpartisan municipal elections under Article 24 of this Chapter. (1996, 2nd Ex. Sess., c. 9, s. 7.)

§ 163-335. Other rules.

Except as provided by this Article, the conduct of elections shall be governed by Subchapter VI of this Chapter. (1996, 2nd Ex. Sess., c. 9, s. 7.)

Chapter 164.

Concerning the General Statutes of North Carolina.

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The General Statutes.

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ARTICLE 1.

The General Statutes.

§ 164-1. Title of revision.

This revision shall be known as the "General Statutes of North Carolina" and may be cited in either of the following ways: "General Statutes of North Carolina"; or "General Statutes"; or "G.S."; or "N.C. Gen. Stat."; or "N.C.G.S." (1985, c. 609, s. 6.)

Editor's Note. — It appears that this Article was originally enacted as part of Session Laws 1943, Chapter 33, which was not printed as part of the Session Laws but was in a separate bound volume in the Secretary of State's office. However, the Secretary of State's office no longer has such a volume in its possession. The volume may have burned in a warehouse fire that destroyed some records. The sections first appear in "The North Carolina Code of 1943 — Legislative Edition," the report of the Legislative Commission on Recodification. As the origin of Article 1 is not completely certain, Session Laws 1943, Chapter 33 is not listed in the historical citations for the sections in Article 1.

§ 164-2. Effect as to repealing other statutes.

All public and general statutes not contained in the General Statutes of North Carolina are hereby repealed with the exceptions and limitations hereafter mentioned in this Chapter. No statute or law which has been heretofore repealed shall be revived by the repeal contained in any of the sections of the General Statutes of North Carolina or by the omission of any repealing statute from the General Statutes. All public and general statutes enacted at the regular session of the General Assembly of 1943 shall be deemed to repeal any conflicting provisions of the General Statutes of North Carolina.

CASE NOTES

Cited in Baker v. Varser, 240 N.C. 260, 82 S.E.2d 90 (1954).

§ 164-3. Repeal not to affect rights accrued or suits commenced.

The repeal of the statutes described in G.S. 164-2 shall not affect any act done, any right accruing, accrued or established, or any action or proceeding had or commenced in any case before the time when such repeal shall take effect, but the proceedings in any such case shall be conformed, when necessary, to the provisions of the General Statutes of North Carolina.

§ 164-4. Offenses, penalties and liabilities not affected.

No offense committed, no penalty or forfeiture incurred, no liability arising, and no remedy availed of, under any of the statutes hereby repealed, before the time when such repeal shall take effect shall be affected by the repeal.

§ 164-5. Pending actions and proceedings not affected.

No action or proceeding pending at the time of the repeal, for any offense committed, or for the recovery of any penalty or forfeiture incurred under any of the statutes hereby repealed shall be affected by such repeal, except that the proceedings in such action or proceeding shall be conformed, when necessary, to the provisions of the General Statutes of North Carolina.

§ 164-6. Effect of repeal on persons holding office.

All persons who at the time the General Statutes of North Carolina becomes effective shall hold any office under any of the statutes hereby repealed shall continue to hold the same according to the tenure thereof.

§ 164-7. Statutes not repealed.

The General Statutes of North Carolina shall not have the effect of repealing statutes or provisions of statutes which affect only a particular locality, public-local or private statutes, statutes exempting pending litigation from operation of statutes, statutes relating to the boundary of the State or of any county, acts ceding or relating to the ceding of lands of the State to the federal government, statutes relating to the Cherokee lands, statutes relating to the construction or interpretation of statutes, statutes by virtue of which bonds have been issued and are outstanding on the effective date of the General Statutes, validating acts or curative statutes, or acts granting pensions to named individuals if such statutes were in force on the effective date of the General Statutes.

CASE NOTES

Applied in State v. Gales, 240 N.C. 319, 82 S.E.2d 80 (1954).

§ 164-8. General Statutes of North Carolina effective December 31, 1943.

All provisions, chapters, subdivisions of chapters and sections contained in the General Statutes of North Carolina shall be in force from and after the thirty-first day of December 1943.

CASE NOTES

Cited in Kirby v. Stokes County Bd. of Educ., 230 N.C. 619, 55 S.E.2d 322 (1949).

§ 164-9. Completion of General Statutes by Division of Legislative Drafting and Codification of Statutes.

The Division of Legislative Drafting and Codification of Statutes of the State Department of Justice, under the direction and supervision of the Attorney General, shall complete and perfect the General Statutes, as enacted by the General Assembly of 1943, by changing all references therein to the "Code," "North Carolina Code," "Code of 1943" or "North Carolina Code of 1943" to read "General Statutes," and by causing to be inserted therein all such general public statutes as may be enacted at the 1943 Session of the General Assembly and all amendments, in their proper places in sections under the appropriate chapter and subdivisions of chapters, and by deleting all sections or portions of sections found to be expressly repealed, or found to be repealed by virtue of the repeal of any cognate sections or parts of sections of the Consolidated Statutes or session laws, and by deleting repealed provisions and substituting in lieu thereof all proper amendments of the General Statutes or of cognate sections of the Consolidated Statutes or session laws; and the Division is hereby authorized to change the number of sections and chapters, transfer sections, chapters and subdivisions of chapters and make such other corrections which do not change the law, as may be found by the Division necessary in making an accurate, clear, and orderly statement of said laws. After the completion of such codification of the general and public laws of 1943, such laws, as they appear in the printed volumes of the General Statutes, shall be deemed an accurate codification of the statutes of 1943 contained therein. (1943, c. 15, s. 3.)

§ 164-10. Supplements to the General Statutes; rearrangement of laws, and correction of errors.

The Division of Legislative Drafting and Codification of Statutes of the Department of Justice, under the direction and supervision of the Attorney General, shall have the following duties and powers with regard to the supplements to the General Statutes:

(1) Within six months after the adjournment of each General Assembly, or as soon thereafter as possible, the Division shall cause to be published under its supervision, cumulative pocket supplements to the General Statutes, and any replacement or recompiled volumes thereof, which shall contain an accurate transcription of all laws of a general and permanent nature enacted by the General Assembly, the material contained in the next preceding pocket and interim supplements, complete and accurate annotations to the statutes, appendix and other material accumulated since the publication of the next preceding pocket and interim supplements, and a cumulative index of said material.

(2) Periodically, every six months after the publication and issuance of a cumulative pocket supplement following a session of the General Assembly, or as soon thereafter as possible, except when the publication of the cumulative pocket supplement makes it unnecessary, the Division shall cause to be published an interim supplement containing all pertinent annotations and other material found by the Division to be necessary and proper, accumulating since the publication of the said cumulative pocket supplement or the last interim supplement.

(3) In the preparation of the general and permanent laws enacted by the General Assembly the Division is hereby authorized:
   a. To rearrange the order of chapters, subchapters, articles, sections and other divisions or subdivisions;
   b. To provide titles for any such divisions or subdivisions and section titles or catchlines when they are not provided by such laws;
   c. To adopt a uniform system of lettering or numbering sections and the various subdivisions thereof and to reletter or renumber sections and section subdivisions in accordance with such uniform system;
   d. To rearrange definitions in alphabetical order;
   e. To rearrange lists of counties in alphabetical order; and
   f. To make such other changes in arrangement and form that do not change the law as may be found by the Division necessary for an accurate, clear and orderly codification of such general and permanent laws. (1945, c. 863; 1947, c. 150; 1951, c. 1149, s. 1; 1957, c. 1013.)

Editor's Note. — Session Laws 2008-211, enacted improvements to the rules on the management of stormwater in the coastal counties in order to protect water quality, which superceded the former rules. The act is noted in full under G.S. 143-214.7. Session Laws 2008-211, s. 7, provides: "Provisions of Act Not Codified; Set Out As Note. — Notwithstanding G.S. 164-10, the Revisor of Statutes shall not codify any of the provisions of this act. The Revisor of Statutes shall set out the text of this act as a note to G.S. 143-214.7 and may make notes concerning this act to other sections of the General Statutes as the Revisor of Statutes deems appropriate."

§ 164-11. Supplements prima facie statement of laws; method of citation.

(a) The supplements to the General Statutes of North Carolina, or to any replacement or recompiled volumes of the General Statutes, when printed under the supervision of the Division of Legislative Drafting and Codification of Statutes of the Department of Justice, shall establish prima facie the general and permanent laws of North Carolina contained in said supplements.

(b) The cumulative pocket supplement may be cited as "G.S., Supp. 19 ....." and the interim supplement may be cited as "... G.S. In. Supp. 19 .....," the blank in front of "G.S." to be filled in with the number of the interim supplement for that year. (1945, c. 863; 1951, c. 1149, s. 2.)

Cross References. — For subsequent law, see G.S. 164-11.1.

§ 164-11.1. Cumulative Supplements prima facie evidence of laws.

The 1945, 1947, 1949, 1951, 1953, 1955, and 1957 Cumulative Supplements to the General Statutes of North Carolina, or to any replacement or recompiled volumes of the General Statutes as compiled and published by The Michie Company under the supervision of the Department of Justice of the State of North Carolina, are hereby constituted and declared to be prima facie evidence of the laws of North Carolina contained in said supplements. (1949, c. 45; 1951, c. 1149, s. 3; 1953, c. 140; 1955, c. 53; 1957, c. 371.)

Cross References. — See G.S. 164-11.

Legal Periodicals. — For brief comment on this section, see 27 N.C.L. Rev. 478 (1949).

§ 164-11.2. Adoption of 1950 Volumes 2A, 2B and 2C of the General Statutes.

The chapters, subchapters, articles and sections, now comprising Volume 2 of the General Statutes of North Carolina and the Cumulative Supplements thereto, consisting of G.S. 26-1 through 105-462 now in force as amended, are hereby reenacted and designated Volumes 2A, 2B and 2C, respectively, of the General Statutes of North Carolina: Provided, that this enactment of Volumes 2A, 2B and 2C shall not include any appended annotations, editorial notes, comments, cross references, legislative or historical references, or other material collateral or supplemental to the said chapters, subchapters, articles and sections, but not contained in the body thereof. (1951, c. 900.)

§ 164-11.3. Adoption of 1952 Volumes 3A, 3B and 3C of the General Statutes.

The chapters, subchapters, articles and sections now comprising Volume 3 of the General Statutes of North Carolina, and Cumulative Supplements thereto, consisting of G.S. 106-1 through 166-13, now in force, as amended, are hereby reenacted and designated Volumes 3A, 3B and 3C respectively of the General Statutes of North Carolina. This reenactment of Volumes 3A, 3B and 3C shall not be construed to invalidate or repeal any acts which have been passed during the 1953 Session of the General Assembly, prior to February 18, 1953, nor shall this reenactment include any appended annotations, editorial notes, comments and cross references, legislative or historical references, or other material connected or supplemental to the said chapters, subchapters, articles and sections, but not contained in the body hereof. (1955, c. 43.)

Editor's Note. — Section 106-1, referred to in this section was repealed by Session Laws, 1995, c. 390, s. 2.

§ 164-11.4. Adoption of 1953 Volumes 1A, 1B and 1C of the General Statutes.

The chapters, subchapters, articles and sections now comprising Volume 1 of the General Statutes of North Carolina, and Cumulative Supplements thereto, consisting of G.S. 1-1 through 27-59, now in force, as amended, are hereby reenacted and designated Volumes 1A, 1B and 1C respectively of the General Statutes of North Carolina. This enactment of Volumes 1A, 1B and 1C shall not be construed to invalidate or repeal any acts which have been passed during the 1955 Session of the General Assembly, prior to February 11, 1955, nor shall this enactment include any appended annotations, editorial notes, comments and cross references, legislative or historical references, or other material connected or supplemental to the said chapters, subchapters, articles and sections, but not contained in the body hereof. (1955, c. 43.)

§ 164-11.5. Adoption of 1958 Replacement Volumes 2C and 3B of the General Statutes.

(a) The chapters, subchapters, articles and sections now comprising Volume 2C of the General Statutes of North Carolina, and Cumulative Supplement thereto, consisting of G.S. 83-1 through 105-462, now in force, as amended, are hereby reenacted and designated Replacement Volume 2C of the General Statutes of North Carolina.

(b) The chapters, subchapters, articles and sections now comprising Volume 3B of the General Statutes of North Carolina, and Cumulative Supplement thereto, consisting of G.S. 117-1 through 150-34, now in force, as amended, are hereby reenacted and designated Replacement Volume 3B of the General Statutes of North Carolina.

(c) This enactment of Replacement Volumes 2C and 3B shall not be construed to invalidate or repeal any acts which have been passed during the 1959 Session of the General Assembly, prior to February 24, 1959, nor shall this enactment include any appended annotations, editorial notes, comments and cross references, legislative or historical references, or other material connected or supplemental to the said chapters, subchapters, articles and sections, but not contained in the body hereof. (1959, c. 12.)

§ 164-11.6. Adoption of 1960 Replacement Volumes 2B and 3A of the General Statutes.

(a) The chapters, subchapters, articles and sections now comprising Volume 2B of the General Statutes of North Carolina, and Cumulative Supplement thereto, consisting of G.S. 53-1 through 82-18, now in force, as amended, are hereby reenacted and designated as Replacement Volume 2B of the General Statutes of North Carolina.

(b) The chapters, subchapters, articles and sections now comprising Volume 3A of the General Statutes of North Carolina, and Cumulative Supplement thereto, consisting of G.S. 106-1 through 116-185, now in force, as amended, are hereby reenacted and designated Replacement Volume 3A of the General Statutes of North Carolina.

(c) This enactment of Replacement Volumes 2B and 3A shall not be construed to invalidate or repeal any acts which have been passed during the 1961 Session of the General Assembly, prior to March 14, 1961, nor shall this enactment include any appended annotations, editorial notes, comments and cross references, legislative or historical references, or other material connected or supplemental to the said chapters, subchapters, articles and sections, but not contained in the body hereof. (1961, cc. 38, 185.)

Editor's Note. — Section 106-1, referred to in this section was repealed by Session Laws, 1995, c. 390, s. 2.

§ 164-11.7. Adoption of 1965 Replacement Volumes 2B, 2C and 2D and 1964 Replacement Volumes 3B, 3C and 3D of the General Statutes.

(a) The chapters, subchapters, articles and sections now comprising Volumes 2B and 2C of the General Statutes of North Carolina, and Cumulative Supplements thereto, consisting of G.S. 53-1 to 105-462, now in force, as amended, are hereby reenacted and designated as 1965 Replacement Volumes 2B, 2C and 2D of the General Statutes of North Carolina.

(b) The chapters, subchapters, articles and sections now comprising Volumes 3B and 3C of the General Statutes of North Carolina, and Cumulative Supplements thereto, consisting of G.S. 117-1 to 167-3, now in force, as amended, are hereby reenacted and designated as 1964 Replacement Volumes 3B, 3C and 3D of the General Statutes of North Carolina.

(c) This enactment of 1965 Replacement Volumes 2B, 2C and 2D and 1964 Replacement Volumes 3B, 3C and 3D shall not be construed to invalidate or repeal any acts which have been passed during the 1965 Session of the General Assembly, prior to May 14, 1965, nor shall this enactment include any appended annotations, editorial notes, comments and cross references, legislative or historical references, or other material connected or supplemental to the said chapters, subchapters, articles and sections, but not contained in the body hereof. (1965, c. 544.)

§ 164-11.8. Adoption of 1965 Replacement Volumes 1C and 1D and 1966 Replacement Volumes 2A and 3A of the General Statutes.

(a) The chapters, subchapters, articles and sections now comprising Volume 1C of the General Statutes of North Carolina, and Cumulative Supplements thereto, consisting of G.S. 15-1 to 27-59, now in force, as amended, are hereby reenacted and designated as 1965 Replacement Volumes 1C and 1D of the General Statutes of North Carolina.

(b) The chapters, subchapters, articles and sections now comprising 1950 Recompiled Volume 2A of the General Statutes of North Carolina, and Cumulative Supplements thereto, consisting of G.S. 28-1 to 52A-20, now in force, as amended, is hereby reenacted and designated as 1966 Replacement Volume 2A of the General Statutes of North Carolina.

(c) The chapters, subchapters, articles and sections now comprising 1960 Replacement Volume 3A of the General Statutes of North Carolina, and Cumulative Supplements thereto, consisting of G.S. 106-1 to 116-211, now in force, as amended, is hereby reenacted and designated as 1966 Replacement Volume 3A of the General Statutes of North Carolina.

(d) This enactment of 1965 Replacement Volumes 1C and 1D and 1966 Replacement Volumes 2A and 3A shall not be construed to invalidate or repeal any acts which have been passed during the 1967 Session of the General Assembly, prior to the date of ratification, nor shall this enactment include any appended annotations, editorial notes, comments and cross references, legislative or historical references, or other material connected or supplemental to said chapters, subchapters, articles and sections, but not contained in the body hereof. (1967, c. 1266.)

Editor's Note. — Section 52A-20, referred to in this section was repealed by Session Laws, 1995, c. 538, s. 7(a).

Section 106-1, referred to in this section was repealed by Session Laws, 1995, c. 390, s. 2.

§ 164-11.9. Adoption of 1969 Replacement Volumes 1A and 1B of the General Statutes.

(a) The chapters and sections thereof now comprising Volume 1A of the General Statutes of North Carolina, and Cumulative Supplement thereto, consisting of G.S. 1-1 through 1B-8 now in force, as amended, are hereby reenacted and designated as 1969 Replacement Volume 1A of the General Statutes of North Carolina.

(b) The chapters and sections thereof now comprising Volume 1B of the General Statutes of North Carolina and Cumulative Supplement thereto, consisting of G.S. 2-1 through 14-431, now in force, as amended, are hereby reenacted and designated as 1969 Replacement Volume 1B of the General Statutes of North Carolina.

This reenactment and designation shall not operate as ratification of the judgment of the editors in placing certain sections of this volume in the "1970 Interim Supplement" to Volume 1B. Such sections shall be treated in all respects as if they appear within the bound replacement volume. (1971, c. 135.)

Article 2.

The General Statutes Commission.

§ 164-12. Creation; name.

There is hereby created and established a commission to be known as "The General Statutes Commission." (1945, c. 157.)

State Government Reorganization. — The General Statutes Commission was transferred to the Department of Justice by G.S. 143A-53, enacted by Session Laws 1971, c. 864.

Editor's Note. — Session Laws 2007-538, s. 13, provides: "The North Carolina General Statutes Commission ("General Statutes Commission") shall review G.S. 130A-391 [repealed], G.S. 90-602, and other statutes related to organ donation to determine whether the statutes should be amended to be consistent with and conform to the Revised Uniform Anatomical Gift Act as enacted in this act. The General Statutes Commission shall make its recommendations upon the convening of the 2008 Regular Session of the 2007 General Assembly."

Session Laws 2009-264, s. 1, provides: "It is the intent of the General Assembly to refer to a person with a disability as a person first when directing the drafting of statutes and resolutions. The Legislative Services Office shall incorporate into its drafting training of legislative drafters the preference to avoid language that implies a person as a whole is disabled, equates a person with his or her condition, or is regarded as derogatory or demeaning. The Arc of North Carolina shall provide a list of nationally recognized descriptors to the Legislative Services Office to be used in this training."

Session Laws 2009-264, s. 2, provides: "The General Statutes Commission shall recommend to the 2010 reconvened session of the 2009 General Assembly and to the 2011 Regular Session of the General Assembly any statutory changes and drafting policies needed to make the General Statutes and administrative rules refer to a person with a disability as a person first. The goal of such revisions shall be to avoid language that implies a person as a whole is disabled, equates a person with his or her condition, or is regarded as derogatory or demeaning. In making recommendations, the General Statutes Commission shall distinguish those instances where a word or phrase is required by federal law or regulation, is describing a medical diagnosis, or is referring to nonliving entities such as facilities, organizations, programs, services, or zone designations."

Session Laws 2009-273, s. 1, provides: "The General Statutes Commission shall study and recommend to the 2010 Regular Session of the 2009 General Assembly and the 2011 Regular Session of the General Assembly ways to make the General Statutes and the North Carolina Constitution gender neutral. These may include recommending legislative changes needed to make the General Statutes and the Constitution gender neutral and a process to be authorized by the General Assembly whereby changes that do not change the law can be made administratively by the Attorney General to make the General Statutes gender neutral."

Session Laws 2009-281, s. 2, provides: "The General Statutes Commission shall study and recommend to the 2010 Regular Session of the 2009 General Assembly ways to ensure that the General Statutes properly and uniformly refer to federal or state military organizations. These may include a single term that will include all organizations that compose the reserve components of the armed forces. The recommendations may include a process to be authorized by the General Assembly whereby changes that do not change the law can be made administratively by the Attorney General."

Legal Periodicals. — For article on the North Carolina General Statutes Commission, see 46 N.C.L. Rev. 469 (1968).

§ 164-13. Duties; use of funds.

(a) It shall be the duty of the Commission:

(1) To advise and cooperate with the Division of Legislative Drafting and Codification of Statutes of the Department of Justice in the work of continuous statute research and correction for which the Division is made responsible by G.S. 114-9(3).

(2) To advise and cooperate with the Division of Legislative Drafting and Codification of Statutes in the preparation and issuance by the Division of supplements to the General Statutes pursuant to G.S. 114-9(2).

(3) To make a continuing study of all matters involved in the preparation and publication of modern codes of law.

(4) To recommend to the General Assembly the enactment of such substantive changes in the law as the Commission may deem advisable.

(5) To receive and consider proposed changes in the law recommended by the American Law Institute, by the National Conference of Commissioners on Uniform State Laws or by other learned bodies.

(b) Funds made available to the Commission by appropriation of the General Assembly, by allotment from the Contingency and Emergency Fund, or otherwise, may be used to employ the services of persons especially qualified to assist in the work of the Commission and for necessary clerical assistance.

(1945, c. 157; 1951, c. 761; 1957, c. 1405; 1969, c. 541, s. 3; 1971, c. 1093, s. 7; 1981, c. 599, s. 20.)

Cross References. — As to subsequent statute relating to duties of Revisor of Statutes in regard to G.S. 114-9, subdivision (3), see G.S. 114-9.1.

Legal Periodicals. — For an article on statutory easements by necessity or cartways, see 75 N.C.L. Rev. 1943 (1997).

§ 164-14. Membership; appointments; terms; vacancies.

(a) The Commission shall consist of 14 members, who shall be appointed as follows:

(1) One member, by the president of the North Carolina State Bar;
(2) One member, by the General Statutes Commission;
(3) One member, by the dean of the school of law of the University of North Carolina;
(4) One member, by the dean of the school of law of Duke University;
(5) One member, by the dean of the school of law of Wake Forest University;
(6) One member, by the Speaker of the House of Representatives of each General Assembly from the membership of the House;
(7) One member, by the President Pro Tempore of the Senate of each General Assembly from the membership of the Senate;
(8) Two members, by the Governor;
(9) One member, by the dean of the school of law of North Carolina Central University;
(10) One member by the president of the North Carolina Bar Association;
(11) One member, by the dean of the school of law of Campbell University.
(12) One member, by the dean of the school of law of Elon University.
(13) One member, by the dean of the Charlotte School of Law (NC), Inc.

(b) Appointments of original members of the Commission made by the president of the North Carolina State Bar, the president of the North Carolina Bar Association, and the deans of the schools of law of Duke University, the University of North Carolina, and Wake Forest University shall be for one year. Appointments of original members of the Commission made by the Speaker of the House of Representatives, the President of the Senate, and the Governor shall be for two years.

(c) After the appointment of the original members of the Commission, appointments by the president of the North Carolina State Bar, the General Statutes Commission, and the deans of the schools of law of North Carolina Central University, Duke University, Elon University, the University of North Carolina, and Wake Forest University shall be made in the even-numbered years, and appointments made by the Speaker of the House of Representatives, the President Pro Tempore of the Senate, president of the North Carolina Bar Association, the deans of the School of Law of Campbell University and the Charlotte School of Law (NC), Inc., and the Governor shall be made in the odd-numbered years. Such appointments shall be made for two-year terms beginning June first of the year when such appointments are to become effective and expiring May 31 two years thereafter. All such appointments shall be made not later than May 31 of the year when such appointments are to become effective.

(d) If any appointment provided for by this section is not made prior to June first of the year when it should become effective, a vacancy shall exist with respect thereto, and the vacancy shall then be filled by appointment by the Governor. If any member of the Commission dies or resigns during the term for which he was appointed, his successor for the unexpired term shall be appointed by the person who made the original appointment, as provided in G.S. 164-14, or by the successor of such person; and if such vacancy is not filled within 30 days after the vacancy occurs, it shall then be filled by appointment by the Governor. In any case where an appointment authorized to be made by G.S. 164-14(c) has not been made on or before July 31 of the year in which it was due to be made, a vacancy shall exist with respect to that appointment and the General Statutes Commission at its next meeting shall by majority vote fill the vacancy by appointment.

(e) All appointments shall be reported to the secretary of the Commission.

(f) Notwithstanding the expiration of the term of the appointment, the terms of members of the General Statutes Commission shall continue until the appointment of a successor has been made and reported to the secretary of the Commission. (1945, cc. 157, 635; 1947, c. 114, s. 3; 1967, cc. 17, 1230; 1969, c. 541, s. 4; 1971, c. 1, ss. 1, 2; c. 76; 1975, c. 394, ss. 1, 2; 1977, c. 709, ss. 1, 2; 1991, c. 739, s. 33; 1995, c. 509, s. 119; 2009-550, s. 8(a).)

Editor's Note. — Session Laws 2009-550, s. 8(b), provides: "The initial appointment by the dean of the school of law for Elon University shall be for the term ending May 31, 2010. The initial appointment by the dean of the Charlotte School of Law (NC), Inc., shall be for the term ending May 31, 2011."

Effect of Amendments. — Session Laws 2009-550, s. 8(a), effective August 28, 2009, in subsection (a), substituted "14 members" for "12 members" and added subdivisions (12) and (13); in subsection (c), inserted "Elon University," substituted "deans" for "dean," and inserted "and the Charlotte School of Law (NC), Inc."

Legal Periodicals. — For recent development, "The Supreme Court of North Carolina's Rulemaking Authority and the Struggle for Power: State v. Tutt," see 84 N.C. L. Rev. 2100 (2006).

§ 164-15. Meetings; quorum.

The Commission shall hold not less than two regular meetings each year, of which one shall be held in June and one in November, at such times during those months as may be fixed therefor by the Commission itself. The Commission may hold such other regular meetings as it may provide for by its rules. Special meetings may be called by the chairman, or by any two members of the Commission, upon such notice and in such manner as may be fixed therefor by the rules of the Commission. The regular June and November meetings of the Commission shall be held in Raleigh, but the Commission may provide for the holding of other meetings from time to time at any other place or places in the State. The first meeting of the Commission shall be held in June 1945 upon the call of the Attorney General at such time and upon such notice as he may designate. A majority of the members of the Commission shall constitute a quorum. (1945, c. 157; 1983, c. 768, s. 24.)

§ 164-16. Officers.

At its regular June meeting in the odd-numbered years the Commission shall elect a chairman and a vice-chairman for a term of two years and until their successors are elected and assume the duties of their positions. The Revisor of Statutes shall be ex officio secretary of the Commission. (1945, c. 157; 1947, c. 114, s. 2.)

§ 164-17. Committees; rules.

The Commission may elect, or may authorize its chairman to appoint, such committees of the Commission as it may deem proper. The Commission may adopt such rules not inconsistent with this Article as it may deem proper with respect to any and all matters relating to the discharge of its duties under this Article. (1945, c. 157.)

§ 164-18. Reports.

The Commission shall submit to each regular session of the General Assembly a report of its work during the preceding two years, together with such recommendations as it may deem proper. (1945, c. 157.)

§ 164-19. Compensation.

Members of the Commission shall be paid the amount of per diem provided by G.S. 138-5 for attendance upon meetings of the Commission, or upon attendance of meetings of committees of the Commission, together with such subsistence and travel allowance as may be provided by law. (1945, c. 157; 1969, c. 445, s. 3.)

§§ 164-20 through 164-24: Reserved for future codification purposes.

ARTICLE 3.

Commission on Code Recodification.

§§ 164-25 through 164-34: Repealed by Session Laws 1981, c. 859, s. 13.10.

ARTICLE 4.

Sentencing Commission.

Editor's Note. — This Article as originally enacted by Session Laws 1989 (Reg. Sess., 1990), c. 1076, was to expire July 1, 1992. This date was subsequently extended to July 8, 1993 by Session Laws 1991 (Reg. Sess., 1992), c. 812, s. 12 and c. 816, s. 1; to August 1, 1993, by Session Laws 1993, c. 253, s. 5.1; to July 1, 1994, by Session Laws 1993, c. 321, s. 200.1; to July 1, 1995, by Session Laws 1993 (Reg. Sess., 1994) c. 591, s. 6(a); to July 1, 1997, by Session Laws 1995, c. 236, s. 1; to July 1, 1997 by Session Laws 1997-256, s. 6; to July 31, 1997, by Session Laws 1997-347, s. 2; to August 15, 1997, by Session Laws 1997-401, s. 2; and to August 29, 1997, by Session Laws 1997-418, s. 2. The Sentencing Commission was made permanent by Session Laws 1997-443, s. 18.6(b).

§ 164-35. Commission established.

The North Carolina Sentencing and Policy Advisory Commission is established. As used in this Article, the term "Commission" means the North Carolina Sentencing and Policy Advisory Commission. (1989 (Reg. Sess., 1990), c. 1076, s. 1; 1991 (Reg. Sess., 1992), c. 812, s. 12; c. 816, s. 1; 1993, c. 253, s. 5.1; c. 321, s. 200.1; 1993 (Reg. Sess., 1994), c. 591, s. 6(a); 1995, c. 236, s. 1; 1997-256, s. 6; 1997-347, s. 2; 1997-401, s. 2; 1997-418, s. 2; 1997-443, s. 18.6(a).)

Editor's Note. — As to the provisions formerly providing for the expiration of this Article, see the Editor's Note preceding this section.

For the text of sections 2 and 3 of the Sentencing and Policy Advisory Commission Act of 1990, Session Laws 1989 (Reg. Sess., 1990), see c. 1076, ss. 2 and 3.

Session Laws 2001-424, s. 25.8(a) and (b), provide: "(a) In exercising its statutory responsibility under Article 4 of Chapter 164 of the General Statutes to monitor and review the criminal justice and corrections system, the North Carolina Sentencing and Policy Advisory Commission shall study and review the State's sentencing laws in view of the projected growth in the prison population by 2010. Areas of review may include the classification of offenses and offenders, the relationship of the sentence and the sentence length to the offense, and the sentence dispositions available to judges. The Commission shall also analyze the parole-eligible population in terms of offense committed, sentence, and time served in comparison to inmates sentenced under structured sentencing. The Commission shall develop alternatives for consideration by the General Assembly. The alternatives presented by the Commission should ensure that sentencing laws appropriately penalize offenders for the nature and degree of harm caused by the offense while identifying inconsistencies in the structured sentencing law or in its application. The Commission's alternatives shall be consistent with the purposes of sentencing as stated in G.S. 15A-1340.12.

"(b) The North Carolina Sentencing and Policy Advisory Commission shall report its findings to the 2001 General Assembly no later than the convening of the 2002 Regular Session of the 2001 General Assembly."

Session Laws 2001-424, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2001'."

Session Laws 2001-424, s. 36.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2001-2003 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2001-2003 fiscal biennium."

Session Laws 2001-424, s. 36.5 is a severability clause.

Session Laws 2004-186, s. 12.1, provides: "The General Assembly finds that the North Carolina Sentencing and Policy Advisory Commission has adopted formal criteria for classifying felony offenses. The Sentencing Commission has identified three general types of harms: harms to persons (including both physical and mental injury); harms to property; and harms to society. The degrees of harm are divided into three levels:

"(1) Injury to person, property, or society;

"(2) Significant injury to person, property, or society; and

"(3) Serious injury to person, property, or society. The stated purpose of establishing the criteria was 'to create a rational and consistent philosophical basis for classifying offenses; to assure proportionality in severity; and to provide a guidepost for classifying new crimes in the future.'

"In contrast to the felony classification criteria, the Commission did not create classification criteria for misdemeanors. However, the current misdemeanor sentencing laws include an assault offense that has serious injury as an element — even though 'serious injury to a person' is a category of harm for felony offense classification. The General Assembly finds that the classification of assault offenses that involve serious injury as misdemeanors is inconsistent with the Sentencing Commission's classification of felonies based on harm.

"The North Carolina Sentencing and Policy Advisory Commission, pursuant to its statutory responsibilities under Article 4 of Chapter 164 of the General Statutes, shall study the classification of misdemeanor offenses. In particular, the Commission shall examine the classification of assault offenses in relation to property offenses, crimes against society, and felony assault offenses. The Commission shall develop a system for classifying misdemeanor offenses on the basis of their severity. The Commission may consider reclassifying existing offenses and creating new offenses in order to insure proportionality and consistency. The Commission shall report its findings and recommendations to the 2005 General Assembly, 2005 Regular Session. The report shall describe the status of the Commission's work and shall include any completed policy recommendations and proposed legislation. The Commission shall make a final report to the 2005 General Assembly, 2006 Regular Session."

§ 164-36. Powers and duties.

(a) Sentences established for violations of the State's criminal laws should be based on the established purposes of our criminal justice and corrections systems. The Commission shall evaluate sentencing laws and policies in relationship to both the stated purposes of the criminal justice and corrections systems and the availability of sentencing options. The Commission shall make recommendations to the General Assembly for the modification of sentencing laws and policies, and for the addition, deletion, or expansion of sentencing options as necessary to achieve policy goals. The Commission shall make a report of its recommendations, including any recommended legislation, to the General Assembly annually.

(b) Dispositions established for violations by juveniles of the State's criminal laws should be based on the established purposes set forth in Chapter 7B of the General Statutes. The Commission shall evaluate dispositional laws and policies in relationship to both the stated purposes of Chapter 7B of the General Statutes and the availability of dispositional alternatives. The Commission shall make recommendations to the General Assembly for the modification of dispositional laws and policies, and for the addition, deletion, or expansion of dispositional alternatives as necessary to achieve policy goals. The Commission shall make a report of its recommendations, including any recommended legislation, to the General Assembly annually. (1989 (Reg. Sess., 1990), c. 1076, s. 1; 1991 (Reg. Sess., 1992), c. 812, s. 12; c. 816, s. 1; 1993, c. 253, s. 5.1; c. 321, s. 200.1; 1993 (Reg. Sess., 1994), c. 591, s. 6(a); 1995, c. 236, s. 1; 1997-256, s. 6; 1997-347, s. 2; 1997-401, s. 2; 1997-418, s. 2; 1997-443, s. 18.6(a), (c); 1998-202, s. 10(a).)

Editor's Note. — Session Laws 2005-295, s. 1, effective August 22, 2005, provides: "The North Carolina Sentencing and Policy Advisory Commission, pursuant to its statutory responsibilities under Article 4 of Chapter 164 of the General Statutes, shall study aggravating factors which may be considered in capital felony sentencing pursuant to G.S. 15A-2000(e). In particular, the Commission shall examine the question of whether the State's capital sentencing law should include as an aggravating factor that the capital felony was committed at a time when the defendant knew the behavior was prohibited by a valid protective order entered pursuant to Chapter 50B of the General Statutes of North Carolina, or by a valid protective order entered by the courts of another state or the courts of an Indian tribe. The Commission shall report its findings and recommendations to the 2005 General Assembly not later than May 1, 2006. The report shall describe the Commission's deliberations and shall include any policy recommendations and proposed legislation."

§ 164-37. Membership; chairman; meetings; quorum.

The Commission shall consist of 30 members as follows:

(1) The Chief Justice of the North Carolina Supreme Court shall appoint a sitting or former Justice or judge of the General Court of Justice, who shall serve as Chairman of the Commission;

(2) The Chief Judge of the North Carolina Court of Appeals, or another judge on the Court of Appeals, serving as his designee;

(3) The Secretary of Correction or his designee;

(4) The Secretary of Crime Control and Public Safety or his designee;

(5) The Chairman of the Parole Commission, or his designee;

(6) The President of the Conference of Superior Court Judges or his designee;

(7) The President of the District Court Judges Association or his designee;

(8) The President of the North Carolina Sheriff's Association or his designee;

(9) The President of the North Carolina Association of Chiefs of Police or his designee;

(10) One member of the public at large, who is not currently licensed to practice law in North Carolina, to be appointed by the Governor;

(11) One member to be appointed by the Lieutenant Governor;

(12) Three members of the House of Representatives, to be appointed by the Speaker of the House;

(13) Three members of the Senate, to be appointed by the President Pro Tempore of the Senate;

(14) The President Pro Tempore of the Senate shall appoint the representative of the North Carolina Community Sentencing Association that is recommended by the President of that organization;

(15) The Speaker of the House of Representatives shall appoint the member of the business community that is recommended by the President of the North Carolina Retail Merchants Association;

(16) The Chief Justice of the North Carolina Supreme Court shall appoint the criminal defense attorney that is recommended by the President of the North Carolina Academy of Trial Lawyers;
(17) The President of the Conference of District Attorneys or his designee;
(18) The Lieutenant Governor shall appoint the member of the North Carolina Victim Assistance Network that is recommended by the President of that organization;
(19) A rehabilitated former prison inmate, to be appointed by the Chairman of the Commission;
(20) The President of the North Carolina Association of County Commissioners or his designee;
(21) The Governor shall appoint the member of the academic community, with a background in criminal justice or corrections policy, that is recommended by the President of The University of North Carolina;
(22) The Attorney General, or a member of his staff, to be appointed by the Attorney General;
(23) The Governor shall appoint the member of the North Carolina Bar Association that is recommended by the President of that organization.
(24) A member of the Justice Fellowship Task Force, who is a resident of North Carolina, to be appointed by the Chairman of the Commission.
(25) The President of the Association of Clerks of Superior Court of North Carolina, or his designee.
(26) A representative of the Department of Juvenile Justice and Delinquency Prevention.

The Commission shall have its initial meeting no later than September 1, 1990, at the call of the Chairman. The Commission shall meet a minimum of four regular meetings each year. The Commission may also hold special meetings at the call of the Chairman, or by any four members of the Commission, upon such notice and in such manner as may be fixed by the rules of the Commission. A majority of the members of the Commission shall constitute a quorum. (1989 (Reg. Sess., 1990), c. 1076, s. 1; 1991 (Reg. Sess., 1992), c. 812, s. 12; c. 816, ss. 1, 2; 1993, c. 253, s. 5.1; c. 321, s. 200.1; c. 535, s. 4; 1993 (Reg. Sess., 1994), c. 591, s. 6(a); 1995, c. 236, s. 1; 1997-256, s. 6; 1997-347, s. 2; 1997-401, s. 2; 1997-418 s. 2; 1997-443, s. 18.6(a); 1998-170, s. 1; 1998-202, s. 10(f); 2000-137, s. 4(kk).)

Editor's Note. — Session Laws 1991 (Reg. Sess., 1992), c. 816, which amended this section, in s. 6, provides: "Nothing in this act shall be construed to obligate the General Assembly to appropriate funds to implement the provisions of this act."

§ 164-38. Terms of members; compensation; expenses.

The terms of existing members shall expire on June 30, 1997, unless they resign or are removed. New members shall be appointed or the existing members reappointed by the appointing authorities to serve terms of two years, unless they resign or are removed. Members serving by virtue of elective or appointive office or as designees of such officeholders may serve only so long as the officeholders hold those respective offices. Members appointed by the Speaker of the House and the President Pro Tempore of the Senate may be removed by the appointing authority without cause. Vacancies occurring before the expiration of a term shall be filled in the manner provided for the members first appointed. A member of the Commission may be removed only for disability, neglect of duty, incompetence, or malfeasance in office. Before removal, the member is entitled to a hearing. Effective with respect to members designated on or after July 1, 1992, a person making a designation pursuant to G.S. 164-37 may not make another designation, except that the person's successor in elective or appointive office may make a new designation.

The Commission members shall receive no salary for serving. All Commission members shall receive necessary subsistence and travel expenses in accordance with the provisions of G.S. 120-3.1, 138-5, and 138-6 as applicable. (1989 (Reg. Sess., 1990), c. 1076, s. 1; 1991 (Reg. Sess., 1992), c. 812, s. 12; c. 816, ss. 1, 3; 1993, c. 253, s. 5.1; c. 321, s. 200.1(b); 1993 (Reg. Sess., 1994), c. 591, s. 6(a), (b); 1995, c. 236, s. 1; c. 236, s. 2; 1997-256, s. 6; 1997-347, s. 2; 1997-401, s. 2; 1997-418, s. 2; 1997-443, s. 18.6(a), (b).)

Editor's Note. — Session Laws 1991 (Reg. Sess., 1992), c. 816, which amended this section, in s. 6, provides: "Nothing in this act shall be construed to obligate the General Assembly to appropriate funds to implement the provisions of this act."

§ 164-39. Executive director and other staff.

The Commission shall employ an Executive Director from candidates presented to it by the Chairman and the Director of the Administrative Office of the Courts. The Executive Director shall have appropriate training and experience to assist the Commission in the performance of its duties. The Executive Director shall be responsible for compiling the work of the Commission and drafting suggested legislation incorporating the Commission's findings for submission to the General Assembly.

Subject to the approval of the Chairman, the Executive Director shall employ such other staff and shall contract for services as is necessary to assist the Commission in the performance of its duties, and as funds permit.

The Commission may, with the approval of the Legislative Services Commission, meet in the State Legislative Building or the Legislative Office Building, or may meet in an area provided by the Director of the Administrative Office of the Courts. Commission staff shall use office space provided by the Director of the Administrative Office of the Courts. (1989 (Reg. Sess., 1990), c. 1076, s. 1; 1991 (Reg. Sess., 1992), c. 812, s. 12; c. 816, s. 1; 1993, c. 253, s. 5.1; c. 321, s. 200.1; 1993 (Reg. Sess., 1994), c. 591, s. 6(a); 1995, c. 236, s. 1; 1997-256, s. 6; 1997-347, s. 2; 1997-401, s. 2; 1997-418, s. 2; 1997-443, s. 18.6(a).)

§ 164-40. Correction population simulation model; Department of Juvenile Justice and Delinquency Prevention facilities population simulation model.

(a) The Commission shall develop a correctional population simulation model, and shall have first priority to apply the model to a given fact situation, or theoretical change in the sentencing laws, when requested to do so by the Chairman, the Executive Director, or the Commission as a whole.

The Executive Director or the Chairman shall make the model available to respond to inquiries by any State legislator, or by the Secretary of the Department of Correction, in second priority to the work of the Commission.

(b) The Commission shall develop a Department of Juvenile Justice and Delinquency Prevention facilities population simulation model, and shall have first priority to apply the model to a given fact situation, or theoretical change in the dispositional laws set forth in Chapter 7B of the General Statutes, when requested to do so by the Chairman, the Executive Director, or the Commission as a whole.

The Executive Director or the Chairman shall make the model available to respond to inquiries by any State legislator, or by the Department of Juvenile

Justice and Delinquency Prevention, in second priority to the work of the Commission. (1989 (Reg. Sess., 1990), c. 1076, s. 1; 1991 (Reg. Sess., 1992), c. 812, s. 12; c. 816, s. 1; 1993, c. 253, s. 5.1; c. 321, s. 200.1; 1993 (Reg. Sess., 1994), c. 591, s. 6(a); 1995, c. 236, s. 1; 1997-256, s. 6; 1997-347, s. 2; 1997-401, s. 2; 1997-418, s. 2; 1997-443, s. 18.6(a); 1998-202, s. 10(b); 2000-137, s. 4(ii).)

§ 164-41. Classification of offenses — ranges of punishment.

(a) The Commission shall classify criminal offenses into felony and misdemeanor categories on the basis of their severity.

(b) In determining the proper category for each felony and misdemeanor, the Commission shall consider, to the extent that they have relevance, the following:

(1) The nature and degree of harm likely to be caused by the offense, including whether it involves property, irreplaceable property, a person, number of persons, or a breach of the public trust;
(2) The deterrent effect a particular classification may have on the commission of the offense by others;
(3) The current incidence of the offense in the State as a whole;
(4) The rights of the victim.

(c) For each classification of felonies and misdemeanors formulated pursuant to subsection (b), the Commission shall assign a suggested range of punishment. The Commission shall take into consideration the current range of punishment for each offense. (1989 (Reg. Sess., 1990), c. 1076, s. 1; 1991 (Reg. Sess., 1992), c. 812, s. 12; c. 816, s. 1; 1993, c. 253, s. 5.1; c. 321, s. 200.1; 1993 (Reg. Sess., 1994), c. 591, s. 6(a); 1995, c. 236, s. 1; 1997-256, s. 6; 1997-347, s. 2; 1997-401, s. 2; 1997-418, s. 2; 1997-443, s. 18.6(a).)

§ 164-42. Sentencing structures.

(a) The Commission shall recommend structures for use by a sentencing court in determining the most appropriate sentence to be imposed in a criminal case, including:

(1) Imposition of an active term of imprisonment;
(2) Imposition of a term of probation;
(3) Suspension of a sentence to imprisonment and imposition of probation with conditions, including the appropriate probation option or options, including house arrest, regular probation, intensive supervision, restitution, and community service;
(4) Based upon the combination of offense and defendant characteristics in each case, the presumptively appropriate length of a term of probation, or a term of imprisonment;
(5) Ordering multiple sentences to terms of imprisonment to run concurrently or consecutively;
(6) For a sentence to probation without a suspended sentence to imprisonment, the maximum term of confinement to be imposed if the defendant violates the conditions of probation.

(b) The sentencing structures shall be consistent with the goals, policies, and purposes of the criminal justice and corrections systems, as set forth in Sections 2 and 3 of the Sentencing and Policy Advisory Commission Act of 1990. As part of its work, the Commission shall offer recommendations for the incorporation of those sections into the sentencing laws of North Carolina. In formulating structures, the Commission also shall consider:

(1) The nature and characteristics of the offense;
(2) The severity of the offense in relation to other offenses;

(3) The characteristics of the defendant that mitigate or aggravate the seriousness of his criminal conduct and the punishment deserved therefor;
(4) The defendant's number of prior convictions;
(5) The available resources and constitutional capacity of the Department of Correction, local confinement facilities, and community-based sanctions;
(6) The rights of the victims;
(7) That felony offenders sentenced to an active term of imprisonment, or whose suspended sentence to imprisonment is activated, should serve a designated minimum percentage of their sentences before they are eligible for parole; and
(8) That misdemeanor offenders sentenced to an active term of imprisonment, or whose suspended sentence to imprisonment is activated, should serve a designated minimum percentage of their sentence before they are eligible for parole.

(c) The Commission shall also consider the policy issues set forth in G.S. 164-42.1 in developing its sentencing structures.

(d) The Commission shall include with each set of sentencing structures a statement of its estimate of the effect of the sentencing structures on the Department of Correction and local facilities, both in terms of fiscal impact and on inmate population. If the Commission finds that the proposed sentencing structures will result in inmate populations in the Department of Correction and local confinement facilities that exceed the standard operating capacity, then the Commission shall present an additional set of structures that are consistent with that capacity. For purposes of this subsection, "standard operating capacity" means the total capacity expected to be available in both local confinement facilities and in the Department of Correction once all the proceeds of bonds authorized by Chapter 933 of the 1989 Session Laws and Chapter 935 of the 1989 Session Laws have been expended for the construction of prison facilities. (1989 (Reg. Sess., 1990), c. 1076, s. 1; 1991 (Reg. Sess., 1992), c. 812, s. 12; c. 816, ss. 1, 5; 1993, c. 253, s. 5.1; c. 321, s. 200.1; 1993 (Reg. Sess., 1994), c. 591, s. 6(a); 1995, c. 236, s. 1; 1997-256, s. 6; 1997-347, s. 2; 1997-401, s. 2; 1997-418, s. 2; 1997-443, s. 18.6(a); 2009-372, s. 8.)

Cross References. — As to legislation regarding blended sentencing, see the editor's note at G.S. 7B-2500.

Editor's Note. — For the text of sections 2 and 3 of the Sentencing and Policy Advisory Commission Act of 1990, Session Laws 1989 (Reg. Sess., 1990), see c. 1076, ss. 2 and 3.

Session Laws 1991 (Reg. Sess., 1992), c. 816, which amended this section, in s. 6, provides: "Nothing in this act shall be construed to obligate the General Assembly to appropriate funds to implement the provisions of this act."

Session Laws 2009-372, s. 19 is a severability clause.

Effect of Amendments. — Session Laws 2009-372, s. 8, effective December 1, 2009, and applicable to offenses committed on or after that date, substituted "supervision" for "probation" near the end of subdivision (a)(4).

§ 164-42.1. Policy recommendations.

(a) Using the studies of the Special Committee on Prisons, the Governor's Crime Commission, and other analyses, including testimony from representatives of the bodies that conducted the analyses, the Commission shall:
(1) Determine the long-range needs of the criminal justice and corrections systems and recommend policy priorities for those systems;
(2) Determine the long-range information needs of the criminal justice and corrections systems and acquire that information as it becomes available;

(3) Identify critical problems in the criminal justice and corrections systems and recommend strategies to solve those problems;
(4) Assess the cost-effectiveness of the use of State and local funds in the criminal justice and corrections systems;
(5) Recommend the goals, priorities, and standards for the allocation of criminal justice and corrections funds;
(6) Recommend means to improve the deterrent and rehabilitative capabilities of the criminal justice and corrections systems;
(7) Propose plans, programs, and legislation for improving the effectiveness of the criminal justice and corrections systems;
(8) Determine the sentencing structures for parole decisions;
(9) Examine the impact of mandatory sentence lengths as opposed to the deterrent effect of minimum mandatory terms of imprisonment;
(10) Examine good time and gain time practices;
(11) Study the value of presentence reports;
(12) Consider the rehabilitative potential of the offender and the appropriate rehabilitative placement;
(13) Examine the impact of imprisonment on families of offenders;
(14) Examine the impact of imprisonment on the ability of the offender to make restitution;
(15) Study the need for an amendment to Article XI, Section 1 of the State Constitution to include restitution, restraints on liberty, work programs, or other punishments to the list of punishments allowed under that section; and
(16) Study the costs and consequences of criminal behavior in North Carolina and consider the value of preventing crimes by using incarceration to deter both prospective criminals and convicted criminals from future crimes.

(b) Using the studies and analyses available, including testimony from representatives of the bodies that conducted the analyses, the Commission shall:

(1) Determine the long-range needs of the juvenile justice system and recommend policy priorities for that system;
(2) Determine the long-range information needs of the juvenile justice system and acquire that information as it becomes available;
(3) Identify critical problems in the juvenile justice system and recommend strategies to solve those problems;
(4) Assess the cost-effectiveness of the use of State and local funds in the juvenile justice system; and
(5) Recommend the goals, priorities, and standards for the allocation of juvenile justice funds. (1989 (Reg. Sess., 1990), c. 1076, s. 1; 1993, c. 253, s. 5.1; c. 321, s. 200.1; 1993 (Reg. Sess., 1994), c. 591, s. 6(a); 1995, c. 236, s. 1; 1997-256, s. 6; 1997-347, s. 2; 1997-401, s. 2; 1997-418, s. 2; 1997-443, s. 18.6(a); 1998-202, s. 10(c).)

Editor's Note. — Session Laws 2004-124, s. 16.5, provides: "Pursuant to G.S. 164-42.1 and G.S. 164-43, the North Carolina Sentencing and Policy Advisory Commission shall prepare biennial reports on juvenile recidivism in North Carolina. The Commission shall consult with the Department of Juvenile Justice and Delinquency Prevention and the Fiscal Research Division of the Legislative Services Office of the General Assembly in developing a methodology for measuring juvenile recidivism in North Carolina. The Commission shall report the proposed methodology to the 2005 General Assembly by March 1, 2005. The Commission's report shall also include a timeline for completing the initial analysis and recidivism report and any proposed legislation regarding juvenile recidivism. The report shall also include recommendations for other outcome measures that are appropriate for evaluating juvenile program effectiveness."

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides:

"Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5 contains a severability clause.

§ 164-42.2. Community corrections.

The Commission shall recommend a comprehensive community corrections strategy and organizational structure for the State based upon the following:

(1) A review of existing community-based corrections programs in the State;

(2) The identification of additional types of community corrections programs, including residential programs, necessary to create an effective continuum of corrections sanctions in North Carolina;

(3) The identification of categories of offenders who would be eligible for sentencing to community corrections programs and the impact that the use of a comprehensive range of community-based sanctions would have on sentencing practices;

(4) A form of State oversight and coordination to ensure that community corrections programs are coordinated in order to achieve maximum impact; and

(5) A mechanism for State funding and local community participation in the operation and implementation of community corrections programs;

(6) An analysis of the rate of recidivism of clients under the supervision of the existing community-based corrections programs in the State, recidivism here measured as the clients committing new crimes at any time subsequent to their entry into a community-based corrections program. (1989 (Reg. Sess., 1990), c. 1076, s. 1; 1993, c. 253, s. 5.1; c. 321, s. 200.1; 1993 (Reg. Sess., 1994), c. 591, s. 6(a); 1995, c. 236, s. 1; 1997-256, s. 6; 1997-347, s. 2; 1997-401, s. 2; 1997-418, s. 2; 1997-443, s. 18.6(a).)

Editor's Note. — The subdivisions of this section were enacted as subdivisions (a) to (f) by Session Laws 1989 (Reg. Sess., 1990), c. 1076, s. 1, and redesignated as subdivisions (1) to (6) at the direction of the Revisor of Statutes.

§ 164-43. Priority of duties; reports; continuing duties.

(a) The Commission shall have two primary duties, and other secondary duties essential to accomplishing the primary ones. The Commission may establish subcommittees or advisory committees composed of Commission members to accomplish duties imposed by this Article.

It is the legislative intent that the Commission attach priority to accomplish the following primary duties:

(1) The classification of criminal offenses as described in G.S. 164-41 and the formulation of sentencing structures as described in G.S. 164-42; and

(2) The formulation of proposals and recommendations as described in G.S. 164-42.1 and G.S. 164-42.2.

(b) The Commission shall report its findings and recommendations to the 1991 General Assembly, 1991 Regular Session. The report shall describe the status of the Commission's work, and shall include any completed policy recommendations.

(c) The Commission shall report on its progress in formulating recommendations for the classification and ranges of punishment for felonies and misdemeanors, required by G.S. 164-41, and sentencing structures, established under G.S. 164-42, to the 1991 General Assembly, 1992 Regular Session, and shall make a final report on these recommendations no later than 30 days after the convening of the 1993 Session of the General Assembly.

(d) Once the primary duties of the Commission have been accomplished, it shall have the continuing duty to monitor and review the criminal justice and corrections systems and the juvenile justice system in this State to ensure that sentences and dispositions remain uniform and consistent, and that the goals and policies established by the State are being implemented by sentencing and dispositional practices, and it shall recommend methods by which this ongoing work may be accomplished and by which the correctional population simulation model and the Department of Juvenile Justice and Delinquency Prevention facilities population simulation model developed under G.S. 164-40 shall continue to be used by the State.

(e) Upon adoption of a system for the classification of offenses formulated under G.S. 164-41, the Commission or its successor shall review all proposed legislation which creates a new criminal offense, changes the classification of an offense, or changes the range of punishment or dispositional level for a particular classification, and shall make recommendations to the General Assembly.

(f) In the case of a new criminal offense, the Commission or its successor shall determine whether the proposal places the offense in the correct classification, based upon the considerations and principles set out in G.S. 164-41. If the proposal does not assign the offense to a classification, it shall be the duty of the Commission or its successor to recommend the proper classification placement.

(g) In the case of proposed changes in the classification of an offense or changes in the range of punishment or dispositional level for a classification, the Commission or its successor shall determine whether such a proposed change is consistent with the considerations and principles set out in G.S. 164-41, and shall report its findings to the General Assembly.

(h) The Commission or its successor shall meet within 10 days after the last day for filing general bills in the General Assembly for the purpose of reviewing bills as described in subsections (e), (f), and (g). The Commission or its successor shall include in its report on a bill an analysis based on an application of the correctional population simulation model or the Department of Juvenile Justice and Delinquency Prevention facilities population simulation model to the provisions of the bill. (1989 (Reg. Sess., 1990), c. 1076, s. 1; 1991 (Reg. Sess., 1992), c. 812, s. 12; c. 816, ss. 1, 4; 1993, c. 253, s. 5.1; c. 321, s. 200.1; 1993 (Reg. Sess., 1994), c. 591, s. 6(a); 1995, c. 236, s. 1; 1997-256, s. 6; 1997-347, s. 2; 1997-401, s. 2; 1997-418, s. 2; 1997-443, s. 18.6(a); 1998-202, s. 10(d); 2000-137, s. 4(jj).)

Editor's Note. — Session Laws 1991 (Reg. Sess., 1992), c. 816, which amended this section, in s. 6, provides: "Nothing in this act shall be construed to obligate the General Assembly to appropriate funds to implement the provisions of this act."

Session Laws 2004-124, s. 16.5, provides: "Pursuant to G.S. 164-42.1 and G.S. 164-43, the North Carolina Sentencing and Policy Advisory Commission shall prepare biennial reports on juvenile recidivism in North Carolina. The Commission shall consult with the Department of Juvenile Justice and Delinquency Prevention and the Fiscal Research Division of the Legislative Services Office of the General Assembly in developing a methodology for measuring juvenile recidivism in North Carolina. The Commission shall report the proposed methodology to the 2005 General Assembly by March 1, 2005. The Commission's report shall also include a timeline for completing the initial analysis and recidivism report and any proposed legislation regarding juvenile recidivism. The report shall also include recommendations for other outcome measures that are appropriate for evaluating juvenile program effectiveness."

Session Laws 2004-124, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2004'."

Session Laws 2004-124, s. 33.3, provides:

"Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2004-2005 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2004-2005 fiscal year."

Session Laws 2004-124, s. 33.5 contains a severability clause.

§ 164-44. Statistical information; financial or other aid.

(a) The Commission shall have the secondary duty of collecting, developing, and maintaining statistical data relating to sentencing, corrections, and juvenile justice so that the primary duties of the Commission will be formulated using data that is valid, accurate, and relevant to this State. All State agencies shall provide data as it is requested by the Commission. All meetings of the Commission shall be open to the public and the information presented to the Commission shall be available to any State agency or member of the General Assembly.

(b) The Commission shall have the authority to apply for, accept, and use any gifts, grants, or financial or other aid, in any form, from the federal government or any agency or instrumentality thereof, or from the State or from any other source including private associations, foundations, or corporations to accomplish any of the duties set out in this Chapter. (1989 (Reg. Sess., 1990), c. 1076, s. 1; 1991 (Reg. Sess., 1992), c. 812, s. 12; c. 816, s. 1; 1993, c. 253, s. 5.1; c. 321, s. 200.1; 1993 (Reg. Sess., 1994), c. 591, s. 6(a); 1995, c. 236, s. 1; 1997-256, s. 6; 1997-347, s. 2; 1997-401, s. 2; 1997-418, s. 2; 1997-443, s. 18.6(a); 1998-202, s. 10(e).)

§ 164-45. Administrative direction and supervision.

The Commission shall be administered under the direction and supervision of the Director of the Administrative Office of the Courts. The Commission shall exercise all of its prescribed statutory powers independently of the head of that Office, except that all management functions shall be performed under the direction and supervision of the Director of the Administrative Office of the Courts. "Management functions," as used in this section, means planning, organizing, staffing, directing, coordinating, and budgeting. (1989 (Reg. Sess., 1990), c. 1076, s. 1; 1991 (Reg. Sess., 1992), c. 812, s. 12; c. 816, s. 1; 1993, c. 253, s. 5.1; c. 321, s. 200.1; 1993 (Reg. Sess., 1994), c. 591, s. 6(a); 1995, c. 236, s. 1; 1997-256, s. 6; 1997-347, s. 2; 1997-401, s. 2; 1997-418, s. 2; 1997-443, s. 18.6(a).)

§ 164-46: Repealed by Session Laws 1998-212, s. 16.18(b), effective July 1, 1998.

§ 164-47. Biennial Report on Recidivism.

The Judicial Department, through the North Carolina Sentencing and Policy Advisory Commission, and the Department of Correction shall jointly conduct ongoing evaluations of community corrections programs and in-prison treatment programs and make a biennial report to the General Assembly. The report shall include composite measures of program effectiveness based on recidivism rates, other outcome measures, and costs of the programs.

During the 1998-99 fiscal year, the Sentencing and Policy Advisory Commission shall coordinate the collection of all data necessary to create an expanded database containing offender information on prior convictions, current conviction and sentence, program participation, and outcome measures. Each program to be evaluated shall assist the Commission in the development of systems and collection of data necessary to complete the evaluation process.

The first evaluation report shall be presented to the Chairs of the Senate and House Appropriations Committees and the Chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety by April 15, 2000, and future reports shall be made by April 15 of each even-numbered year. (1998-212, s. 16.18(a).)

Editor's Note. — Session Laws 1998-212, s. 16.18(a), in part, was codified as this section at the direction of the Revisor of Statutes.

§ 164-48. Biennial report on juvenile recidivism.

The Judicial Department, through the North Carolina Sentencing and Policy Advisory Commission, shall conduct biennial recidivism studies of juveniles in North Carolina. Each study shall be based upon a sample of juveniles adjudicated delinquent and document subsequent involvement in both the juvenile justice system and criminal justice system for at least two years following the sample adjudication. All State agencies shall provide data as requested by the Commission.

The Sentencing and Policy Advisory Commission shall report the results of the first recidivism study to the Chairs of the Senate and House of Representatives Appropriations Committees and the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety by May 1, 2007, and future reports shall be made by May 1 of each odd-numbered year. (2005-276, s. 14.19(a).)

§ 164-49. Biennial report on effectiveness of JCPC grant recipients.

The Judicial Department, through the North Carolina Sentencing and Policy Advisory Commission, shall conduct biennial studies on the effectiveness of programs receiving Juvenile Crime Prevention Council grant funding in North Carolina. Each study shall be based upon a sample of juveniles admitted to programs funded with JCPC grants and document subsequent involvement in both the juvenile justice system and criminal justice system for at least two years following the sample admittance. All State agencies shall provide data as requested by the Commission.

The Sentencing and Policy Advisory Commission shall report the results of the first effectiveness study to the Chairs of the Senate and House of Representatives Appropriations Committees and the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety by May 1, 2011, and future reports shall be made by May 1 of each odd-numbered year. (2009-451, s. 15.17J.)

Editor's Note. — Session Laws 2009-451, s. 28.6, made this section effective July 1, 2009.

Session Laws 2009-451, s. 1.2, provides: "This act shall be known as the 'Current Operations and Capital Improvements Appropriations Act of 2009'."

Session Laws 2009-451, s. 28.5 is a severability clause.

Chapter 165.

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ARTICLE 1.

Department of Administration.

§ 165-1. North Carolina Veterans Commission renamed.

The North Carolina Veterans Commission is hereby renamed the Department of Administration. The Department shall assume all duties, responsibilities and powers formerly exercised by the Veterans Commission, and shall further exercise those powers and duties prescribed in this Article and elsewhere in the General Statutes. (1967, c. 1060, s. 1; 1973, c. 620, s. 9; 1977, c. 70, s. 27.)

Revision of Article. — Session Laws 1967, c. 1060, s. 1, rewrote the former Article, which also consisted of 11 sections and was derived from Session Laws 1945, c. 723, s. 1; c. 1087; 1949, c. 430, ss. 1, 2; c. 1292; 1951, c. 1048, ss. 1, 2; 1957, c. 541, s. 19. Where present sections are similar to prior provisions, the historical citations have been added thereto.

Cross References. — As to Department of Administration, see G.S. 143-334 et seq. and G.S. 143B-366 et seq.

§ 165-2. References changed.

Wherever in the General Statutes the words “North Carolina Veterans Commission” appear, the same shall be stricken out and the words “North Carolina Department of Administration” inserted in lieu thereof. (1967, c. 1060, s. 1; 1977, c. 70, s. 27.)

§ 165-3. Definitions.

Wherever used in this Article, unless the context otherwise requires, the terms defined in this section shall have the following meaning:

(1) “Commission” means the Veterans Affairs Commission.
(2) “Department” means the North Carolina Department of Administration, an agency of the government of the State of North Carolina.
(3) Repealed by Session Laws 1973, c. 620, s. 9.
(4) “Veteran” means
  a. For qualifying as a voting member of the State Board of Veterans Affairs and as the State Director of Veterans Affairs, a person who served honorably during a period of war as defined in Title 38, United States Code.
  b. For entitlement to the services of the Department of Administration, any person who may be entitled to any benefits or rights under the laws of the United States by reason of service in the armed forces of the United States.
(5) “Veterans’ organization” means any organization of veterans which has been chartered by an act of the United States Congress and is legally constituted and operating in this State pursuant to said charter. (1945, c. 723, s. 1; 1949, c. 430, s. 1; 1967, c. 1060, s. 1; 1973, c. 620, s. 9; 1977, c. 70, s. 27.)

§ 165-4. Purpose.

The purpose of this Article is to provide assistance to veterans, their families and their dependents, in obtaining or maintaining privileges, rights and benefits to which they are entitled under federal, State or local laws. (1945, c. 723, s. 1; 1967, c. 1060, s. 1.)

§ 165-5: Repealed by Session Laws 1973, c. 620, s. 9.

§ 165-6. Powers and duties of the Department.

In furtherance of the stated purpose of this Article, the Department is hereby authorized and empowered to do the following:

(1) To assist veterans, their families, and dependents in the presentation, processing, proof, and establishment of such claims, privileges, rights, and benefits as they may be entitled to under federal, State, or local laws, rules, and regulations.

(2) To aid persons in active military service and their dependents with problems arising out of said service which come reasonably within the purview of the Department's program of assistance.

(3) To collect data and information as to the facilities and services available to veterans, their families, and dependents and to cooperate with agencies furnishing information or services throughout the State in order to inform such agencies regarding the availability of (i) education, training and retraining facilities, (ii) health, medical, rehabilitation, and housing services and facilities, (iii) employment and reemployment services, (iv) provisions of federal, State, and local laws, rules, and regulations affording rights, privileges, and benefits to veterans, their families, and dependents, and in respect to such other matters of similar, related, or appropriate nature not herein set out.

(4) To establish such field offices, facilities and services throughout the State as may be necessary to carry out the purposes of this Article.

(5) To cooperate, as the Department deems appropriate, with governmental, private and civic agencies and instrumentalities in securing services or benefits for veterans, their families, dependents and beneficiaries.

(6) To accept any property, funds, service, or facilities from any source, public or private, granted in aid or furtherance of the administration of the provisions of this Article.

(7) To enter into any contract or agreement with any person, firm, or corporation, or governmental agency or instrumentality in furtherance of the purposes of this Article, and to make all rules and regulations necessary for the proper and effective administration of its duties.

(8) It shall be the duty of the Department to train, assist, and provide guidance to the employees of any county, city, town, or Indian tribe who are engaged in veterans service. Authority is hereby granted the governing body of any county, city or town to appropriate such amounts as it may deem necessary to provide a veterans service program and the expenditure of such funds is hereby declared to be for a public purpose; such program shall be operated in affiliation with this Department as set forth above and in compliance with Department policies and procedures.

(9) The Department may, in its discretion, contribute to each county an amount not to exceed two thousand dollars ($2,000) on a matching

basis for any fiscal year for the maintenance and operation of a county veterans service program. Participating counties shall furnish the Department such reports, accountings and other information at such times and in such form as the Department may require.

(10) Repealed by Session Laws 1973, c. 620, s. 9. (1945, c. 723, s. 1; 1949, c. 1292; 1967, c. 1060, s. 1; 1973, c. 620, s. 9; 1985, c. 757, s. 61(a); 2009-280, s. 1.)

Local Modification to Former § 165-6. — Yancey: 1959, c. 936.

Editor's Note. — Session Laws 2008-107, s. 22.6(a) and (b), provides: "(a) The Office of State Budget and Management, in consultation with the Department of Administration, shall study the level of State assistance provided to county veterans service programs by the Aid to Counties program within the Department of Administration pursuant to G.S. 165-6(9). The Office will collect data from county programs, including a five-year analysis of county spending, the number and type of veteran claims filed, and the number of FTE staff assigned to the county programs, to assess the level of services provided. The study should examine the effect of changing the amount of assistance that a county is eligible to receive pursuant to G.S. 165-6(9). The study should include an analysis of the number of claims filed with each veterans service program; total county spending for the programs; and the county veteran population. The study should also include a section on recommended statutory changes, budgetary increases, distribution reallocations, and administrative changes to the Division of Veterans Affairs.

"(b) The Office of State Budget and Management shall submit a final report of its findings and recommendations to the House Appropriations Subcommittee on General Government, the Senate Appropriations Subcommittee on General Government and Information Technology, and the Fiscal Research Division no later than March 1, 2009."

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2008-2009 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 2008-2009 fiscal year."

Session Laws 2008-107, s. 30.5 is a severability clause.

Effect of Amendments. — Session Laws 2009-280, s. 1, effective July 10, 2009, in subdivision (8), inserted "and provide guidance to" and substituted "city, town, or Indian tribe" for "city or town" in the first sentence, and in the last sentence, deleted "and under its supervision" following "this Department" near the end, and added "and in compliance with Department polices and procedures" at the end.

§ 165-7: Repealed by Session Laws 1973, c. 620, s. 9.

§ 165-8. Quarters.

The Department of Administration shall provide, in the City of Raleigh, adequate quarters for the central office of the Department of Administration. The Department of Administration shall procure suitable space for its field offices and other activities pursuant to applicable provisions of law and in accordance with rules adopted by the Governor with the approval of the Council of State. (1945, c. 723, s. 1; 1967, c. 1060, s. 1; 1973, c. 620, s. 9; 1977, c. 70, s. 27.)

§ 165-9. Appropriations.

Appropriations for the Department shall be made from the general fund of the State, and the Governor, with the approval of the Council of State, is hereby authorized and empowered to allocate from time to time from the Contingency and Emergency Fund, such funds as may be necessary to carry out the intent and purposes of this Article. (1945, c. 723, s. 1; 1967, c. 1060, s. 1.)

§ 165-10. Transfer of veterans' activities.

The Governor may transfer to the Department such funds, facilities, properties and activities now being held or administered by the State for the benefit of veterans, their families and dependents, as he may deem proper; provided, that the provisions of this section shall not apply to the activities of the North Carolina Employment Security Commission in respect to veterans. (1945, c. 723, s. 1; 1967, c. 1060, s. 1.)

§ 165-11. Copies of records to be furnished to the Department of Administration.

(a) Whenever copies of any State and local public records are requested by a representative of the Department of Administration in assisting persons in obtaining any federal, State, local or privately provided benefits relating to veterans and their beneficiaries, the official charged with the custody of any such records shall without charge furnish said representative with the requested number of certified copies of such records; provided, that this section shall not apply to the disclosure of information in certain privileged and confidential records referred to elsewhere in the General Statutes of North Carolina, which information shall continue to be disclosed in the manner prescribed by the statute relating thereto.

(b) No official chargeable with the collection of any fee or charge under the laws of the State of North Carolina in connection with his official duties shall be held accountable on his official bond or otherwise for any fee or charge remitted pursuant to the provisions of this section. (1967, c. 1060, s. 1; 1973, c. 620, s. 9; 1977, c. 70, s. 27.)

§ 165-11.1. Confidentiality of Veterans Affairs records.

Notwithstanding any other provisions of Chapter 143B, no records of the Division of Veterans Affairs in the Department of Administration shall be disclosed or used for any purpose except for official purposes, and no records shall be disclosed, destroyed or used in any manner which is in violation of any existing federal law or regulation. Nothing in this Chapter shall convert records which are the property of the federal government into State property. (1977, c. 70, s. 28.)

Article 2.

Minor Veterans.

§ 165-12. Short title.

This Article may be cited as "The Minor Veterans Enabling Act." (1945, c. 770.)

Legal Periodicals. — For discussion of this Article, see 23 N.C.L. Rev. 359 (1945).

CASE NOTES

Cited in Gastonia Personnel Corp. v. Rogers, 276 N.C. 279, 172 S.E.2d 19 (1970).

§ 165-13. Definition.

As used in this Article, "veteran" means any person who may be entitled to any benefits or rights under the laws of the United States, by reason of service in the armed forces of the United States. (1945, c. 770; 1967, c. 1060, s. 2.)

§ 165-14. Application of Article.

This Article applies to every person, either male or female, 18 years of age or over, but under 21 years of age, who is, or who may become, entitled to any rights or benefits under the laws of the United States relating to veterans benefits. (1945, c. 770; 1967, c. 1060, s. 3.)

§ 165-15. Purpose of Article.

The purpose of this Article is to remove the disqualification of age which would otherwise prevent persons to whom this Article applies from taking advantage of any right or benefit to which they may be or may become entitled under the laws of the United States relating to veterans benefits, and to assure those dealing with such minor persons that the acts of such minors shall not be invalid or voidable by reason of the age of such minors, but shall in all respects be as fully binding as if said minors had attained their majority; and this Article shall be liberally construed to accomplish that purpose. (1945, c. 770; 1967, c. 1060, s. 4.)

§ 165-16. Rights conferred; limitation.

(a) Every person to whom this Article applies is hereby authorized and empowered, in his or her own name without order of court or the intervention of any guardian or trustee:

(1) To purchase or lease any property, either real or personal, or both, which such person may deem it desirable to purchase or lease in order to avail himself or herself of any of the benefits of the laws of United States relating to veterans benefits, and take title to such property in his or her own name or in the name of himself or herself and spouse.

(2) To execute any note or similar instrument for any part or all of the purchase price of any property purchased pursuant to subdivision (1) of this section and to secure the payment thereof by retained title contract, mortgage, deed of trust or other similar or appropriate instrument.

(3) To execute any other contract or instrument which such person may deem necessary in order to enable such person to secure the benefits of the laws of the United States relating to veterans benefits.

(4) To execute any contract or instrument which such person may deem necessary or proper in order to enable such person to make full use of any property purchased pursuant to the provisions of the laws of the United States relating to veterans benefits, including the right to dispose of such property; such contracts to include but not to be limited to the following:

  a. With respect to a home: Contracts for insurance, repairs, and services such as gas, water, and lights, and contracts for furniture and other equipment.

  b. With respect to a farm: Contracts such as are included in paragraph (a) of this subdivision (4) above, together with contracts for livestock, seeds, fertilizer and farm equipment and machinery, and contracts for farm labor and other farm services.

c. With respect to a business: Contracts such as are included in paragraph (a) of this subdivision (4), together with such other contracts as such person may deem necessary or proper for the maintenance and operation of such business.

(b) Every person to whom this Article applies may execute such contracts as are hereby authorized in his own name without any order from any court, and without the intervention of a guardian or trustee, and no note, mortgage, conveyance, deed of trust, contract, or other instrument, conveyance or action within the purview of this Article shall be invalid, voidable or defective by reason of the fact that the person executing or performing the same was at the time a minor.

(c) In respect to any action at law or special proceeding in relation to any transaction within the purview of this Article, every minor person to whom this Article applies shall appear and plead in his or her own name and right without the intervention of any guardian or trustee, and every such minor person shall be considered a legal party to any such action at law or special proceeding in all respects as if such person had attained the age of 21 years. No such minor shall hereafter interpose the defense of lack of legal capacity by reason of age in connection with any transaction within the purview of this Article, nor disavow any such transaction upon coming of age.

(d) All such authority and power as are conferred by this Article are subject to all applicable provisions of the laws of the United States relating to veterans benefits. (1945, c. 770; 1967, c. 1060, s. 5.)

Article 3.

Minor Spouses of Veterans.

§ 165-17. Definition.

As used in this Article, "veteran" means any person who may be entitled to any benefits or rights under the laws of the United States, by reason of service in the armed forces of the United States. (1945, c. 771; 1967, c. 1060, s. 6.)

§ 165-18. Rights conferred.

(a) Any person under the age of 18 years who is the husband or wife of a veteran, is hereby authorized and empowered in his or her own name, and without any order of court or the intervention of a guardian or trustee, to execute any and all contracts, conveyances, and instruments, to take title to property, to defend any action at law, and to do all other acts necessary to make fully available to such veteran, his or her family or dependents, all rights and benefits under the laws of the United States relating to veterans benefits, in as full and ample manner as if such minor husband or wife of such veteran had attained the age of 18 years.

(b) Any person under the age of 18 years, who is the husband or wife of a veteran, is hereby authorized and empowered in his or her own name, and without any order of court or the intervention of a guardian or trustee, to join in the execution of any contract, deed, conveyance or other instrument which may be deemed necessary to enable his or her veteran spouse to make full use of any property purchased pursuant to the provisions of the foregoing subsection, including the right to dispose of such property.

(c) With respect to any action at law or special proceeding in relation to any transaction within the purview of this Article, every minor person to whom this Article applies shall appear and plead in his or her own name and right without the intervention of any guardian or trustee; and every such minor person shall be considered a legal party to any such action at law or special proceeding in all respects as if such person had attained the age of 18 years. No such minor shall hereafter interpose the defense of lack of legal capacity by reason of age in connection with any transaction within the purview of this Article, nor disavow any such transaction upon coming of age. (1945, c. 771; 1947, c. 905, ss. 1, 2; 1967, c. 1060, s. 7; 1971, c. 1231, s. 1; 1973, c. 1446, s. 12.)

Legal Periodicals. — For article, "The Contracts of Minors Viewed from the Perspective of Fair Exchange," see 50 N.C.L. Rev. 517 (1972).

CASE NOTES

Authority to suspend accrued statutory rights may not be reasonably implied from the general terms of this section. Harrill v. Teachers' & State Employees' Retirement Sys., 271 N.C. 357, 156 S.E.2d 702 (1967).

Article 4.

Scholarships for Children of War Veterans.

§ 165-19. Purpose.

In appreciation for the service and sacrifices of North Carolina's war veterans and as evidence of this State's concern for their children, there is hereby continued a revised program of scholarships for said children as set forth in this Article. (1967, c. 1060, s. 8.)

§ 165-20. Definitions.

As used in this Article the terms defined in this section shall have the following meaning:

(1) "Active federal service" means full-time duty in the armed forces other than active duty for training; however, if disability or death occurs while on active duty for training (i) as a direct result of armed conflict or (ii) while engaged in extra-hazardous service, including such service under conditions simulating war, such active duty for training shall be considered as active federal service.

(2) "Armed forces" means the army, navy, marine corps, air force and coast guard, including their reserve components.

(3) "Child" means a person: (i) under 25 years of age at the time of application for a scholarship, (ii) who is a domiciliary of North Carolina and is a resident of North Carolina when applying for a scholarship, (iii) who has completed high school or its equivalent prior to receipt of a scholarship awarded under this Article, (iv) who has complied with the requirements of the Selective Service System, if applicable, and (v) who further meets one of the following requirements:

   a. A person whose veteran parent was a legal resident of North Carolina at the time of said veteran's entrance into that period of service in the armed forces during which eligibility is established under G.S. 165-22.

   b. A veteran's child who was born in North Carolina and has been a resident of North Carolina continuously since birth. Provided, that the requirement in the preceding sentence as to birth in North Carolina may be waived by the Department of Administration if it is shown to the satisfaction of the Department that the child's mother was a native-born resident of North Carolina and was such resident at the time of her marriage to the veteran and was outside the State temporarily at the time of the child's birth, following which the child was returned to North Carolina within a reasonable period of time where said child has since lived continuously.

c. A person meeting either of the requirements set forth in subdivision (3) a or b above, and who was legally adopted by the veteran prior to said person's reaching the age of 15 years.

(4) "Period of war" and "wartime" shall mean any of the periods or circumstances as defined below:

a. World War I, meaning (i) the period beginning on April 6, 1917 and ending on November 11, 1918, and (ii) in the case of a veteran who served with the United States armed forces in Russia, the period beginning on April 6, 1917 and ending on April 1, 1920.

b. World War II, meaning the period beginning on December 7, 1941 and ending on December 31, 1946.

c. Korean Conflict, meaning the period beginning on June 27, 1950 and ending on January 31, 1955.

d. Vietnam era, meaning the period beginning on August 5, 1964, and ending on May 7, 1975.

d1. Persian Gulf War, meaning the period beginning on August 2, 1990, and ending on the date prescribed by Presidential proclamation or concurrent resolution of the United States Congress.

e. Any period of service in the armed forces during which the veteran parent of an applicant for a scholarship under this Article suffered death or disability (i) as a direct result of armed conflict or (ii) while engaged in extra-hazardous service, including such service under conditions simulating war.

(5) "Private educational institution" means any junior college, senior college or university which is operated and governed by private interests not under the control of the federal, State or any local government, which is located within the State of North Carolina, which does not operate for profit, whose curriculum is primarily directed toward the awarding of associate, baccalaureate or graduate degrees, which agrees to the applicable administration and funding provisions of G.S. 165-22.1, of this Article, and which is otherwise approved by the State Board of Veterans Affairs.

(6) "State educational institution" means any constituent institution of The University of North Carolina, or any community college operated under the provisions of Chapter 115D of the General Statutes of North Carolina.

(7) "Veteran" means a person who served as a member of the armed forces of the United States in active federal service during a period of war and who was separated from the armed forces under conditions other than dishonorable. A person who was separated from the armed forces under conditions other than dishonorable and whose death or disability was incurred (i) as a direct result of armed conflict or (ii) while engaged in extra-hazardous service, including such service under conditions simulating war, shall also be deemed a "veteran" and such death or disability shall be considered wartime service-connected. (1967, c. 1060, s. 8; 1969, c. 720, s. 3; c. 741, ss. 1, 2; 1971, c. 339; 1973, c. 620, s. 9; c. 755; 1975, c. 160, s. 1; 1977, c. 70, s. 27; 1985, c. 39, s. 2; c. 788; 1989, c. 767, s. 1; 1991, c. 549, s. 1; 2001-424, s. 7.1(a); 2002-126, s. 19.3(a); 2008-107, s. 19.2(b); 2008-187, s. 48; 2008-192, s. 11.)

Editor's Note. — Chapter 115A, referred to in subdivision (6) of this section, was repealed by Session Laws 1979, c. 462. See now Chapter 115D.

Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.5 is a severability clause.

Session Laws 2008-192, s. 11, which amended subdivision (6) by inserting "redesignated effective August 1, 2008, as the 'University of North Carolina School of the Arts'" following "North Carolina School of the Arts" was repealed by Session Laws 2008-187, s. 48, which provided that the section was repealed if House Bill 2436, 2007 Regular Session [2008-107] and Senate Bill 2015, 2007 Regular Session [2008-192] become law.

Effect of Amendments. — Session Laws 2008-107, s. 19.2(b), effective July 1, 2008, rewrote subdivision (6).

§ 165-21. Scholarship.

(a) A scholarship granted pursuant to this Article shall consist of the following benefits in either a State or private educational institution:

(1) With respect to State educational institutions, unless expressly limited elsewhere in this Article, a scholarship shall consist of:
  a. Tuition at the State educational institution.
  b. A standard board allowance.
  c. A standard room allowance.
  d. Matriculation and other institutional fees required to be paid as a condition to remaining in the institution and pursuing the course of study selected.

(2) With respect to private educational institutions, a scholarship shall consist of a monetary allowance as prescribed in G.S. 165-22.1(d).

(3) Only one scholarship may be granted pursuant to this Article with respect to each child and it shall not extend for a longer period than four academic years, which years, however, need not be consecutive.

(4) No educational assistance shall be afforded a child under this Article after the end of an eight-year period beginning on the date the scholarship is first awarded. Those persons who have been granted a scholarship under this Article prior to the effective date of this act shall be entitled to the remainder of their period of scholarship eligibility if used prior to August 1, 2010. Whenever a child is enrolled in an educational institution and the period of entitlement ends while enrolled in a term, quarter or semester, such period shall be extended to the end of such term, quarter or semester, but not beyond the entitlement limitation of four academic years.

(5) A scholarship awarded to a student under this section shall not exceed the cost of attendance at the State educational institution at which the student is enrolled. If a student, who is eligible for a scholarship under this section, also receives a scholarship or other grant covering the cost of attendance at the State educational institution for which the scholarship is awarded, then the amount of the scholarship shall be reduced by an appropriate amount determined by the State educational institution at which the student is enrolled. The scholarship shall be reduced so that the sum of all grants and scholarship aid covering the cost of attendance received by the student, including the scholarship under this section, shall not exceed the cost of attendance for the State educational institution at which the student is enrolled.

(b) Repealed by Session Laws 2002-126, s. 19.3(b), effective November 1, 2002.

(c) If a child is awarded a scholarship under this Article, the Commission shall notify the recipient by May 1st of the year in which the recipient enrolls in college. (1967, c. 1060, s. 8; 1969, c. 741, s. 3; 1975, c. 137, s. 1; 1989, c. 767, s. 2; 2001-424, s. 7.1(b); 2002-126, s. 19.3(b); 2008-107, s. 19.2(a).)

Editor's Note. — Session Laws 2008-107, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2008'."

Session Laws 2008-107, s. 30.5 is a severability clause.

Effect of Amendments. — Session Laws 2008-107, s. 19.2(a), effective July 1, 2008, added "at the State educational institution" in subdivision (a)(1)a.; in subdivisions (a)(1)b. and (a)(1)c., substituted "standard" for "reasonable" and made minor punctuation changes; in subdivision (a)(1)d., deleted "excluding charges or fees for books, supplies, tools and clothing" at the end and made a minor grammatical change; and added subdivision (a)(5).

§ 165-22. Classes or categories of eligibility under which scholarships may be awarded.

A child, as defined in this Article, who falls within the provisions of any eligibility class described below shall, upon proper application be considered for a scholarship, subject to the provisions and limitations set forth for the class under which he is considered:

(1) Class I-A: Under this class a scholarship shall be awarded to any child whose veteran parent
  a. Was killed in action or died from wounds or other causes not due to his own willful misconduct while a member of the armed forces during a period of war, or
  b. Has died of service-connected injuries, wounds, illness or other causes incurred or aggravated during wartime service in the armed forces, as rated by the United States Department of Veterans Affairs.

(2) Class I-B: Under this class a limited scholarship providing only those benefits set forth in G.S. 165-21(1)a and d and 165-21(2) of this Article, shall be awarded to any child whose veteran parent, at the time the benefits pursuant to this Article are sought to be availed of, is or was at the time of his death receiving compensation for a wartime service-connected disability of one hundred percent (100%) as rated by the United States Department of Veterans Affairs. Provided, that if the veteran parent of a recipient under this class should die of his wartime service-connected condition before the recipient shall have utilized all of his scholarship eligibility time, then the North Carolina Department of Administration shall amend the recipient's award from Class I-B to Class I-A for the remainder of the recipient's eligibility time. The effective date of such an amended award shall be determined by the Department of Administration, but, in no event shall it predate the date of the veteran parent's death.

(3) Class II: Under this class a scholarship may be awarded to not more than 100 children yearly, each of whose veteran parent, at the time the benefits pursuant to this Article are sought to be availed of:
  a. Is or was at the time of his death receiving compensation for a wartime service-connected disability of twenty percent (20%) or more, but less than one hundred percent (100%), as rated by the United States Department of Veterans Affairs, or
  b. Was awarded a Purple Heart for wounds received as a result of an act of any opposing armed force, as a result of an international terrorist attack, or as a result of military operations while serving as part of a peacekeeping force.

(4) Class III: Under this class a scholarship may be awarded to not more than 100 children yearly, each of whose veteran parent, at the time the benefits pursuant to this Article are sought to be availed of:
  a. Is or was at the time of his death drawing pension for permanent and total disability, nonservice-connected, as rated by the United States Department of Veterans Affairs.

b. Is deceased and who does not fall within the provisions of any other eligibility class described in G.S. 165-22(1), (2), (3), (4)a., nor (5).

c. Served in a combat zone, or waters adjacent to a combat zone, or any other campaign, expedition, or engagement for which the United States Department of Defense authorizes a campaign badge or medal, who does not fall within the provisions of any other class described in G.S. 165-22(1), (2), (3), (4)a., or (5).

(5) Class IV: Under this class a scholarship as defined in G.S. 165-21 shall be awarded to any child whose parent, while serving honorably as a member of the armed forces of the United States in active federal service during a period of war, as defined in G.S. 165-20(4), was listed by the United States government as (i) missing in action, (ii) captured in line of duty by a hostile force, or (iii) forcibly detained or interned in line of duty by a foreign government or power. (1967, c. 1060, s. 8; 1973, cc. 197, 577; c. 620, s. 9; 1975, c. 160, s. 2; c. 167, s. 1; 1977, c. 70, s. 27; 1989, c. 767, ss. 3, 4; 1991, c. 549, s. 2; 2002-126, s. 19.3(c).)

§ 165-22.1. Administration and funding.

(a) The administration of the scholarship program shall be vested in the Department of Administration, and the disbursing and accounting activities required shall be a responsibility of the Department of Administration. The Veterans Affairs Commission shall determine the eligibility of applicants, select the scholarship recipients, establish the effective date of scholarships, and may suspend or revoke scholarships if the said Veterans Affairs Commission finds that the recipient does not comply with the registration requirements of the Selective Service System or does not maintain an adequate academic status, or if the recipient engages in riots, unlawful demonstrations, the seizure of educational buildings, or otherwise engages in disorderly conduct, breaches of the peace or unlawful assemblies. The Department of Administration shall maintain the primary and necessary records, and the Veterans Affairs Commission shall promulgate such rules and regulations not inconsistent with the other provisions of this Article as it deems necessary for the orderly administration of the program. It may require of State or private educational institutions, as defined in this Article, such reports and other information as it may need to carry out the provisions of this Article. The Department of Administration shall disburse scholarship payments for recipients certified eligible by the Department of Administration upon certification of enrollment by the enrolling institution.

(b) Funds for the support of this program shall be appropriated to the Department of Administration as a reserve for payment of the allocable costs for room, board, tuition, and other charges, and shall be placed in a separate budget code from which disbursements shall be made. Funds to support the program shall be supported by receipts from the Escheat Fund, as provided by G.S. 116B-7, but those funds may be used only for worthy and needy residents of this State who are enrolled in public institutions of higher education of this State. In the event the said appropriation for any year is insufficient to pay the full amounts allocable under the provisions of this Article, such supplemental sums as may be necessary shall be allocated from the Contingency and Emergency Fund. The method of disbursing and accounting for funds allocated for payments under the provisions of this section shall be in accordance with those standards and procedures prescribed by the Director of the Budget, pursuant to the Executive Budget Act.

(c) Allowances for room and board in State educational institutions shall be at such rate as established by the Secretary of the Department of Administration.

(d) Scholarship recipients electing to attend a private educational institution shall be granted a monetary allowance for each term or other academic period attended under their respective scholarship awards. All recipients under Class I-B scholarship shall receive an allowance at one rate, irrespective of course or institution; all recipients under Classes I-A, II, III and IV shall receive a uniform allowance at a rate higher than for Class I-B, irrespective of course or institution. The amount of said allowances shall be determined by the Director of the Budget and made known prior to the beginning of each fall quarter or semester; provided that the Director of the Budget may change the allowances at intermediate periods when in his judgment such changes are necessary. Disbursements by the State shall be to the private institution concerned, for credit to the account of each recipient attending said institution. The manner of payment to any private institution shall be as prescribed by the Department of Administration. The participation by any private institution in the program shall be subject to the applicable provisions of this Article and to examination by State auditors of the accounts of scholarship recipients attending or having attended private institutions. The Veterans Affairs Commission may defer making an award or may suspend an award in any private institution which does not comply with the provisions of this Article relating to said institutions.

(e) Irrespective of other provisions of this Article, the Veterans Affairs Commission may prescribe special procedures for adjusting the accounts of scholarship recipients who for reasons of illness, physical inability to attend class or for other valid reason satisfactory to the Veterans Affairs Commission may withdraw from State or private educational institutions prior to the completion of the term, semester, quarter or other academic period being attended at the time of withdrawal. Such procedures may include, but shall not be limited to, paying the recipient the dollar value of his unused entitlements for the academic period being attended, with a corresponding deduction of this period from his remaining scholarship eligibility time. (1967, c. 1060, s. 8; 1969, c. 720, ss. 4, 5; c. 741, s. 4; 1971, c. 458; 1973, c. 620, s. 9; 1975, c. 19, s. 71; c. 160, s. 3; 1977, c. 70, s. 27; 1985, c. 39, s. 3; 2002-126, s. 19.3(d); 2003-284, s. 18.5(a).)

ARTICLE 5.

Veterans' Recreation Authorities.

§ 165-23. Short title.

This Article may be referred to as the "Veterans' Recreation Authorities Law." (1945, c. 460, s. 1.)

CASE NOTES

This Article is valid, as it is for a public purpose and in the public interest. Brumley v. Baxter, 225 N.C. 691, 36 S.E.2d 281, 162 A.L.R. 930 (1945).

Article Does Not Authorize City to Make Absolute Grant. — This Article, under which veterans' recreational center was created, did not authorize city to make an absolute grant of its property upon such terms that in the event the grantee determined the public purpose had failed or the recreational facilities placed thereon for veterans were not being sufficiently used, the grantee could dispose of the property in its discretion and apply the proceeds to such charity as it might elect. Brumley v. Baxter, 225 N.C. 691, 36 S.E.2d 281, 162 A.L.R. 930 (1945).

§ 165-24. Finding and declaration of necessity.

It is hereby declared that conditions resulting from the concentration in various cities and towns of the State having a population of more than one hundred thousand inhabitants of persons serving in the armed forces in connection with the present war, or who after having served in the armed services during the present war, or previously have been honorably discharged, require the construction, maintenance and operation of adequate recreation facilities for the use of such persons; that it is in the public interest that adequate recreation facilities be provided in such concentrated centers; and the necessity, in the public interest, for the provisions hereinafter enacted is hereby declared as a matter of legislative determination. (1945, c. 460, s. 2.)

§ 165-25. Definitions.

The following terms, wherever used or referred to in this Article, shall have the following respective meanings, unless a different meaning clearly appears from the context:

(1) "Authority" or "recreation authority" shall mean a public body and a body corporate and politic organized in accordance with the provisions of this Article for the purposes, with the powers and subject to the restrictions hereinafter set forth.

(2) "City" shall mean the city or town having a population of more than one hundred thousand inhabitants (according to the last federal census) which is, or is about to be, included in the territorial boundaries of an authority when created hereunder.

(3) "City clerk" and "mayor" shall mean the clerk and mayor, respectively, of the city or the officers thereof charged with the duties customarily imposed on the clerk and mayor, respectively.

(4) "Commissioner" shall mean one of the members of an authority appointed in accordance with the provisions of this Article.

(5) "Council" shall mean the legislative body, council, board of commissioners, board of trustees, or other body charged with governing the city.

(6) "Federal government" shall include the United States of America, the Federal Emergency Administration of Public Works or any agency, instrumentality, corporate or otherwise, of the United States of America.

(7) "Government" shall include the State and federal governments and any subdivision, agency or instrumentality, corporate or otherwise, of any of them.

(8) "Real property" shall include lands, lands under water, structures, and any and all easements, franchises and incorporeal hereditaments and every estate and right therein, legal and equitable, including terms for years and liens by way of judgment, mortgage or otherwise.

(9) "State" shall mean the State of North Carolina.

(10) "Veteran" shall include every person who has enlisted or who has been inducted, warranted or commissioned, and who served honorably in active duty in the military or naval service of the United States at any time, and who is honorably separated or discharged from such service, or who, at the time of making use of the facilities, is still in active service, or has been retired, or who has been furloughed to a reserve. This definition shall be liberally construed, with a view completely to effectuate the purpose and intent of this Article.

(11) "Veterans' recreation project" shall include all real and personal property, buildings and improvements, offices and facilities acquired

or constructed, or to be acquired or constructed, pursuant to a single plan or undertaking to provide recreation facilities for veterans in concentrated centers of population. The term "veterans' recreation project" may also be applied to the planning of the buildings and improvements, the acquisition of property, the construction, reconstruction, alteration and repair of the improvements, and all other work in connection therewith. (1945, c. 460, s. 3.)

§ 165-26. Creation of authority.

If the council of any city in the State having a population of more than one hundred thousand, according to the last federal census, shall, upon such investigation as it deems necessary, determine:

(1) That there is a lack of adequate veterans' recreation facilities and accommodations from the operations of public or private enterprises in the city and surrounding area; and/or

(2) That the public interest requires the construction, maintenance or operation of a veterans' recreation project for the veterans thereof, the council shall adopt a resolution so finding (which need not go into any detail other than the mere finding), and shall cause notice of such determination to be given to the mayor, who shall thereupon appoint, as hereinafter provided, five commissioners to act as an authority. Said Commission shall be a public body and a body corporate and politic upon the completion of the taking of the following proceedings:

The commissioners shall present to the Secretary of State an application signed by them, which shall set forth (without any detail other than the mere recital): (i) that the council has made the aforesaid determination after such investigation, and that the mayor has appointed them as commissioners; (ii) the name and official residence of each of the commissioners, together with a certified copy of the appointment evidencing their right to office, the date and place of induction into and taking oath of office, and that they desire the recreation authority to become a public body and a body corporate and politic under this Article; (iii) the term of office of each of the commissioners; (iv) the name which is proposed for the corporation; and (v) the location and the principal office of the proposed corporation. The application shall be subscribed and sworn to by each of the said commissioners before an officer authorized by the laws of the State to take and certify oaths, who shall certify upon the application that he personally knows the commissioners and knows them to be the officers as asserted in the application, and that each subscribed and swore thereto in the officer's presence. The Secretary of State shall examine the application, and if he finds that the name proposed for the corporation is not identical with that of a person or of any other corporation of this State or so nearly similar as to lead to confusion and uncertainty, he shall receive and file it and shall record it in an appropriate book of record in his office.

When the application has been made, filed and recorded, as herein provided, the authority shall constitute a public body and a body corporate and politic under the name proposed in the application; the Secretary of State shall make and issue to the said commissioners a certificate of incorporation pursuant to this Article, under the seal of the State, and shall record the same with the application.

The boundaries of such authority shall include said city and the area within 10 miles from the territorial boundaries of said city, but in no event shall it include the whole or a part of any other city nor any area included within the boundaries of another authority. In case an area lies within 10 miles of the boundaries of more than one city, such area shall be deemed to be within the boundaries of the authority embracing such area which was first established, all priorities to be determined on the basis of the time of the issuance of the aforesaid certificates by the Secretary of State. After the creation of an authority, the subsequent existence within its territorial boundaries of more than one city shall in no way affect the territorial boundaries of such authority.

In any suit, action or proceeding involving the validity or enforcement of or relating to any contract of the authority, the authority shall be conclusively deemed to have been established in accordance with the provisions of this Article upon proof of the issuance of the aforesaid certificate by the Secretary of State. A copy of such certificate, duly certified by the Secretary of State, shall be admissible evidence in any such suit, action or proceeding, and shall be conclusive proof of the filing and contents thereof. (1945, c. 460, s. 4.)

§ 165-27. Appointment, qualifications and tenure of commissioners.

An authority shall consist of five commissioners appointed by the mayor, and he shall designate the first chairman.

Of the commissioners who are first appointed, two shall serve for a term of one year, two for a term of three years, and one for a term of five years, and thereafter, the terms of office for all commissioners shall be five years. A commissioner shall hold office until his successor has been appointed and qualified. Vacancies shall be filled for the unexpired term. Vacancies occurring by expiration of office or otherwise shall be filled in the following manner: The mayor and the remaining commissioners shall have a joint session and shall unanimously select the person to fill the vacancy; but if they are unable to do so, then such fact shall be certified to the resident judge of the superior court of the County in which the authority is located, and he shall fill the vacancy. The mayor shall file with the city clerk a certificate of the appointment or reappointment of any commissioner, and such certificate shall be conclusive evidence of the due and proper appointment of such commissioner. A commissioner shall receive no compensation for his services, but he shall be entitled to the necessary expenses, including traveling expenses, incurred in the discharge of his duties.

When the office of the first chairman of the authority becomes vacant, the authority shall select a chairman from among its members. An authority shall select from among its members a vice-chairman, and it may employ a secretary, technical experts and such other officers, agents and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties, and compensation. An authority may employ its own counsel and legal staff. An authority may delegate to one or more of its agents or employees such powers or duties as it may deem proper. (1945, c. 460, s. 5.)

§ 165-28. Duty of the authority and commissioners of the authority.

The authority and its commissioners shall be under a statutory duty to comply or to cause compliance strictly with all provisions of this Article and the laws of the State and in addition thereto, with each and every term, provision and covenant in any contract of the authority on its part to be kept or performed.

The commissioners may, in the exercise of their discretion, limit the use of recreational centers under their control in whole or in part to veterans of one sex. They shall have the authority to make rules and regulations regarding the use of the recreational centers and other matters and things coming within their jurisdiction.

They shall have the authority to appoint one or more advisory committees consisting of representatives of various veterans' organizations and others and may delegate to such committee or committees authority to execute the policies and programs of activity adopted by the commissioners. (1945, c. 460, s. 6; 1965, c. 367.)

§ 165-29. Interested commissioners or employees.

No commissioner or employee of any authority shall acquire any interest, direct or indirect, in any veterans' recreation project or in any property included or planned to be included in any project, nor shall he have any interest, direct or indirect, in any contract or proposed contract for materials or services to be furnished or used in connection with any such project. If any commissioner or employee of an authority owns or controls an interest, direct or indirect, in any property included or planned to be included in any veterans' recreation project, he shall immediately disclose the same in writing to the authority and such disclosure shall be entered upon the minutes of the authority. Failure so to disclose such interest shall constitute misconduct in office. (1945, c. 460, s. 7.)

§ 165-30. Removal of commissioners.

The mayor may remove a commissioner for inefficiency or neglect of duty or misconduct in office, but only after the commissioner shall have been given a copy of the charges against him (which may be made by the mayor) at least 10 days prior to the hearing thereon and had an opportunity to be heard in person or by counsel.

If, after due and diligent search, a commissioner to whom charges are required to be delivered hereunder cannot be found within the county where the authority is located, such charges shall be deemed served upon such commissioner if mailed to him at his last known address as same appears upon the records of the authority.

In the event of the removal of any commissioner, the mayor shall file in the office of the city clerk a record of the proceedings, together with the charges made against the commissioner removed, and the findings thereon. (1945, c. 460, s. 8.)

§ 165-31. Powers of authority.

An authority shall constitute a public body and a body corporate and politic, exercising public powers, and having all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this Article, including the following powers in addition to others herein granted:

To sue and be sued in any court; to make, use and alter a common seal; to purchase, acquire by devise or bequest, hold and convey real and personal property; to elect and appoint, in such manner as it determines to be proper, all necessary officers and agents, fix their compensation and define their duties and obligations; to make bylaws and regulations consistent with the laws of the State, for its own government and for the due and orderly conduct of its affairs and management of its property; without limiting the generality of the foregoing, to do any and everything that may be useful and necessary in order to provide recreation for veterans. (1945, c. 460, s. 9.)

§ 165-32. Zoning and building laws.

All recreation projects of an authority shall be subject to the planning, zoning, sanitary and building laws, ordinances and regulations applicable to the locality in which the recreation project is situated. (1945, c. 460, s. 10.)

§ 165-33. Tax exemptions.

The authority shall be exempt from the payment of any taxes or fees to the State or any subdivisions thereof, or to any officer or employee of the State or any subdivision thereof. The property of an authority shall be exempt from all local, municipal and county taxes, and for the purpose of such tax exemption, it is hereby declared as a matter of legislative determination that an authority is and shall be deemed to be a municipal corporation. (1945, c. 460, s. 11.)

§ 165-34. Reports.

The authority shall, at least once a year, file with the mayor of the city an audit report by a certified public accountant of its activities for the preceding year, and shall make any recommendations with reference to any additional legislation or other action that may be necessary in order to carry out the purposes of this Article. (1945, c. 460, s. 12.)

§ 165-35. Exemption from Local Government and County Fiscal Control Acts.

The authority shall be exempt from the operation and provisions of Chapter 60 of the Public Laws of North Carolina of 1931, known as the "Local Government Act," and the amendments thereto, and from Chapter 146 of the Public Laws of North Carolina of 1927, known as the "County Fiscal Control Act" and the amendments thereto. (1945, c. 460, s. 13.)

§ 165-36. Conveyance, lease or transfer of property by a city or county to an authority.

Any city or county, in order to provide for the construction, reconstruction, improvement, repair or management of any veterans' recreation project, or in order to accomplish any of the purposes of this Article, may, with or without consideration or for a nominal consideration, lease, sell, convey or otherwise transfer to an authority within the territorial boundaries of which such city or county it is wholly or partly located, any real, personal or mixed property, and in connection with any such transaction, the authority involved may accept such lease, transfer, assignment and conveyance, and bind itself to the performance and observation of any agreements and conditions attached thereto. Any city or county may purchase real property and convey or cause same to be conveyed to an authority. (1945, c. 460, s. 14.)

Local Modification. — Mecklenburg and city of Charlotte: 1965, c. 715, s. 1.

§ 165-37. Contracts, etc., with federal government.

In addition to the powers conferred upon the authority by other provisions of this Article, the authority is empowered to borrow money and/or accept grants from the federal government for or in aid of the construction of any veterans' recreation project which such authority is authorized by this Article to undertake, to take over any land acquired by the federal government for the construction of such a project, to take over, lease or manage any recreation project constructed or owned by the federal government, and to these ends, to enter into such contracts, mortgages, trust indentures, leases and other agreements which the federal government shall have the right to require. It is the purpose and intent of this Article to authorize every authority to do any and all things necessary to secure the financial aid and the cooperation of the federal government in the construction, maintenance and operation of any veterans' recreation project which the authority is empowered by this Article to undertake. (1945, c. 460, s. 15.)

§ 165-38. Article controlling.

Insofar as the provisions of this Article are inconsistent with the provisions of any other law, the provisions of this Article shall be controlling: Provided, that nothing in this Article shall prevent any city or municipality from establishing, equipping and operating a veterans' recreation project, or extending recreation facilities under the provisions of its charter or any general law other than this Article. (1945, c. 460, s. 17.)

ARTICLE 6.

Powers of Attorney.

§ 165-39. Validity of acts of agent performed after death of principal.

No agency created by a power of attorney in writing given by a principal who is at the time of execution, or who, after executing such power of attorney, becomes, either (i) a member of the armed forces of the United States, or (ii) a person serving as a merchant seaman outside the limits of the United States, included within the several states and the District of Columbia; or (iii) a person outside said limits by permission, assignment or direction of any department or official of the United States government, in connection with any activity pertaining to or connected with the prosecution of any war in which the United States is then engaged, shall be revoked or terminated by the death of the principal, as to the agent or other person who, without actual knowledge or actual notice of the death of the principal, shall have acted or shall act, in good faith, under or in reliance upon such power of attorney or agency, and any action so taken, unless otherwise invalid or unenforceable, shall be binding on the heirs, devisees, legatees, or personal representatives of the principal. (1945, c. 980, s. 1; 1995, c. 379, s. 5.)

§ 165-40. Affidavit of agent as to possessing no knowledge of death of principal.

An affidavit, executed by the attorney in fact or agent, setting forth that he has not or had not, at the time of doing any act pursuant to the power of attorney, received actual knowledge or actual notice of the revocation or termination of the power of attorney, by death or otherwise, or notice of any facts indicating the same, shall, in the absence of fraud, be conclusive proof of the nonrevocation or nontermination of the power at such time. If the exercise of the power requires execution and delivery of any instrument which is recordable under the laws of this State, such affidavit (when authenticated for record in the manner prescribed by law) shall likewise be recordable. (1945, c. 980, s. 2.)

§ 165-41. Report of "missing" not to constitute revocation.

No report or listing, either official or otherwise, of "missing" or "missing in action," as such words are used in military parlance, shall constitute or be interpreted as constituting actual knowledge or actual notice of the death of such principal or notice of any facts indicating the same, or shall operate to revoke the agency. (1945, c. 980, s. 3.)

§ 165-42. Article not to affect provisions for revocation.

This Article shall not be construed so as to alter or affect any provisions for revocation or termination contained in such power of attorney. (1945, c. 980, s. 4.)

ARTICLE 7.

Miscellaneous Provisions.

§ 165-43. Protecting status of State employees in armed forces, etc.

Any employee of the State of North Carolina, who has been granted a leave of absence for service in either (i) the armed forces of the United States; or (ii) the merchant marine of the United States; or (iii) outside the continental United States with the Red Cross, shall, upon return to State employment, if reemployed in the same position and if within the time limits set forth in the leave of absence, receive an annual salary of at least (i) the annual salary the employee was receiving at the time such leave was granted; plus (ii) an amount obtained by multiplying the step increment applicable to the employee's classification as provided in the classification and salary plan for State employees by the number of years of such service, counting a fraction of a year as a year; provided that no such employee shall receive a salary in excess of the top of the salary range applicable to the classification to which such employee is assigned upon return. (1945, c. 220.)

Cross References. — As to federal records and reports that person dead, missing, captured, etc., see G.S. 8-37.1 through 8-37.3. As to conservators of estates of persons reported missing, captured or interned, see G.S. 28A-2 through 28A-8. As to Veterans' Guardianship Act, see Chapter 34. As to temporary guardians of children of servicemen, see G.S. 35A-1228. As to instruments proved or acknowledged before officers of certain ranks, see G.S. 47-2, 47-2.1. As to registration of official discharges from military and naval forces, see G.S. 47-109 to 47-114. As to exemption of veterans from peddlers' license tax, see G.S. 105-53. As to exemption of veterans' organizations from tax on billiard and pool tables, see G.S. 105-64. As to exemption of property of veterans' organizations from taxation, see G.S. 105-278.7. As to pensions for Confederate veterans, widows and servants, see G.S. 112-15 et seq. As to salary payments for teachers, etc., serving in armed forces, see G.S. 115C-302.1. As to furnishing certification of birth dates to veterans' organizations, see G.S. 130A-120. As to absentee voting by members of armed forces, see Chapter 163, Article 21.

§ 165-44. Korean and Vietnam veterans; benefits and privileges.

(a) All benefits and privileges now granted by the laws of this State to veterans of World War I and World War II and their dependents and next of kin are hereby extended and granted to veterans of the Korean Conflict and their dependents and next of kin.

For the purposes of this section, the term "veterans of the Korean Conflict" means those persons serving in the armed forces of the United States during the period beginning on June 27, 1950, and ending on January 31, 1955.

(b) All benefits and privileges now granted by the laws of this State to veterans of World War I, World War II, the Korean Conflict, and their dependents and next of kin are hereby extended and granted to veterans of the Vietnam era and their dependents and next of kin.

For purposes of this section, the term "veterans of the Vietnam era" means those persons serving in the armed forces of the United States during the period beginning August 5, 1964, and ending on such date as shall be prescribed by Presidential proclamation or concurrent resolution of the Congress. (1953, c. 215; 1969, c. 720, ss. 1, 2.)

§ 165-44.01. Wearing of medals by public safety personnel.

(a) Uniformed public safety officers may wear military service medals during the business week prior to Veterans Day, Memorial Day, and the Fourth of July, the day of Veterans Day, Memorial Day, and the Fourth of July, and the business day immediately following Veterans Day, Memorial Day, and the Fourth of July.

(b) The employer of a uniformed public safety officer shall retain the right to prohibit the wearing of military service medals pursuant to this subsection if the employer determines that wearing the military service medals poses a safety hazard to the uniformed public safety officer or to the public. Any prohibition under this subsection shall only be effective if adopted after this section becomes law.

(c) This section shall be interpreted in accordance with all applicable federal laws and regulations.

(d) The following definitions shall apply in this section:

(1) Military service medal. — Any medal, badge, ribbon, or other decoration awarded by the active or reserve components of the armed forces of the United States, the North Carolina Air National Guard, or the North Carolina Army National Guard to members of those forces.

(2) Public safety officer. — An employee of a public safety agency who is a law enforcement officer, a firefighter, or emergency medical services personnel.

(e) Uniformed public safety officers may not cover their badges when wearing military service medals in compliance with this section. (2009-240, s. 1.)

Editor's Note. — Session Laws 2009-240, s. 2, made this section effective June 30, 2009.

Article 7A.

Priority in Employment Assistance for United States Armed Forces Veterans.

§ 165-44.1. Purpose.

The General Assembly finds and declares that veterans in North Carolina represent a strong, productive part of the workforce of this State and are disadvantaged in their pursuit of civilian employment through their delayed entry into the civilian labor market and that it is only proper and in the public interest and public welfare that veterans be provided priority in programs of employment and job training assistance. (1997-171, s. 1)

§ 165-44.2. Veteran defined.

For the purposes of this Article, "veteran" means a person who served on active duty (other than for training) in any component of the United States Armed Forces for a period of 180 days or more, unless released earlier because of service-connected disability, and who was discharged or released from the armed forces under honorable conditions. (1997-171, s. 1.)

§ 165-44.3. Priority defined.

For the purposes of this Article, "priority" for veterans means that eligible veterans who register or otherwise apply for services shall be extended the opportunity to participate in or otherwise receive the services of the covered providers before the providers extend the opportunity or services to other registered applicants. (1997-171, s. 1.)

§ 165-44.4. Coverage defined.

This Article shall apply to any State agency, department and institution, any county, city, or other political subdivision of the State, any board or commission, and any other public or private recipient which:

(1) Receives federal job training funds provided to the State or job training funds appropriated by the General Assembly; and

(2) Provides employment and job training assistance programs and services, including but not limited to employability assessments, support services referrals, and vocational and educational counseling. (1997-171, s. 1.)

§ 165-44.5. Priority employment assistance directed.

All covered service providers, as specified in G.S. 165-44.4, shall establish procedures to provide veterans with priority, not inconsistent with existing federal or State law, to participate in employment and job training assistance programs. (1997-171, s. 1.)

§ 165-44.6. Implementation and performance measures.

The North Carolina Commission on Workforce Preparedness shall:

(1) Issue implementing directives that shall apply to all covered service providers as specified in G.S. 165-44.4, and revise those directives as necessary to accomplish the purpose of this Article.

(2) Develop measures of service for veterans that will serve as indicators of compliance with the provisions of this Article by all covered service providers.

(3) Annually publish and submit to the Joint Legislative Commission on Governmental Operations, beginning not later than October 1, 1998, a report detailing covered providers' compliance with the provisions of this Article. (1997-171, s. 1.)

ARTICLE 8.

State Veterans Home.

§ 165-45. Short Title.

This Article may be referred to as the "State Veterans Home Act". (1995, c. 346, s. 1.)

§ 165-46. Establishment.

The State of North Carolina shall construct, maintain, and operate veterans homes for the aged and infirm veterans resident in this State under the administrative authority and control of the Division of Veterans Affairs of the Department of Administration. There is vested in such Division any and all powers and authority that may be necessary to enable it to establish and operate the homes and to issue rules necessary to operate the homes in compliance with applicable State and federal statutes and regulations. (1995, c. 346, s. 1.)

§ 165-47. Exemption from certificate of need.

Any state veterans home established by the Division of Veterans Affairs shall be exempt from the certificate of need requirements as set out in Article 9 of Chapter 131E, or as may be hereinafter enacted. (1995, c. 346, s. 1.)

§ 165-48. North Carolina Veterans Home Trust Fund.

(a) Establishment. — A trust fund shall be established in the State treasury, for the Division of Veterans Affairs, to be known as the North Carolina Veterans Home Trust Fund.

(b) Composition. — The trust fund shall consist of all funds and monies received by the Veterans Affairs Commission or the Division of Veterans Affairs from the United States, any federal agency or institution, and any other source, whether as a grant, appropriation, gift, contribution, bequest or individual reimbursement, for the care and support of veterans who have been admitted to a State veterans home.

(c) Use of Fund. — The trust fund created in subsection (a) of this section shall be used by the Division of Veterans Affairs:

(1) To pay for the care of veterans in said State veterans homes;

(2) To pay the general operating expenses of the State veterans homes, including the payment of salaries and wages of officials and employees of said homes; and

(3) To remodel, repair, construct, modernize, or add improvements to buildings and facilities at the homes.

(d) Miscellaneous. — The following provisions apply to the trust fund created in subsection (a) of this section:

(1) All funds deposited and all income earned on the investment or reinvestment of such funds shall be credited to the trust fund.

(2) Any monies remaining in the trust fund at the end of each fiscal year shall remain on deposit in the State treasury to the credit of the North Carolina Veterans Home Trust Fund.

(3) Nothing contained herein shall prohibit the establishment and utilization of special agency accounts by the Division of Veterans Affairs, as may be approved by the Veterans Affairs Commission, for the receipt and disbursement of personal funds of the State veterans homes' residents or for receipt and disbursement of charitable contributions for use by and for residents. (1995, c. 346, s. 1.)

§ 165-49. Funding.

(a) The Division of Veterans Affairs of the Department of Administration may apply for and receive federal aid and assistance from the United States Department of Veterans Affairs or any other agency of the United States Government authorized to pay federal aid to states for the construction and acquisition of veterans homes under Title 38, United States Code, section 8131 et seq., or for the care or support of disabled veterans in State veterans homes under Title 38, United Stated Code, section 1741 et seq., or from any other federal law for said purposes.

(b) The Division of Veterans Affairs may receive from any source any gift, contribution, bequest, or individual reimbursement, the receipt of which does not exclude any other source of revenue.

(c) All funds received by the Division shall be deposited in the North Carolina Veterans Home Trust Fund, except for any funds deposited into special agency accounts established pursuant to G.S. 165-48(d)(3). The Veterans Affairs Commission shall authorize the expenditure of all funds from the North Carolina Veterans Home Trust Fund. The Veterans Affairs Commission may delegate authority to the Assistant Secretary of Veterans Affairs for the expenditure of funds from the North Carolina Veterans Home Trust Fund for operations of the State Veterans Nursing Homes. (1995, c. 346, s. 1; 2001-117, s. 1.)

§ 165-50. Contracted operation of homes.

The Veterans Affairs Commission may contract with persons or other nongovernmental entities to operate each State veterans home. Contracts for the procurement of services to manage, administer, and operate any State veterans home shall be awarded on a competitive basis through the solicitation of proposals and through the procedures established by statute and the Division of Purchase and Contract. A contract may be awarded to the vendor whose proposal is most advantageous to the State, taking into consideration cost, program suitability, management plan, excellence of program design, key personnel, corporate or company resources, financial condition of the vendor, experience and past performance, and any other qualities deemed necessary by the Veterans Affairs Commission and set out in the solicitation for proposals. Any contract awarded under this section shall not exceed five years in length. The Veterans Affairs Commission is not required to select or recommend the vendor offering the lowest cost proposal but shall select or recommend the vendor who, in the opinion of the Commission, offers the proposal most advantageous to the veterans and the State of North Carolina. (1995, c. 346, s. 1.)

§ 165-51. Program staff.

The Division shall appoint and fix the salary of an Administrative Officer for the State veterans home program. The Administrative Officer shall be an honorably discharged veteran who has served in active military service in the armed forces of the United States for other than training purposes. The Administrative Officer shall direct the establishment of the State veterans home program, coordinate the master planning, land acquisition, and construction of all State veterans homes under the procedures of the Office of State Construction, and oversee the ongoing operation of said veterans homes. The Division may hire any required additional administrative staff to help with administrative and operational responsibilities at each established State Veterans Home. (1995, c. 346, s. 1; 2001-117, s. 2.)

§ 165-52. Admission and dismissal authority.

The Veterans Affairs Commission shall have authority to determine administrative standards for admission and dismissal, as well as the medical conditions, of all persons admitted to and dismissed from any State veterans home, and to issue any necessary rules, subject to the requirements set out in G.S. 165-53. (1995, c. 346, s. 1.)

§ 165-53. Eligibility and priorities.

(a) To be eligible for admission to a State veterans home, an applicant shall meet the following requirements:

(1) The veteran shall have served in the active armed forces of the United States for other than training purposes;

(2) The veteran shall have been discharged from the armed forces under honorable conditions;

(3) The veteran shall be disabled by age, disease, or other reason as determined through a physical examination by a State veterans home physician; and

(4) The veteran shall have resided in the State of North Carolina for two years immediately prior to the date of application.

(b) Eligible veterans will be admitted into a State veterans home or place on waiting lists for admission into a home according to the following priorities:

(1) Eligible wartime veterans will receive priority over eligible nonwartime veterans and will be admitted to the first available bed capable of providing the level of care required. Eligible wartime veterans with equal care requirements will be ranked in chronological order based on the earliest date of receipt of the veteran's application for care.

(2) All other eligible veterans will be ranked in chronological order based on the earliest date of receipt of the veteran's application for care. If more than one application is received on the same date, the Administrative Officer will determine their sequential order on the list according to medical need.

(c) Nonveterans may occupy no more than twenty-five percent (25%) of the total beds in a State veterans home. When any space is available for nonveterans, priority will be established for the following relatives of eligible veterans in the following order:

(1) Spouse.

(2) Widow or widower whose spouse, if living, would be an eligible veteran.

(3) Gold Star parents, defined as the mother or father of a veteran who died an honorable death while in active service to the United States during time of war or emergency. (1995, c. 346, s. 1; 2001-117, s. 3.)

§ 165-54. Deposit required.

Each resident of any State veterans home shall pay to the Division of Veterans Affairs the cost of maintaining his or her residence at the home. This deposit shall be placed in the North Carolina Veterans Home Trust Fund and shall be in an amount and in the form prescribed by the Veterans Affairs Commission in consultation with the Assistant Secretary for Veterans Affairs. (1995, c. 346, s. 1.)

§ 165-55. Report and budget.

(a) The Assistant Secretary for Veterans Affairs shall report annually to the Secretary of the Department of Administration on the activities of the State Veterans Homes Program. This report shall contain an accounting of all monies received and expended, statistics on residents in the homes during the year, recommendations to the Secretary, the Governor, and the General

Assembly as to the program, and such other matters as may be deemed pertinent.

(b) The Assistant Secretary for Veterans Affairs, with the approval of the Veterans Affairs Commission, shall compile an annual budget request for any State funding needed for the anticipated costs of the homes, which shall be submitted to the Secretary of the Department of Administration. State appropriated funds for operational needs shall be made available only in the event that other sources are insufficient to cover essential operating costs. (1995, c. 346, s. 1.)

Chapter 166.

Civil Preparedness Agencies.

§§ 166-1 through 166-13: Repealed by Session Laws 1977, c. 848, s. 1.

Cross References. — As to transfer of the State Civil Preparedness Agency to the Department of Crime Control and Public Safety, see G.S. 143B-475. For present provisions as to civil preparedness, see Chapter 166A.

Editor's Note. — Section 166-4 was previously repealed by Session Laws 1975, c. 734, s. 8. Section 166-13 was previously repealed by Session Laws 1955, c. 79.

Chapter 166A.

North Carolina Emergency Management Act.

Article 1.

North Carolina Emergency Management Act of 1977.

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166A-20. Title, purpose.
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166A-30. Short title.
166A-31. Definitions.
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166A-33 through 166A-39. [Reserved.]

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166A-40. Title of Article; entering into Compact.
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Article 5.

Emergency Management Certification Program.

166A-60. Emergency Management Certification Program authority; purpose.
166A-61. Program standards and guidelines.
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Article 1.

North Carolina Emergency Management Act of 1977.

Editor's Note. — Sections 166A-1 through 166A-16, originally enacted as Chapter 166A, have been recodified as Article 1 of Chapter 166A at the direction of the Revisor of Statutes.

§ 166A-1. Short title.

This Article may be cited as "North Carolina Emergency Management Act of 1977." (1977, c. 848, s. 2; 1979, 2nd Sess., c. 1310, s. 2; 1995, c. 509, s. 120.)

Editor's Note. — This Chapter is Chapter 166, as rewritten by Session Laws 1977, c. 848, and recodified. Where appropriate, the historical citations to the sections in the former Chapter have been added to corresponding sections in the Chapter as rewritten and recodified.

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 22.4(a), effective July 16, 1994, changed the title of Article 1, which had been "North Carolina Emergency Management Act of 1977." The title is set out in the form above at the direction of the Revisor of Statutes.

Session Laws 2001-424, s. 12.3(b), provides: "The Statewide Floodplain Mapping Unit is transferred from the Office of State Budget and Management to the Department of Crime Control and Public Safety, Division of Emergency Management. This transfer has all of the elements of a Type I transfer as defined in G.S. 143A-6."

Session Laws 2007-485, s. 6, provides: "The Division of Emergency Management of the Department of Crime Control and Public Safety shall study ways to facilitate the construction and repair of water dependent structures such as fish processing and packing facilities and boat repair and building facilities located in regulated flood zones. The Division shall report the results of its study, including any recommendations, to the Joint Legislative Commission on Seafood and Aquaculture by March 1, 2008."

Session Laws 2008-162, s. 1, provides: "The Division of Emergency Management, in consultation with the North Carolina Association of County Commissioners, shall study ways and develop plans to increase the capabilities of counties to plan for, respond to, and manage disasters at the local level. Plans developed shall include time lines for implementation and estimates of funding needs and shall address:

"(1) Mandating, if determined necessary, the establishment and maintenance of emergency management agencies at the county level.

"(2) Increasing the number of counties employing full-time emergency management coordinators, such that every county in the State, either individually or pursuant to a joint undertaking between two or more counties, has a full-time local emergency management coordinator available.

"(3) Implementing an emergency management certification requirement for all local emergency management coordinators and other essential local emergency management personnel.

"(4) Developing a model registry for use by the counties in identifying functionally and medically fragile persons in need of assistance during a disaster and in allocating resources to meet those needs.

"(5) Establishing a registry program for functionally and medically fragile persons in all counties."

Session Laws 2008-162, s. 2, requires the Division of Emergency Management to report the results of its study no later than December 1, 2008.

Session Laws 2008-181, s. 20.1, proposes a study similar to the study set out in Session Laws 2008-162, s. 1, addressing the capabilities of counties to plan for, respond to, and manage disasters at a local level.

Session Laws 2008-181, ss. 34.1 through 34.7, establish the Joint Select Committee on Emergency Preparedness and Disaster Management Recovery, provide for the composition, meetings and quorum, reimbursement of expenses, and professional and clerical staff support of the Committee, and terminates the Committee on December 31, 2009, or upon the filing of its final report, whichever occurs first.

CASE NOTES

Cited in Gregory v. Penland, 179 N.C. App. 505, 634 S.E.2d 625, 2006 N.C. App. LEXIS 1981 (2006).

§ 166A-2. Purposes.

The purposes of this Article are to set forth the authority and responsibility of the Governor, State agencies, and local governments in prevention of, preparation for, response to and recovery from natural or man-made disasters or hostile military or paramilitary action and to:

(1) Reduce vulnerability of people and property of this State to damage, injury, and loss of life and property;

(2) Prepare for prompt and efficient rescue, care and treatment of threatened or affected persons;

(3) Provide for the rapid and orderly rehabilitation of persons and restoration of property; and

(4) Provide for cooperation and coordination of activities relating to emergency and disaster mitigation, preparedness, response and recovery among agencies and officials of this State and with similar agencies and officials of other states, with local and federal governments, with interstate organizations and with other private and quasi-official organizations. (1959, c. 337, s. 1; 1975, c. 734, s. 1; 1977, c. 848, s. 2; 1995, c. 509, s. 121.)

OPINIONS OF ATTORNEY GENERAL

Governor Has Power to Aid Victims of Disaster and to Fund Programs. — The Governor has the power, during a state of disaster and with the concurrence of the Council of State, to establish programs to aid the victims of that disaster and to fund those programs from appropriations to the state's agencies and institutions. See opinion of Attorney General to Marvin K. Dorman, Jr., State Budget Officer, 1999 N.C. AG LEXIS 35 (12/1/99).

Nuclear Power Plant. — The Governor has the authority to utilize equipment, supplies, facilities and personnel of a county or municipality and require local government personnel and agencies to cooperate in emergency management planning and training exercises for a nuclear power plant. See opinion of Attorney General to Mr. Joseph W. Dean, Secretary, Department of Crime Control and Public Safety, 55 N.C.A.G. 121 (1986).

§ 166A-3. Limitations.

Nothing in this Article shall be construed to:

(1) Interfere with dissemination of news or comment on public affairs; but any communications facility or organization, including but not limited to radio and television stations, wire services, and newspapers, may be requested to transmit or print public service messages furnishing information or instructions in connection with an emergency, disaster or war; or

(2) Limit, modify or abridge the authority of the Governor to proclaim martial law or exercise any other powers vested in him under the Constitution, statutes, or common law of this State independent of, or in conjunction with, any provisions of this Article. (1975, c. 734, s. 2; 1977, c. 848, s. 2; 1995, c. 509, s. 122.)

§ 166A-4. Definitions.

The following definitions apply in this Article:

(1) Account. — The State Emergency Response Account established in G.S. 166A-6.02.

(1a) Disaster. — An occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made accidental, military or paramilitary cause.

(2) Disaster Area. — The geographical area covered by a proclamation made by the Governor pursuant to G.S. 166A-6(a1).

(2a) Division. — The Division of Emergency Management established in Part 8 of Article 11 of Chapter 143B of the General Statutes.

(3) Eligible Entity. — Any political subdivision. The term also includes an owner or operator of a private nonprofit utility that meets the eligibility criteria set out in this Article.

(4) Emergency Management. — Those measures taken by the populace and governments at federal, State, and local levels to minimize the adverse effect of any type disaster, which includes the never-ending preparedness cycle of planning, prevention, mitigation, warning, movement, shelter, emergency assistance, and recovery.

(5) Emergency Management Agency. — A State or local governmental agency charged with coordination of all emergency management activities for its jurisdiction.

(5a) Hazard Risk Management. — The systematic application of policies, practices, and resources to the identification, assessment, and control of risk associated with hazards affecting human health and safety and property. Hazard, risk, and cost-benefit analysis are used to support development of risk reduction options, program objectives, and prioritization of issues and resources.

(6) Political Subdivision. — Counties and incorporated cities, towns and villages.

(7) Preliminary Damage Assessment. — The (initial estimate prepared) process used by State, local, or federal emergency management workers to determine the severity and magnitude of damage caused by a disaster event.

(8) Private Nonprofit Utilities. — A utility that would be eligible for federal public assistance disaster funds pursuant to 44 C.F.R. Part 206.

(9) Stafford Act. — The Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. No. 93-288, 88 Stat. 143, codified generally at 42 U.S.C. § 5121, et seq., as amended.

(10) State Acquisition and Relocation Fund. — State funding for supplemental grants to homeowners participating in a Hazard Mitigation Grant Program Acquisition and Relocation Program. These grants are used to acquire safe, decent, and sanitary housing by paying the difference between the cost of the home acquired under the Hazard Mitigation Grant Program Acquisition and Relocation Program and the cost of a comparable home located outside the 100-year floodplain. (1951, c. 1016, s. 2; 1953, c. 1099, s. 1; 1955, c. 387, s. 1; 1975, c. 734, ss. 4-6, 14; 1977, c. 848, s. 2; 1979, 2nd Sess., c. 1310, s. 2; 1995, c. 509, s. 123; 2001-214, s. 1; 2006-66, ss. 6.5(c), (d); 2009-193, ss. 1, 2; 2009-397, s. 2.)

Effect of Amendments. — Session Laws 2009-193, ss. 1 and 2, effective June 26, 2009, inserted "planning" in subdivision (4), and added subdivision (5a).

Session Laws 2009-397, s. 2, effective July 31, 2009, added subdivision (2a).

CASE NOTES

Preparedness Cycle of Prevention. — Injuries suffered by honorary member of a beach rescue squad in the wake of emergency efforts after a hurricane were compensable injuries because the injuries were sustained while the honorary member was engaged in emergency management services in accordance with provisions of the North Carolina Emergency Management Act; specifically, the honorary member was engaged in the never-ending preparedness cycle of prevention. Ward v. Long Beach Volunteer Rescue Squad, 151 N.C. App. 717, 568 S.E.2d 626, 2002 N.C. App. LEXIS 981 (2002), cert. denied, 356 N.C. 314, 571 S.E.2d 219 (2002).

OPINIONS OF ATTORNEY GENERAL

Nuclear Power Plant. — The Governor has the authority to utilize equipment, supplies, facilities and personnel of a county or municipality and require local government personnel and agencies to cooperate in emergency management planning and training exercises for a nuclear power plant. See opinion of Attorney General to Mr. Joseph W. Dean, Secretary, Department of Crime Control and Public Safety, 55 N.C.A.G. 121 (1986).

Regional Council Is Not Within Definition of Political Subdivision. — See opinion of Attorney General to Mr. David L. Britt, Department of Military and Veterans Affairs, 43 N.C.A.G. 187 (1973), opinion rendered under former G.S. 166-2.

§ 166A-5. State emergency management.

The State emergency management program includes all aspects of preparations for, response to and recovery from war or peacetime disasters.

(1) Governor. — The Governor shall have general direction and control of the State emergency management program and shall be responsible for carrying out the provisions of this Article.

a. The Governor is authorized and empowered:

1. To make, amend or rescind the necessary orders, rules and regulations within the limits of the authority conferred upon him herein, with due consideration of the policies of the federal government.
2. To delegate any authority vested in him under this Article and to provide for the subdelegation of any such authority.
3. To cooperate and coordinate with the President and the heads of the departments and agencies of the federal government, and with other appropriate federal officers and agencies, and with the officers and agencies of other states and local units of government in matters pertaining to the emergency management of the State and nation.
4. To enter into agreements with the American National Red Cross, Salvation Army, Mennonite Disaster Service and other disaster relief organizations.
5. To make, amend, or rescind mutual aid agreements in accordance with G.S. 166A-10.
6. To utilize the services, equipment, supplies and facilities of existing departments, offices and agencies of the State and of the political subdivisions thereof. The officers and personnel of all such departments, offices and agencies are required to cooperate with and extend such services and facilities to the Governor upon request. This authority shall extend to a state of disaster, imminent threat of disaster or emergency management planning and training purposes.
7. To agree, when required to obtain federal assistance in debris removal, that the State will indemnify the federal govern-

ment against any claim arising from the removal of the debris.

8. To sell, lend, lease, give, transfer or deliver materials or perform services for disaster purposes on such terms and conditions as may be prescribed by any existing law, and to account to the State Treasurer for any funds received for such property.
9. To use contingency and emergency funds as necessary and appropriate to provide relief and assistance from the effects of a disaster, and to reallocate such other funds as may reasonably be available within the appropriations of the various departments when the severity and magnitude of such disaster so requires and the contingency and emergency funds are insufficient or inappropriate.

b. In the threat of or event of a disaster, or when requested by the governing body of any political subdivision in the State, the Governor may assume operational control over all or any part of the emergency management functions within this State.

(2) Secretary of Crime Control and Public Safety. — The Secretary of Crime Control and Public Safety shall be responsible to the Governor for State emergency management activities. The Secretary shall have the following powers and duties as delegated by the Governor:

a. To activate the State and local plans applicable to the areas in question and to authorize and direct the deployment and use of any personnel and forces to which the plan or plans apply, and the use or distribution of any supplies, equipment, materials and facilities available pursuant to this Article or any other provision of law.

b. To adopt the rules to implement this Article.

c. To develop a system of damage assessment through which the Secretary will recommend the appropriate level of disaster declaration to the Governor. The system shall, at a minimum, consider whether the damage involved and its effects are of such a severity and magnitude as to be beyond the response capabilities of the local government or political subdivision.

d. Additional authority, duties, and responsibilities as may be prescribed by the Governor. The Secretary may subdelegate his authority to the appropriate member of his department.

(3) Functions of State Emergency Management. — The functions of the State emergency management program include:

a. Coordination of the activities of all agencies for emergency management within the State, including planning, organizing, staffing, equipping, training, testing, and the activation of emergency management programs.

b. Preparation and maintenance of State plans for man-made or natural disasters. The State plans or any parts thereof may be incorporated into department regulations and into executive orders of the Governor.

b1. Coordination with the State Health Director to amend or revise the North Carolina Emergency Operations Plan regarding public health matters. At a minimum, the revisions to the Plan shall provide for the following:

1. The epidemiologic investigation of a known or suspected threat caused by nuclear, biological, or chemical agents.
2. The examination and testing of persons and animals that may have been exposed to a nuclear, biological, or chemical agent.

3. The procurement and allocation of immunizing agents and prophylactic antibiotics.
4. The allocation of the National Pharmaceutical Stockpile.
5. The appropriate conditions for quarantine and isolation in order to prevent further transmission of disease.
6. Immunization procedures.
7. The issuance of guidelines for prophylaxis and treatment of exposed and affected persons.

b2. Establishment of a voluntary model registry for use by political subdivisions in identifying functionally and medically fragile persons in need of assistance during a disaster. All records, data, information, correspondence, and communications relating to the registration of persons with special needs or of functionally and medically fragile persons obtained pursuant to this sub-subdivision are confidential and are not a public record pursuant to G.S. 132-1 or any other applicable statute, except that this information shall be available to emergency response agencies, as determined by the local emergency management director. This information shall be used only for the purposes set forth in this sub-subdivision.

c. Promulgation of standards and requirements for local plans and programs consistent with federal and State laws and regulations, determination of eligibility for State financial assistance provided for in G.S. 166A-7 and provision of technical assistance to local governments. Standards and requirements for local plans and programs promulgated under this sub-subdivison shall be reviewed by the Division of Emergency Management at least biennially and updated as necessary.

d. Development and presentation of training programs, including the Emergency Management Certification Program established under Article 5 of this Chapter, and public information programs to insure the furnishing of adequately trained personnel and an informed public in time of need.

e. Making of such studies and surveys of the resources in this State as may be necessary to ascertain the capabilities of the State for emergency management, maintaining data on these resources, and planning for the most efficient use thereof.

f. Coordination of the use of any private facilities, services, and property.

g. Preparation for issuance by the Governor of executive orders, proclamations, and regulations as necessary or appropriate.

h. Cooperation and maintenance of liaison with the other states, federal government and any public or private agency or entity in achieving any purpose of this Article and in implementing programs for emergency, disaster or war prevention, preparation, response, and recovery.

i. Making recommendations, as appropriate, for zoning, building and other land-use controls, and safety measures for securing mobile homes or other nonpermanent or semipermanent works designed to protect against or mitigate the effects of a disaster.

j. Coordination of the use of existing means of communications and supplementing communications resources and integrating them into a comprehensive State or State-federal telecommunications or other communications system or network.

k. Administration of federal and State grant funds provided for emergency management purposes, including those funds provided for planning and preparedness activities by emergency management agencies.

l. Serving as the lead State agency for the coordination of information and resources for hazard risk management, which shall include the following responsibilities:

1. Coordinating with other State agencies and county governments in conducting hazard risk analysis. To the extent another State agency has primary responsibility for the adoption of hazard mitigation standards, those standards shall be applied in conducting a hazard risk analysis.
2. Establishing and maintaining a hazard risk management information system and tools to display natural hazards and vulnerabilities and conducting risk assessment.
3. Acquiring and leveraging all natural hazard data generated or maintained by State agencies and county governments.
4. Acquiring and leveraging all vulnerability data generated or maintained by State agencies and county governments.
5. Maintaining a clearinghouse for methodologies and metrics for calculating and communicating hazard probability and loss estimation.

m. Utilizing and maintaining technology that enables efficient and effective communication and management of resources between political subdivisions, State agencies, and other governmental entities involved in emergency management activities. (1951, c. 1016, ss. 3, 9; 1953, c. 1099, s. 3; 1955, c. 387, ss. 2, 3, 5; 1957, c. 950, s. 5; 1975, c. 734, ss. 9, 10, 14, 16; 1977, c. 848, s. 2; 1979, 2nd Sess., c. 1310, s. 2; 1995, c. 509, s. 124; 2001-214, s. 2; 2002-179, s. 12; 2009-192, s. 1; 2009-193, s. 3; 2009-196, s. 1; 2009-225, s. 1.)

Effect of Amendments. — Session Laws 2009-192, s. 1, effective June 26, 2009, substituted “training programs” for “training programs, including the Emergency Management Certification Program established under Article 5 of this Chapter” in subdivision (3)d.

Session Laws 2009-193, s. 3, effective June 26, 2009, added subdivisions (3)k. through (3)m.

Session Laws 2009-196, s. 1, effective October 1, 2009, in subdivision (3)c., substituted “and programs consistent with federal and State laws and regulations” for “and programs” in the first sentence, and added the last sentence.

Session Laws 2009-225, s. 1, effective June 30, 2009, added subdivision (3)b2.

OPINIONS OF ATTORNEY GENERAL

Governor Has Power to Aid Victims of Disaster and to Fund Programs. — The Governor has the power, during a state of disaster and with the concurrence of the Council of State, to establish programs to aid the victims of that disaster and to fund those programs from appropriations to the state's agencies and institutions. See opinion of Attorney General to Marvin K. Dorman, Jr., State Budget Officer, 1999 N.C. AG LEXIS 35 (12/1/99).

Nuclear Power Plant. — The Governor has the authority to utilize equipment, supplies, facilities and personnel of a county or municipality and require local government personnel and agencies to cooperate in emergency management planning and training exercises for a nuclear power plant. See opinion of Attorney General to Mr. Joseph W. Dean, Secretary, Department of Crime Control and Public Safety, 55 N.C.A.G. 121 (1986).

§ 166A-6. State of disaster.

(a) The existence of a state of disaster may be proclaimed by the Governor, or by a resolution of the General Assembly if either of these finds that a disaster threatens or exists.

(a1) If a state of disaster is proclaimed, the Secretary shall provide the Governor and the General Assembly with a preliminary damage assessment as soon as the assessment is available. Upon receipt of the preliminary damage assessment, the Governor shall issue a proclamation defining the area subject to the state of disaster and proclaiming the disaster as a Type I, Type II, or Type III disaster. In determining whether the disaster shall be proclaimed as a Type I, Type II, or Type III disaster, the Governor shall follow the standards set forth below.

(1) A Type I disaster may be declared if all of the following criteria are met:
  a. A local state of emergency has been declared pursuant to G.S. 166A-8, and a written copy of the declaration has been forwarded to the Governor;
  b. The preliminary damage assessment meets or exceeds the criteria established for the Small Business Administration Disaster Loan Program pursuant to 13 C.F.R. Part 123 or meets or exceeds the State infrastructure criteria set out in G.S. 166A-6.01(b)(2)a.; and
  c. A major disaster declaration by the President of the United States pursuant to the Stafford Act has not been declared.

A Type I disaster declaration may be made by the Governor prior to, and independently of, any action taken by the Small Business Administration, the Federal Emergency Management Agency, or any other federal agency. A Type I disaster declaration shall expire 30 days after its issuance unless renewed by the Governor or the General Assembly. Such renewals may be made in increments of 30 days each, not to exceed a total of 120 days from the date of first issuance. The Joint Legislative Commission on Governmental Operations shall be notified prior to the issuance of any renewal of a Type I disaster declaration.

(2) A Type II disaster may be declared if the President of the United States has issued a major disaster declaration pursuant to the Stafford Act. The Governor may request federal disaster assistance under the Stafford Act without making a Type II disaster declaration. A Type II disaster declaration shall expire six months after its issuance unless renewed by the Governor or the General Assembly. Such renewals may be made in increments of three months each, not to exceed a total of 12 months from the date of first issuance. The Joint Legislative Commission on Governmental Operations shall be notified prior to the issuance of any renewal of a Type II disaster declaration.

(3) A Type III disaster may be declared if the President of the United States has issued a major disaster declaration under the Stafford Act and:
  a. The preliminary damage assessment indicates that the extent of damage is reasonably expected to meet the threshold established for an increased federal share of disaster assistance under applicable federal law and regulations; or
  b. The preliminary damage assessment prompts the Governor to call a special session of the General Assembly to establish programs to meet the unmet needs of individuals or political subdivisions affected by the disaster.

A Type III disaster declaration shall expire 12 months after its issuance unless renewed by the General Assembly.

(a2) Any state of disaster declared before July 1, 2001, shall terminate by a proclamation of the Governor or resolution of the General Assembly. A proclamation or resolution declaring or terminating a state of disaster shall be disseminated promptly by means calculated to bring its contents to the attention of the general public and, unless the circumstances attendant upon the disaster prevent or impede, promptly filed with the Secretary of Crime Control and Public Safety, the Secretary of State and the clerks of superior court in the area to which it applies.

(b) In addition to any other powers conferred upon the Governor by law, during a state of disaster, the Governor shall have the following powers:

(1) To utilize all available State resources as reasonably necessary to cope with an emergency, including the transfer and direction of personnel or functions of State agencies or units thereof for the purpose of performing or facilitating emergency services;

(2) To take such action and give such directions to State and local law-enforcement officers and agencies as may be reasonable and necessary for the purpose of securing compliance with the provisions of this Article and with the orders, rules and regulations made pursuant thereto;

(3) To take steps to assure that measures, including the installation of public utilities, are taken when necessary to qualify for temporary housing assistance from the federal government when that assistance is required to protect the public health, welfare, and safety;

(4) Subject to the provisions of the State Constitution to relieve any public official having administrative responsibilities under this Article of such responsibilities for willful failure to obey an order, rule or regulation adopted pursuant to this Article.

(c) In addition, during a state of disaster, with the concurrence of the Council of State, the Governor has the following powers:

(1) To direct and compel the evacuation of all or part of the population from any stricken or threatened area within the State, to prescribe routes, modes of transportation, and destinations in connection with evacuation; and to control ingress and egress of a disaster area, the movement of persons within the area, and the occupancy of premises therein;

(2) To establish a system of economic controls over all resources, materials and services to include food, clothing, shelter, fuel, rents and wages, including the administration and enforcement of any rationing, price freezing or similar federal order or regulation;

(3) To regulate and control the flow of vehicular and pedestrian traffic, the congregation of persons in public places or buildings, lights and noises of all kinds and the maintenance, extension and operation of public utility and transportation services and facilities;

(4) To waive a provision of any regulation or ordinance of a State agency or a political subdivision which restricts the immediate relief of human suffering;

(5) Repealed by Session Laws 2001-214, s. 3, effective July 1, 2001.

(6) To perform and exercise such other functions, powers and duties as are necessary to promote and secure the safety and protection of the civilian population;

(7) To appoint or remove an executive head of any State agency or institution the executive head of which is regularly selected by a State board or commission.

a. Such an acting executive head will serve during:

1. The physical or mental incapacity of the regular office holder, as determined by the Governor after such inquiry as the Governor deems appropriate;
2. The continued absence of the regular holder of the office; or
3. A vacancy in the office pending selection of a new executive head.

b. An acting executive head of a State agency or institution appointed in accordance with this subdivision may perform any act and exercise any power which a regularly selected holder of such office could lawfully perform and exercise.

c. All powers granted to an acting executive head of a State agency or institution under this section shall expire immediately:

1. Upon the termination of the incapacity as determined by the Governor of the officer in whose stead he acts;
2. Upon the return of the officer in whose stead he acts; or
3. Upon the selection and qualification of a person to serve for the unexpired term, or the selection of an acting executive head of the agency or institution by the board or commission authorized to make such selection, and his qualification.

(8) To procure, by purchase, condemnation, seizure or by other means to construct, lease, transport, store, maintain, renovate or distribute materials and facilities for emergency management without regard to the limitation of any existing law.

(d) In preparation for a state of disaster, with the concurrence of the Council of State, the Governor may use contingency and emergency funds as necessary and appropriate for National Guard training in preparation for disasters. (1951, c. 1016, s. 4; 1955, c. 387, s. 4; 1959, c. 284, s. 2; c. 337, s. 4; 1975, c. 734, ss. 11, 14; 1977, c. 848, s. 2; 1979, 2nd Sess., c. 1310, s. 2; 1993, c. 321, s. 181(a); 1995, c. 509, s. 125; 2001-214, s. 3.)

§ 166A-6.01. State disaster assistance funds; programs.

(a) If a state of disaster is proclaimed, the Governor may make State funds available for disaster assistance as authorized by this section. Any State funds made available by the Governor for disaster assistance may be administered through State disaster assistance programs which may be established by the Governor upon the proclamation of a state of disaster. It is the intent of the General Assembly in authorizing the Governor to make State funds available for disaster assistance and in authorizing the Governor to establish State disaster assistance programs to provide State assistance for recovery from those disasters for which federal assistance under the Stafford Act is either not available or does not adequately meet the needs of the citizens of the State in the disaster area.

(b) Disaster Assistance Programs — Type I Disaster. — In the event that a Type I disaster is proclaimed, the Governor may make State funds available for disaster assistance in the disaster area in the form of individual assistance and public assistance as provided in this subsection.

(1) Individual assistance. — State disaster assistance in the form of grants to individuals and families may be made available when damage meets or exceeds the criteria set out in 13 C.F.R. Part 123 for the Small Business Administration Disaster Loan Program. Individual assistance grants shall include benefits comparable to those provided by the Stafford Act and may be provided for the following:

a. Provision of temporary housing and rental assistance.

b. Repair or replacement of dwellings. Grants for repair or replacement of housing may include amounts necessary to locate the individual or family in safe, decent, and sanitary housing.

c. Replacement of personal property (including clothing, tools, and equipment).

d. Repair or replacement of privately owned vehicles.

e. Medical or dental expenses.

f. Funeral or burial expenses resulting from the disaster.

g. Funding for the cost of the first year's flood insurance premium to meet the requirements of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. § 4001, et seq.

(2) Public assistance. — State disaster assistance in the form of public assistance grants may be made available to eligible entities located within the disaster area on the following terms and conditions:

a. Eligible entities shall meet the following qualifications:

1. The eligible entity suffers a minimum of ten thousand dollars ($10,000) in uninsurable losses;
2. The eligible entity suffers uninsurable losses in an amount equal to or exceeding one percent (1%) of the annual operating budget;
3. For a state of disaster proclaimed pursuant to G.S. 166A-6(a) after the deadline established by the Federal Emergency Management Agency pursuant to the Disaster Mitigation Act of 2002, P.L. 106-390, the eligible entity shall have a hazard mitigation plan approved pursuant to the Stafford Act; and
4. For a state of disaster proclaimed pursuant to G.S. 166A-6(a) after August 1, 2002, the eligible entity shall be participating in the National Flood Insurance Program in order to receive public assistance for flooding damage.

b. Eligible entities shall be required to provide non-State matching funds equal to twenty-five percent (25%) of the eligible costs of the public assistance grant.

c. An eligible entity that receives a public assistance grant pursuant to this subsection may use the grant for the following purposes only:

1. Debris clearance.
2. Emergency protective measures.
3. Roads and bridges.
4. Crisis counseling.
5. Assistance with public transportation needs.

(c) If a Type II disaster is proclaimed, the Governor may make State funds available for disaster assistance in the disaster area in the form of the following types of grants:

(1) State Acquisition and Relocation Funds.

(2) Supplemental repair and replacement housing grants available to the individuals or families in an amount necessary to locate the individual or family in safe, decent, and sanitary housing not to exceed twenty-five thousand dollars ($25,000) per family.

(d) If a Type III disaster is proclaimed, the Governor may make State funds available for disaster assistance in the disaster area in the form of the following types of grants:

(1) State Acquisition and Relocation Funds.

(2) Supplemental repair and replacement housing grants available to the individuals or families in an amount necessary to locate the individual or family in safe, decent, and sanitary housing not to exceed twenty-five thousand dollars ($25,000) per family.

(3) Any programs authorized by the General Assembly. (2001-214, s. 4; 2001-487, s. 98; 2002-24, s. 1; 2002-159, s. 57.5; 2006-66, s. 6.5(a).)

Editor's Note. — Session Laws 2001-214, s. 4, enacted this section as G.S. 166A-6A. It was redesignated as G.S. 166A-6.01 at the direction of the Revision of Statutes.

§ 166A-6.02. State Emergency Response Account.

(a) Account Established. — There is established a State Emergency Response Account as a reserve in the General Fund. Any funds appropriated to the Account shall remain available for expenditure as provided by this section, unless directed otherwise by the General Assembly.

(b) Purpose of Funds. — The Governor may spend funds from the Account for the following purposes:

(1) To cover the start-up costs of State Emergency Response Team operations for an emergency that poses an imminent threat of a Type I, Type II, or Type III disaster as defined by G.S. 166A-6.

(2) To cover the cost of first responders to a Type I, Type II, or Type III disaster and any related supplies and equipment needed by first responders that are not provided for under subdivision (1) of this subsection.

All other types of disaster assistance authorized by G.S. 166A-6 shall continue to be financed by the funds made available under G.S. 166A-6.01.

(c) Reporting Requirement. — The Governor shall report to the Joint Legislative Commission on Governmental Operations and to the Chairs of the Appropriations Committees of the Senate and House of Representatives on any expenditures from the State Emergency Response Account no later than 30 days after making the expenditure. The report shall include a description of the emergency and type of action taken. (2006-66, s. 6.5(b).)

Editor's Note. — Session Laws 2006-66, s. 28.7 made this section effective July 1, 2006.

Session Laws 2006-66, s. 1.2, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 2006'."

Session Laws 2006-66, s. 28.6, is a severability clause.

§ 166A-6.03. Ensuring availability of emergency supplies and utility services.

(a) Executive Order. — In addition to any other powers conferred on the Governor by law, whenever a curfew has been imposed, the Governor may declare by executive order that the health, safety, or economic well-being of persons or property in this State require that persons transporting essentials in commerce to the curfew area, or assisting in ensuring their availability, and persons assisting in restoring utility services, be allowed to enter or remain in areas from which they would otherwise be excluded for the limited purpose of delivering the essentials, assisting in ensuring their availability, or assisting in restoring utility services.

(b) Maximum Hours of Service Waiver. — As part of an executive order issued pursuant to subsection (a) of this section, or independently of such an order, the Governor may declare by executive order that the health, safety, or economic well-being of persons or property in this State require that the maximum of hours of service prescribed by the Department of Crime Control and Public Safety pursuant to G.S. 20-381 and similar rules be waived for persons transporting essentials or assisting in the restoration of utility services.

(c) Certification System. — The Secretary of Crime Control and Public Safety shall develop a system pursuant to which a person who transports essentials in commerce, or assists in ensuring their availability, and persons who assist in the restoring of utility services can be certified as such. The certification system shall allow for both predisaster declaration and postdisaster declaration certification and may include an annually renewable precertification. The Secretary shall only allow those who routinely transport or distribute essentials or assist in the restoring of utility services to be certified. A certification of the employer shall constitute a certification of the employer's employees. The Secretary shall create an easily recognizable indicium of certification in order to assist local officials' efforts to determine which persons have received certification by the system established under this subsection.

(d) Notwithstanding the existence of any curfew, a person who is certified pursuant to the system established under subsection (c) of this section shall be allowed to enter or remain in the curfew area for the limited purpose of delivering or assisting in the distribution of essentials or assisting in the restoration of utility services and shall be allowed to provide service that exceeds otherwise applicable hours of service maximums, to the extent authorized by an executive order executed pursuant to subsection (a) of this section. Nothing in this section prohibits law enforcement or other local officials from specifying the permissible route of ingress or egress for persons with certifications.

(e) If the Governor declares the existence of an abnormal market disruption with respect to petroleum pursuant to G.S. 75-38(f), the Governor shall contemporaneously seek all applicable waivers under the federal Clean Air Act, 42 U.S.C. § 7401, et seq., and any other applicable federal law to facilitate the transportation of fuel within this State in order to address or prevent a fuel supply emergency in this State. Waiver requests shall be directed to the appropriate federal agencies and shall seek waivers of the following:

(1) The Reformulated Gasoline requirements throughout the State.
(2) The Federal and State Implementation Plan summertime gasoline requirements (low RVP) throughout the State.
(3) Any other waiver that will, if obtained, facilitate the transportation of fuel within this State.

(f) Definitions. — The following definitions apply in this section:

(1) Curfew. — Any restriction on ingress and egress to an area that is covered by a state of disaster declared pursuant to this Article or a locally declared state of emergency declared pursuant to Article 36A of Chapter 14 of the General Statutes, or any restriction on the movement of persons within such an area.
(2) Curfew area. — The area that is subject to a curfew.
(3) Essentials. — Any goods that are consumed or used as a direct result of an emergency or which are consumed or used to preserve, protect, or sustain life, health, safety, or economic well-being of persons or their property. The Secretary of Crime Control and Public Safety shall determine what goods constitute essentials for purposes of this section. (2009-195, s. 1.)

Editor's Note. — Session Laws 2009-195, s. 2, made this section effective June 26, 2009.

§ 166A-6.1. Emergency planning; charge.

(a) Every person, firm, corporation or municipality who is licensed to construct or who is operating a fixed nuclear facility for the production of electricity shall pay to the Department of Crime Control and Public Safety an annual fee of at least thirty thousand dollars ($30,000) for each fixed nuclear facility which is located within this State or has a Plume Exposure Pathway Emergency Planning Zone of which any part is located within this State. This fee is to be applied to the costs of planning and implementing emergency response activities as are required by the Federal Emergency Management Agency for the operation of nuclear facilities. Said fee is to be paid no later than July 31 of each year. This minimum fee may be increased from time to time as the costs of such planning and implementation increase. Such increases shall be by agreement between the State and the licensees or operators of the fixed nuclear facilities.

(b) Every person, firm, corporation or municipality who is licensed to construct or who is operating a fixed nuclear facility for the production of electricity shall pay to the Department of Crime Control and Public Safety, for the use of the Division of Environmental Health of the Department of Environment and Natural Resources, an annual fee of thirty-six thousand dollars ($36,000) for each fixed nuclear facility that is located within this State or that has a Plume Exposure Pathway Emergency Planning Zone any part of which is located within this State. This fee shall be applied only to the costs of planning and implementing emergency response activities as required by the Federal Emergency Management Agency for the operation of nuclear facilities. This fee is to be paid no later than July 31 of each year.

(c) The fees imposed by this section do not revert at the end of a fiscal year. The amount of fees carried forward from one fiscal year to the next shall be taken into consideration in determining the fee to be assessed each fixed nuclear facility under subsection (a) in that fiscal year. (1981, c. 1128, ss. 1, 2; 1983, c. 622, ss. 1-3; 1989, c. 727, s. 219(42); 1989 (Reg. Sess., 1990), c. 964, s. 1; 1991 (Reg. Sess., 1992), c. 1039, s. 18; 1997-443, s. 11A.123; 2000-109, s. 6; 2002-70, s. 5.)

§ 166A-7. County and municipal emergency management.

(a) The governing body of each county is responsible for emergency management, as defined in G.S. 166A-4, within the geographical limits of such county. All emergency management efforts within the county will be coordinated by the county, including activities of the municipalities within the county.

(1) The governing body of each county is hereby authorized to establish and maintain an emergency management agency for the purposes contained in G.S. 166A-2.

(2) The governing body of each county which establishes an emergency management agency pursuant to this authorization will appoint a coordinator who will have a direct responsibility for the organization, administration and operation of the county program and will be subject to the direction and guidance of such governing body.

(3) In the event any county fails to establish an emergency management agency, and the Governor, in his discretion, determines that a need exists for such an emergency management agency, then the Governor is hereby empowered to establish an emergency management agency within said county.

(b) All incorporated municipalities are authorized to establish and maintain emergency management agencies subject to coordination by the county.

(b1) Counties and incorporated municipalities are authorized to form joint emergency management agencies composed of a county and one or more municipalities within the county's borders, between two or more counties, or between two or more counties and one or more municipalities within the borders of those counties.

(c) Each county and incorporated municipality in this State is authorized to make appropriations for the purposes of this Article and to fund them by levy of property taxes pursuant to G.S. 153A-149 and G.S. 160A-209 and by the allocation of other revenues, whose use is not otherwise restricted by law.

(d) In carrying out the provisions of this Article each political subdivision is authorized:

(1) To appropriate and expend funds, make contracts, obtain and distribute equipment, materials, and supplies for emergency management

purposes and to provide for the health and safety of persons and property, including emergency assistance, consistent with this Article;

(2) To direct and coordinate the development of emergency management plans and programs in accordance with the policies and standards set by the Division of Emergency Management, consistent with federal and State laws and regulations;

(3) To assign and make available all available resources for emergency management purposes for service within or outside of the physical limits of the subdivision; and

(4) To delegate powers in a local state of emergency under G.S. 166A-8 to an appropriate official.

(5) To coordinate the voluntary registration of functionally and medically fragile persons in need of assistance during a disaster either through a registry established by this subdivision or by the State. All records, data, information, correspondence, and communications relating to the registration of persons with special needs or of functionally and medically fragile persons obtained pursuant to this sub-subdivision are confidential and are not a public record pursuant to G.S. 132-1 or any other applicable statute, except that this information shall be available to emergency response agencies, as determined by the local emergency management director. This information shall be used only for the purposes set forth in this subdivision.

(e) Each county which establishes an emergency management agency pursuant to State standards and which meets requirements for local plans and programs may be eligible to receive State and federal financial assistance, including State and federal funding appropriated for emergency management planning and preparedness, and for the maintenance and operation of a county emergency management program. Such financial assistance is subject to an appropriation being made for this purpose. Where the appropriation does not allocate appropriated funds among counties, the amount allocated to each county shall be determined annually by the Division of Emergency Management. The size of this allocation shall be based in part on the degree to which local plans and programs meet State standards and requirements promulgated by the Division, including those relating to professional competencies of local emergency management personnel. However, in making an allocation determination, the Division shall, where appropriate, take into account the fact that a particular county may lack sufficient resources to meet the standards and requirements promulgated by the Division. (1951, c. 1016, s. 6; 1953, c. 1099, s. 4; 1957, c. 950, s. 2; 1959, c. 337, s. 5; 1973, c. 620, s. 9; 1975, c. 734, ss. 12, 14, 16; 1977, c. 848, s. 2; 1979, 2nd Sess., c. 1310, s. 2; 1995, c. 509, ss. 126, 127; 2009-196, s. 2; 2009-225, s. 2.)

Effect of Amendments. — Session Laws 2009-196, s. 2, effective October 1, 2009, in subsection (b), deleted the former last sentence, which read: "Joint agencies composed of a county and one or more municipalities within its borders may be formed."; added subsection (b1); in subdivision (d)(2), substituted "the Division of Emergency Management, consistent with federal and State laws and regulations" for "the State"; and rewrote subsection (e).

Session Laws 2009-225, s. 2, effective June 30, 2009, added subdivision (d)(5).

§ 166A-8. Local emergency authorizations.

Procedures governing the declaration of a local state of emergency:

(1) A local state of emergency may be declared for any disaster, as defined in G.S. 166A-4 under the provisions of Article 36A of G.S. Chapter 14.

(2) Such a declaration shall activate the local ordinances authorized in G.S. 14-288.12 through 14-288.14 and any and all applicable local

plans, mutual assistance compacts and agreements and shall also authorize the furnishing of assistance thereunder.

(3) The timing, publication, amendment and recision of local "state of emergency" declarations shall be in accordance with the local ordinance. (1951, c. 1016, s. 6; 1953, c. 1099, s. 4; 1957, c. 950, s. 2; 1959, c. 337, s. 5; 1973, c. 620, s. 9; 1975, c. 734, ss. 12, 14, 16; 1977, c. 848, s. 2.)

§ 166A-9. Accept services, gifts, grants and loans.

Whenever the federal government or any agency or officer thereof or of any person, firm or corporation shall offer to the State, or through the State to any political subdivision thereof, services, equipment, supplies, materials, or funds by way of gift, grant or loan, for the purposes of emergency management, the State acting through the Governor, or such political subdivision, acting with the consent of the Governor and through its governing body, may accept such offer. Upon such acceptance the Governor of the State or governing body of such political subdivision may authorize any officer of the State or of the political subdivision, as the case may be, to receive such services, equipment, supplies, materials or funds on behalf of the State or of such political subdivision, and subject to the terms of the offer and the rules and regulations, if any, of the agency making the offer. (1951, c. 1016, s. 8; 1973, c. 803, s. 45; 1975, c. 19, s. 72; c. 734, ss. 13, 14; 1977, c. 848, s. 2; 1979, 2nd Sess., c. 1310, s. 2.)

§ 166A-10. Establishment of mutual aid agreements.

(a) The Governor may establish mutual aid agreements with other states and with the federal government provided that any special agreements so negotiated are within the Governor's authority.

(a1) The Governor may establish mutual aid agreements with political subdivisions in the State with the concurrence of the subdivision's governing body.

(b) The chief executive of each political subdivision, with the concurrence of the subdivision's governing body, may develop mutual aid agreements for reciprocal emergency management aid and assistance. Such agreements shall be consistent with the State emergency management program and plans.

(c) The chief executive officer of each political subdivision, with the concurrence of the governing body and subject to the approval of the Governor, may enter into mutual aid agreements with local chief executive officers in other states for reciprocal emergency management aid and assistance. These agreements shall be consistent with the State emergency management program and plans.

(d) Mutual aid agreements may include but are not limited to the furnishing or exchange of such supplies, equipment, facilities, personnel and services as may be needed; the reimbursement of costs and expenses for equipment, supplies, personnel and similar items; and on such terms and conditions as deemed necessary. (1951, c. 1016, s. 7; 1975, c. 734, ss. 14, 16; 1977, c. 848, s. 2; 1979, 2nd Sess., c. 1310, s. 2; 2009-194, s. 1.)

Effect of Amendments. — Session Laws 2009-194, s. 1, effective June 26, 2009, added subsection (a1), and added the last sentence in subsection (c).

§ 166A-11. Compensation.

(a) Compensation for services or for the taking or use of property shall be only to the extent that legal obligations of individual citizens are exceeded in a particular case and then only to the extent that the claimant has not been deemed to have volunteered his services or property without compensation.

(b) Compensation for property shall be only if the property was commandeered, seized, taken, condemned, or otherwise used in coping with a disaster and this action was ordered by the Governor. The State shall make compensation for the property so seized, taken or condemned on the following basis:

(1) In case property is taken for temporary use, the Governor, within 30 days of the taking, shall fix the amount of compensation to be paid for such damage or failure to return. Whenever the Governor shall deem it advisable for the State to take title to property taken under this section, he shall forthwith cause the owner of such property to be notified thereof in writing by registered mail, postage prepaid, or by the best means available, and forthwith cause to be filed a copy of said notice with the Secretary of State.

(2) If the person entitled to receive the amounts so determined by the Governor as just compensation is unwilling to accept the same as full and complete compensation for such property or the use thereof, he shall be paid seventy-five per centum (75%) of such amount and shall be entitled to recover from the State of North Carolina in an action brought in the superior court in the county of residence of claimant, or in Wake County, in the same manner as other condemnation claims are brought, within three years after the date of the Governor's award. (1977, c. 848, s. 2.)

§ 166A-12. Nondiscrimination in emergency management.

State and local governmental bodies and other organizations and personnel who carry out emergency management functions under the provisions of this Article are required to do so in an equitable and impartial manner. Such State and local governmental bodies, organizations and personnel shall not discriminate on the grounds of race, color, religion, nationality, sex, age or economic status in the distribution of supplies, the processing of applications and other relief and assistance activities. (1975, c. 734, s. 3; 1977, c. 848, s. 2; 1979, 2nd Sess., c. 1310, s. 2; 1995, c. 509, s. 128.)

§ 166A-13. Emergency management personnel.

(a) No person shall be employed or associated in any capacity in any emergency management agency established under this Article if that person:

(1) Advocates or has advocated a change by force or violence in the constitutional form of the Government of the United States or in this State;

(2) Advocates or has advocated the overthrow of any government in the United States by force or violence;

(3) Has been convicted of any subversive act against the United States;

(4) Is under indictment or information charging any subversive act against the United States; or

(5) Has ever been a member of the Communist Party.

Each person who is appointed to serve in any emergency management agency shall, before entering upon his duties, take a written oath before a person authorized to administer oaths in this State, which oath shall be substantially as follows:

"I, ________, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of North Carolina, against all enemies, foreign and domestic; and that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter. And I do further swear (or affirm) that I do not advocate, nor am I, nor have I ever knowingly been, a member of any political party or organization that advocates the overthrow of the Government of the United States or of this State by force or violence; and that during such time as I am a member of the State Emergency Management Agency I will not advocate nor become a member of any political party or organization that advocates the overthrow of the Government of the United States or of this State by force or violence, so help me God."

(b) No position created by or pursuant to this Article shall be deemed an office within the meaning of Article 6, Section 9 of the Constitution of North Carolina. (1951, c. 1016, s. 10; 1975, c. 734, ss. 14, 16; 1977, c. 848, s. 2; 1979, 2nd Sess., c. 1310, s. 2; 1995, c. 509, s. 129.)

§ 166A-14. Immunity and exemption.

(a) All functions hereunder and all other activities relating to emergency management as provided for in this Chapter or elsewhere in the General Statutes are hereby declared to be governmental functions. Neither the State nor any political subdivision thereof, nor, except in cases of willful misconduct, gross negligence or bad faith, any emergency management worker, firm, partnership, association, or corporation complying with or reasonably attempting to comply with this Article or any order, rule or regulation promulgated pursuant to the provisions of this Article or pursuant to any ordinance relating to any emergency management measures enacted by any political subdivision of the State, shall be liable for the death of or injury to persons, or for damage to property as a result of any such activity.

(a1) The immunity provided to firms, partnerships, associations, or corporations, under subsection (a) of this section, is subject to all of the following conditions:

(1) The immunity applies only when the firm, partnership, association, or corporation is acting without compensation or with compensation limited to no more than actual expenses, and one of the following applies:

a. Emergency management services are provided at any place in this State during a state of disaster or state of emergency declared by the Governor pursuant to this Article or G.S. 14-288.15, and the services are provided under the direction and control of the Secretary of the Department of Crime Control and Public Safety pursuant to G.S. 166A-5, 166A-6, and 143B-476, or the Governor.

b. Emergency management services are provided during a local state of emergency declared pursuant to Article 36A of Chapter 14 of the General Statutes, and the services are provided under the direction and control of the governing body of any municipality under G.S. 14-288.12 and G.S. 166A-8, the governing body of any county under G.S. 14-288.13 and G.S. 166A-8, or the chair of any board of county commissioners under G.S. 14-288.14 and G.S. 166A-8.

c. The firm, partnership, association, or corporation is engaged in planning, preparation, training, or exercises with the Division of Emergency Management, the Division of Public Health, or the governing body of each county or municipality under G.S. 166A-7 and G.S. 166A-8 related to the performance of emergency management services or measures.

(2) The immunity shall not apply to any firm, partnership, association, or corporation, or to any employee or agent thereof, whose act or omission caused in whole or in part the actual or imminent disaster or emergency or whose act or omission necessitated emergency management measures.

(3) To the extent that any firm, partnership, association, or corporation has liability insurance, that firm, partnership, association, or corporation shall be deemed to have waived the immunity to the extent of the indemnification by insurance for its negligence. An insurer shall not under a contract of insurance exclude from liability coverage the acts or omissions of a firm, partnership, association, or corporation for which the firm, partnership, association, or corporation would only be liable to the extent indemnified by insurance as provided by this subdivision.

(b) The rights of any person to receive benefits to which the person would otherwise be entitled under this Article or under the Workers' Compensation Law or under any pension law, and the right of any such person to receive any benefits or compensation under any act of Congress shall not be affected by performance of emergency management functions.

(c) Any requirement for a license to practice any professional, mechanical or other skill shall not apply to any authorized emergency management worker who shall, in the course of performing the worker's duties as such, practice such professional, mechanical or other skill during a state of disaster.

(d) As used in this section, the term "emergency management worker" shall include any full or part-time paid, volunteer or auxiliary employee of this State or other states, territories, possessions or the District of Columbia, of the federal government or any neighboring country or of any political subdivision thereof or of any agency or organization performing emergency management services at any place in this State, subject to the order or control of or pursuant to a request of the State government or any political subdivision thereof. The term "emergency management worker" under this section shall also include any health care worker performing health care services as a member of a hospital-based or county-based State Medical Assistance Team designated by the North Carolina Office of Emergency Medical Services and any person performing emergency health care services under G.S. 90-12.2.

(e) Any emergency management worker, as defined in this section, performing emergency management services at any place in this State pursuant to agreements, compacts or arrangements for mutual aid and assistance to which the State or a political subdivision thereof is a party, shall possess the same powers, duties, immunities and privileges the person would ordinarily possess if performing duties in the State, or political subdivision thereof in which normally employed or rendering services. (1957, c. 950, s. 4; 1975, c. 734, s. 14; 1977, c. 848, s. 2; 1979, c. 714, s. 2; 1979, 2nd Sess., c. 1310, s. 2; 1995, c. 509, ss. 130, 131; 2002-179, s. 20(b); 2006-81, s. 1; 2008-200, s. 1; 2009-146, s. 2.)

Editor's Note. — Session Laws 2008-200, s. 2, provides: "This act is effective when it becomes law [August 8, 2008] and applies to any cause of action arising on or after that date and contract of insurance issued or renewed on or after that date."

Effect of Amendments. — Session Laws 2008-200, s. 1, effective August 8, 2008, inserted "firm, partnership, association, or corporation" in subsection (a); and added subsection (a1). For applicability, see Editor's note.

Session Laws 2009-146, s. 2, effective June 19, 2009, inserted "as provided for in this Chapter or elsewhere in the General Statutes" in the first sentence of subsection (a).

CASE NOTES

Finding That a State Employee Was Not Grossly Negligent. — Administratrix could not assert as a defense in a negligence action brought by accident victims that a finding by the N.C. Industrial Commission that the decedent, who was a member of the National Guard, was not grossly negligent precluded recovery under G.S. 166A-14 on grounds of res judicata and collateral estoppel; the decedent was giving the victims a ride in a National Guard vehicle he was operating while he was called upon to duty because of a declared state of emergency when an accident occurred. Gregory v. Penland, 179 N.C. App. 505, 634 S.E.2d 625, 2006 N.C. App. LEXIS 1981 (2006).

Applied in Pangburn v. Saad, 73 N.C. App. 336, 326 S.E.2d 365 (1985); Ray v. Lewis Hauling & Excavating, Inc., 145 N.C. App. 94, 549 S.E.2d 237, 2001 N.C. App. LEXIS 563 (2001).

Cited in Ward v. Long Beach Volunteer Rescue Squad, 151 N.C. App. 717, 568 S.E.2d 626, 2002 N.C. App. LEXIS 981 (2002).

OPINIONS OF ATTORNEY GENERAL

North Carolina Emergency Response Commission. — Members of the North Carolina Emergency Response Commission who are emergency management workers are protected from civil liability, except for gross negligence or intentional wrongdoing, while they perform emergency management functions. See Opinion of Attorney General to Eric Tolbert, Chairman, N.C. Emergency Response Commission, 2000 N.C. AG LEXIS 14 (9/6/2000).

§ 166A-15. No private liability.

Any person, firm or corporation owning or controlling real or personal property who, voluntarily or involuntarily, knowingly or unknowingly, with or without compensation, grants a license or privilege or otherwise permits or allows the designation or use of the whole or any part or parts of such real or personal property for the purpose of sheltering, protecting, safeguarding or aiding in any way persons shall, together with his successors in interest, if any, not be civilly liable for the death of or injury to any person or the loss of or damage to the property of any persons where such death, injury, loss or damage resulted from, through or because of the use of the said real or personal property for any of the above purposes. (1957, c. 950, s. 3; 1977, c. 848, s. 2.)

CASE NOTES

Applied in Ray v. Lewis Hauling & Excavating, Inc., 145 N.C. App. 94, 549 S.E.2d 237, 2001 N.C. App. LEXIS 563 (2001).

§ 166A-15.1. Civil liability of persons who willfully ignore a warning in a disaster.

(a) In a disaster as defined by G.S. 166A-4, a person who willfully ignores a warning regarding personal safety issued by a federal, State, or local law enforcement agency, emergency management agency, or other governmental agency responsible for emergency management under this Article is civilly liable for the cost of a rescue effort to any governmental agency or nonprofit agency cooperating with a governmental agency conducting a rescue on the endangered person's behalf if:

(1) The person ignores the warning, and: (i) engages in an activity or course of action that a reasonable person would not pursue, or (ii) fails to take a course of action that a reasonable person would pursue;

(2) As a result of ignoring the warning the person places himself or herself or another in danger; and

(3) A governmental rescue effort is undertaken on the endangered person's behalf. (1997-232, s. 1.)

Editor's Note. — This section, as enacted by Session Laws 1997-232, s. 1, contains no subsection (b).

§ 166A-16. Severability.

If any provision of this Article or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the Article which can be given effect without the invalid provision or application, and to this end the provisions of this Article are severable. (1977, c. 848, s. 2; 1995, c. 509, s. 132.)

§ 166A-17. Leave options for voluntary firefighters, rescue squad workers, and emergency medical service personnel called into service.

(a) A member of a volunteer fire department, rescue squad, or emergency medical services agency called into service of the State after a proclamation of a state of disaster by the Governor or by the General Assembly, or upon the activation of the State Emergency Response Team in response to a disaster or emergency, shall have the right to take leave without pay from his or her civilian employment. No member of a volunteer fire department, rescue squad, or emergency medical services agency shall be forced to use or exhaust his or her vacation or other accrued leave from his or her civilian employment for a period of active service. The choice of leave shall be solely within the discretion of the member.

(b) For the volunteer member to be entitled to take leave without pay pursuant to this section, his or her services shall be requested in writing by the Director of the Division of Emergency Management or by the head of a local Emergency Management Agency. The request shall be directed to the Chief of the member's volunteer fire department, rescue squad, or emergency medical services agency and a copy shall be provided to the member's employer. This section shall not apply to those members whose services have been certified by their employer to the Director of the Division of Emergency Management, or to the head of a local Emergency Management Agency, as essential to the employer's own on-going emergency or disaster relief activities.

(c) For purposes of this section, a disaster or emergency requiring the activation of the State Emergency Response Team means a disaster or emergency at Activation Level 2 or greater according to the North Carolina State Emergency Operations Plan of November 2002. Activation Level 2 requires the State Emergency Operations Center to be fully activated with 24-hour staffing from all State Emergency Response Team members.

(d) The Commissioner of Labor shall enforce the provisions of this section pursuant to Chapter 95 of the General Statutes. (2003-103, s. 1.)

§ 166A-18. Division of Forest Resources designated as emergency response agency.

The Division of Forest Resources of the Department of Environment and Natural Resources is designated an emergency response agency of the State of North Carolina for purposes of:

(1) Supporting the Division of Emergency Management of the Department of Crime Control and Public Safety in responding to all-risk incidents.

(2) Receipt of any applicable State or federal funding.
(3) Training of other State and local agencies in disaster and emergency management.
(4) Any other disaster and emergency response roles for which the Division has special training or qualifications. (2005-128, s. 1.)

Editor's Note. — The preamble to Session Laws 2005-128, provides: "Whereas, the Division of Forest Resources of the Department of Environment and Natural Resources is the lead emergency response agency in North Carolina for the suppression of wildland fires; and

"Whereas, the Division of Forest Resources plays a critical role in public safety through emergency response, assistance, and recovery; and

"Whereas, the Division of Forest Resources plays a key role in training other State and local agencies in the Incident Command System and the National Incident Management System; and

"Whereas, the Division of Forest Resources responds with trained and experienced personnel and equipment in support of the Division of Emergency Management of the Department of Crime Control and Public Safety during all-risk incidents; and

"Whereas, the Division of Forest Resources provides emergency response to county emergency operations centers during times of both nondeclared states of emergency and declared disasters; Now, therefore,"

§ 166A-19: Reserved for future codification purposes.

ARTICLE 2.

Hazardous Materials Emergency Response.

§ 166A-20. Title, purpose.

(a) This Article may be cited as the "North Carolina Hazardous Materials Emergency Response Act."

(b) The purpose of this Article is to establish a system of regional response to hazardous materials emergencies and terrorist incidents in the State to protect the health and safety of its citizens. (1993 (Reg. Sess., 1994), c. 769, s. 22.4(b); 2002-179, s. 21(a).)

Editor's Note. — Article 2 of this chapter was originally enacted by Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 22.4(b) as G.S. 166A-17 through 166A-25. The present section numbers in Article 2 have been assigned by the Revisor of Statutes.

§ 166A-21. Definitions.

As used in this Article:

(1) "Hazardous materials emergency response team" or "hazmat team" means an organized group of persons specially trained and equipped to respond to and control actual or potential leaks or spills of hazardous materials.
(2) "Hazardous material" means any material defined as a hazardous substance under 29 Code of Federal Regulations § 1910.120(a)(3).
(3) "Hazardous materials incident" or "hazardous materials emergency" means an uncontrolled release or threatened release of a hazardous substance requiring outside assistance by a local fire department or hazmat team to contain and control.
(4) "Regional response team" means a hazmat team under contract with the State to provide response to hazardous materials emergencies occurring outside the hazmat team's local jurisdiction at the direction of the Department of Crime Control and Public Safety, Division of Emergency Management.

(5) "Secretary" means the Secretary of the Department of Crime Control and Public Safety.
(6) "Technician-level entry capability" means the capacity of a hazmat team, in terms of training and equipment as specified in 29 Code of Federal Regulations § 1910.120, to respond to a hazardous materials incident requiring affirmative measures, such as patching, plugging, or other action necessary to stop and contain the release of a hazardous substance at its source.
(7) "Terrorist incident" means activities that occur within the territorial jurisdiction of the United States, involve acts dangerous to human life that are a violation of the criminal laws of the United States or of any state, and are intended to do one of the following:
  a. Intimidate or coerce a civilian population.
  b. Influence the policy of a government by intimidation or coercion.
  c. Affect the conduct of a government by mass destruction, assassination, or kidnapping. (1993 (Reg. Sess., 1994), c. 769, s. 22.4(b); 1997-456, s. 27; 2002-179, s. 21(b).)

Editor's Note. — Subdivisions (a) to (f) of this section were renumbered as subdivisions (1) to (6) pursuant to Session Laws 1997-456, s. 27 which authorized the Revisor of Statutes to renumber or reletter sections and parts of sections having a number or letter designation that is incompatible with the General Assembly's computer database.

§ 166A-22. Hazardous materials emergency response program.

(a) The Secretary shall adopt rules establishing a regional response program for hazardous materials emergencies and terrorist incidents, to be administered by the Division of Emergency Management. To the extent possible, the regional response program shall be coordinated with other emergency planning activities of the State. The regional response program shall include at least six hazmat teams located strategically across the State that are available to provide regional response to hazardous materials or terrorist incidents requiring technician-level entry capability and 24-hour dispatch and communications capability at the Division of Emergency Management Operations Center. The rules for the program shall include:
(1) Standards, including training, equipment, and personnel standards required to operate a regional response team with technician-level entry capability.
(2) Guidelines for the dispatch of a regional response team to a hazardous materials or terrorist incident.
(3) Guidelines for the on-site operations of a regional response team.
(4) Standards for administration of a regional response team, including procedures for reimbursement of response costs.
(5) Refresher and specialist training for members of regional response teams.
(6) Procedures for recovering the costs of a response to a hazardous materials or terrorist incident from persons determined to be responsible for the emergency.
(7) Procedures for bidding and contracting for the provision of a hazmat team for the regional response program.
(8) Criteria for evaluating bids for the provision of a hazmat team for regional response.
(9) Delineation of the roles of the regional response team, local fire department and local public safety personnel, the Division of Emergency Management's area coordinator, and other State agency per-

sonnel responding to the scene of a hazardous materials or terrorist incident.

(b) In developing the program and adopting rules, the Secretary shall consult with the Regional Response Team Advisory Committee established pursuant to G.S. 166A-24. (1993 (Reg. Sess., 1994), c. 769, s. 22.4(b); 2002-179, s. 21(c).)

§ 166A-23. Contracts; equipment loans.

(a) The Secretary may contract with any unit or units of local government for the provision of a regional response team to implement the regional response program. Contracts are to be let consistent with the bidding and contract standards and procedures adopted pursuant to G.S. 166A-22(a)(7) and (8). In entering into contracts with units of local government, the Secretary may agree to provide:

(1) A loan of equipment, including a hazmat vehicle, necessary for the provision technician-level entry capability;

(2) Reimbursement of personnel costs when a regional response team is authorized by the Department to respond to a hazmat or terrorist incident, including the cost of call-back personnel;

(3) Reimbursement for use of equipment and vehicles owned by the regional response team;

(4) Replacement of disposable materials and damaged equipment;

(5) Costs of medical surveillance for members of the regional response team, including baseline, maintenance, and exit physicals;

(6) Training expenses; and

(7) Other provisions agreed to by the Secretary and the regional response team.

(b) The Secretary shall not agree to provide reimbursement for:

(1) Costs of clean-up activities, after a spill or leak has been contained;

(2) Local response not requiring technician-level entry capability; or

(3) Standby time.

(c) Any contract entered into between the Secretary and a unit of local government for the provision of a regional response team shall specify that the members of the regional response team, when performing their duties under the contract, shall not be employees of the State and shall not be entitled to benefits under the Teachers' and State Employees' Retirement System or for the payment by the State of federal social security, employment insurance, or workers' compensation.

(d) Regional response teams that have the use of a State hazmat vehicle may use the vehicle for local purposes. Where a State vehicle is used for purposes other than authorized regional response to a hazardous materials or terrorist incident, the regional response team shall be liable for repairs or replacements directly attributable to the nonauthorized response. (1993 (Reg. Sess., 1994), c. 769, s. 22.4(b); 2002-179, s. 21(d).)

§ 166A-24. Immunity of Regional Response Team Personnel.

Members of a regional response team shall be protected from liability under the provisions of G.S. 166A-14(a) while responding to a hazardous materials or terrorist incident pursuant to authorization from the Division of Emergency Management. (1993 (Reg. Sess., 1994), c. 769, s. 22.4(b); 2002-179, s. 21(e).)

§ 166A-25. Right of entry.

A regional response team, when authorized to respond to a release or threatened release of hazardous materials or when authorized to respond to a terrorist or threatened or imminent terrorist incident, may enter onto any private or public property on which the release or terrorist incident has occurred or on which there is an imminent threat of such release or terrorist incident. A regional response team may also enter, under such circumstances, any adjacent or surrounding property in order to respond to the release or threatened release of hazardous material or to monitor, control, and contain the release or perform any other action in mitigation of a hazardous materials or terrorist incident. (1993 (Reg. Sess., 1994), c. 769, s. 22.4(b); 2002-179, s. 21(f).)

§ 166A-26. Regional Response Team Advisory Committee.

(a) The Regional Response Team Advisory Committee is created. The Secretary shall appoint the members of the Committee and shall designate the chair. In making appointments, the Secretary shall take into consideration the expertise of the appointees in the management of hazardous materials emergencies. The Secretary shall appoint one representative from:

(1) The Division of Emergency Management;
(2) The North Carolina Highway Patrol;
(3) The State Fire and Rescue Commission of the Department of Insurance;
(4) The Department of Environment and Natural Resources;
(5) The Department of Transportation;
(6) The Department of Agriculture and Consumer Services;
(7) The Chemical Industry Council of North Carolina;
(8) The N.C. Association of Hazardous Materials Responders;
(9) Each regional response team;
(10) The State Bureau of Investigation.

In addition to the persons listed above, the Secretary shall appoint to the Advisory Committee three persons designated jointly by the North Carolina Fire Chiefs Association and the North Carolina State Firemen's Association.

(b) The Advisory Committee shall meet on the call of the chair, or at the request of the Secretary; provided that the Committee shall meet no less than once every three months. The Department of Crime Control and Public Safety shall provide space for the Advisory Committee to meet. The Department also shall provide the Advisory Committee with necessary support staff and supplies to enable the Committee to carry out its duties in an effective manner.

(c) Members of the Advisory Committee shall serve without pay, but shall receive travel allowance, lodging, subsistence, and per diem as provided by G.S. 138-5.

(d) The Regional Response Team Advisory Committee shall advise the Secretary on the establishment of the program for regional response to hazardous materials emergencies in the State. The Committee shall also evaluate and advise the Secretary of the need for additional regional response teams to serve the State. (1993 (Reg. Sess., 1994), c. 769, s. 22.4(b); 1997-261, s. 108; 1997-443, s. 11A.123; 2002-179, s. 21(g).)

§ 166A-27. Action for the recovery of costs of hazardous materials emergency response.

(a) A person who causes the release of a hazardous material requiring the activation of a regional response team shall be liable for all reasonable costs incurred by the regional response team in responding to and mitigating the incident. The Secretary shall invoice the person liable for the hazardous materials release, and, in the event of nonpayment, may institute an action to recover those costs in the superior court of the county in which the release occurred.

(b) A person who causes the release of a hazardous material that results in the activation of one or more State Medical Assistance Teams (SMATs) or the Epidemiology Section of the Division of Public Health of the Department of Health and Human Services shall be liable for all reasonable costs incurred by each team or the Epidemiology Section that responds to or mitigates the incident. The Secretary of Health and Human Services shall invoice the person liable for the hazardous materials release and, in the event of nonpayment, may institute an action to recover those costs in the superior court of the county in which the release occurred. (1993 (Reg. Sess., 1994), c. 769, s. 22.4(b); 2007-107, s. 3.1(a).)

Editor's Note. — Session Laws 2007-107, s. 3.1(a), which designated the previously existing provisions of this section as subsection (a) and added subsection (b), effective June 26, 2007, was made applicable to civil actions filed on or after that date.

Session Laws 2007-107, s. 4.2(a), provides: "The Department of Crime Control and Public Safety and the Department of Health and Human Services shall jointly identify and evaluate sources of permanent funding for State Medical Assistance Teams in light of the uncertain future availability of federal and local funding. The Department shall jointly report its findings and recommendations, including any legislative proposals, to the Fiscal Research Division on or before 1 January 2008."

Session Laws 2007-107, s. 6.2, contains a severability clause.

§ 166A-28. Hazardous Materials Emergency Response Fund.

There is established in the Department of Crime Control and Public Safety a fund for those monies collected pursuant to G.S. 166A-27. The Fund is also authorized to accept any gift, grant, or donation of money or property to facilitate the establishment and operation of the regional response system. (1993 (Reg. Sess., 1994), c. 769, s. 22.4(b).)

§ 166A-29: Reserved for future codification purposes.

Article 3.

Disaster Service Volunteer Leave Act.

§ 166A-30. Short title.

This act may be cited as the Disaster Service Volunteer Leave Act. (1993, c. 13, s. 1.)

§ 166A-31. Definitions.

As used in this Article:

(1) "Certified disaster service volunteer" means a person who has completed the necessary training for and been certified as a disaster service specialist by the American National Red Cross.

(2) "Disaster" means a disaster designated at Level III or higher in the American National Red Cross Regulations and Procedures.

(3) "State agency" means and includes all departments, institutions, commissions, committees, boards, divisions, bureaus, officers, and officials of the State, including those within the legislative and judicial branches of State government. (1993, c. 13, s. 1.)

Editor's Note. — The definitions in this section have been placed in alphabetical order at the direction of the Revisor of Statutes. The subdivisions of this section were enacted as subdivisions (a) to (c) by Session Laws 1993, c. 13, s. 1, and redesignated as subdivisions (1) to (3) at the direction of the Revisor of Statutes.

§ 166A-32. Disaster service volunteer leave.

An employee of a State agency who is a disaster service volunteer of the American Red Cross may be granted leave from his work with pay for a time not to exceed 15 work days in any 12-month period to participate in specialized disaster relief services for the American Red Cross. To be granted leave, the request for the services of that employee must come from the American Red Cross. The decision to grant the employee leave rests in the sole discretion of the employing State agency based on the work needs of that agency. Employees granted leave pursuant to this Article shall not lose seniority, pay, vacation time, sick time, or earned overtime accumulation. The State agency shall compensate an employee granted leave under this Article at the regular rate of pay for those regular work hours during which the employee is absent from his work. Leave under this Article shall be granted only for services related to a disaster occurring within the United States.

The State of North Carolina shall not be liable for workers compensation claims arising from accident or injury while the State employee is on assignment as a disaster service volunteer for the American Red Cross. Duties performed while on disaster leave shall not be considered to be a work assignment by a state agency. The employee is granted leave based on the need for the employee's area of expertise. Job functions although similar or related are performed on behalf of and for the benefit of the American Red Cross. (1993, c. 13, s. 1; 2001-508, s. 6.)

§§ 166A-33 through 166A-39: Reserved for future codification purposes.

ARTICLE 4.

Emergency Management Assistance Compact.

§ 166A-40. Title of Article; entering into Compact.

(a) This Article may be cited as the Emergency Management Assistance Compact.

(b) The Emergency Management Assistance Compact, hereinafter "Compact", is hereby enacted into law and entered into by this State with all other states legally joining therein, in the form substantially as set forth in this Article. This Compact is made and entered into by and between the party states which enact this Compact. For the purposes of this Article, the term "states" means the several states, the Commonwealth of Puerto Rico, the District of Columbia, and all United States territorial possessions and the term "party states" means the participating member states which enact and enter into this Compact. (1997-152, s. 1.)

Editor's Note. — The sections in this Article have been renumbered as G.S. 166A-40 to 166A-53 at the direction of the Revisor of Statutes, the section numbers in Session Laws 1997-152, s. 1, having been G.S. 166A-34 to 166A-47.

§ 166A-41. Purposes and authorities.

(a) The purpose of this Compact is to provide for mutual assistance between the party states in managing any emergency or disaster that is duly declared by the governor of the affected state or states, whether arising from natural disaster, technological hazard, man-made disaster, civil emergency aspects of resources shortages, community disorders, insurgency, or enemy attack.

(b) This Compact shall also provide for mutual cooperation in emergency-related exercises, testing, or other training activities using equipment and personnel simulating performance of any aspect of the giving and receiving of aid by party states or subdivisions of party states during emergencies, such actions occurring outside actual declared emergency periods. Mutual assistance in this Compact may include the use of the states' National Guard forces, either in accordance with the National Guard Mutual Assistance Compact or by mutual agreement between states. (1997-152, s. 1; 2009-281, s. 1.)

Effect of Amendments. — Session Laws 2009-281, s. 1, effective July 10, 2009, substituted "National Guard" for "national guard" in the last sentence of subsection (b).

§ 166A-42. General implementation.

(a) Each party state recognizes that many emergencies transcend political jurisdictional boundaries and that intergovernmental coordination is essential in managing these and other emergencies under this Compact. Each party state further recognizes that there will be emergencies that require immediate access and present procedures to apply outside resources to respond to emergencies effectively and promptly. This is because few, if any, individual states have all the resources that they may need in all types of emergencies or the capability of delivering resources to areas where emergencies exist.

(b) The prompt, full, and effective utilization of resources of the participating states, including any resources on hand or available from the federal government or any other source, that are essential to the safety, care, and welfare of the people in the event of any emergency or disaster declared by a party state, shall be the underlying principle on which all articles of this Compact shall be understood.

(c) On behalf of the governor of each party state, the legally designated state official who is assigned responsibility for emergency management shall be responsible for formulation of the appropriate interstate mutual aid plans and procedures necessary to implement this Compact. (1997-152, s. 1.)

§ 166A-43. Party state responsibilities.

(a) It shall be the responsibility of each party state to formulate procedural plans and programs for interstate cooperation in the performance of the responsibilities listed in this Article. In formulating the plans, and in carrying them out, the party states, insofar as practicable, shall:

(1) Review individual state hazards analyses and, to the extent reasonably possible, determine all those potential emergencies the party state might jointly suffer, whether due to natural disaster, technological hazard, man-made disaster, emergency aspects of resource shortages, civil disorders, insurgency, or enemy attack.

(2) Review the party states' individual emergency plans and develop a plan that will determine the mechanism for the interstate management and provision of assistance concerning any potential emergency.

(3) Develop interstate procedures to fill any identified gaps and to resolve any identified inconsistencies or overlaps in existing or developed plans.

(4) Assist in warning communities adjacent to or crossing the state boundaries.
(5) Protect and assure uninterrupted delivery of services, medicines, water, food, energy and fuel, search and rescue, and critical lifeline equipment services, and resources, both human and material.
(6) Inventory and set procedures for the interstate loan and delivery of human and material resources, together with procedures for reimbursement or forgiveness.
(7) Provide, to the extent authorized by law, for temporary suspension of any statutes or ordinances that restrict the implementation of the above responsibilities.

(b) The authorized representative of a party state may request assistance of another party state by contacting the authorized representative of that state. The provisions of this Compact shall only apply to requests for assistance made by and to authorized representatives. Requests may be verbal or in writing. If verbal, the request shall be confirmed in writing within 30 days of the verbal request. Requests shall provide the following information:

(1) A description of the emergency service function for which assistance is needed, including fire services, law enforcement, emergency medical, transportation, communications, public works and engineering, building inspection, planning and information assistance, mass care, resource support, health and medical services, and search and rescue.
(2) The amount and type of personnel, equipment, materials and supplies needed, and a reasonable estimate of the length of time they will be needed.
(3) The specific place and time for staging of the assisting party's response and a point of contact at that location.

(c) There shall be frequent consultation between state officials who have assigned emergency management responsibilities and other appropriate representatives of the party states with affected jurisdictions and the federal government, with free exchange of information, plans, and resource records relating to emergency capabilities. (1997-152, s. 1.)

§ 166A-44. Limitations.

(a) Any party state requested to render mutual aid or conduct exercises and training for mutual aid shall take such action as is necessary to provide and make available the resources covered by this Compact in accordance with the terms hereof; provided that the state rendering aid may withhold resources to the extent necessary to provide reasonable protection for such state.

(b) Each party state shall afford to the emergency forces of any party state while operating within its state limits under the terms and conditions of this Compact, the same powers (except that of arrest unless specifically authorized by the receiving state), duties, rights, and privileges as are afforded forces of the state in which they are performing emergency services. Emergency forces will continue under the command and control of their regular leaders, but the organizational units will come under the operational control of the emergency services authorities of the state receiving assistance. These conditions may be activated, as needed, only subsequent to a declaration of a state of emergency or disaster by the governor of the party state that is to receive assistance or commencement of exercises or training for mutual aid and shall continue so long as the exercises or training for mutual aid are in progress, the state of emergency or disaster remains in effect, or loaned resources remain in the receiving state or states, whichever is longer. (1997-152, s. 1.)

§ 166A-45. Licenses and permits.

Whenever any person holds a license, certificate, or other permit issued by any party state evidencing the meeting of qualifications for professional, mechanical, or other skills, and when assistance is requested by the receiving party state, the person shall be deemed licensed, certified, or permitted by the state requesting assistance to render aid involving skill to meet a declared emergency or disaster, subject to any limitations and conditions the governor of the requesting state may prescribe by executive order or otherwise. (1997-152, s. 1.)

§ 166A-46. Liability.

Officers or employees of a party state rendering aid in another state pursuant to this Compact shall be considered agents of the requesting state for tort liability and immunity purposes; and no party state or its officers or employees rendering aid in another state pursuant to this Compact shall be liable for any act or omission occurring as a result of a good faith attempt to render aid or as a result of the use of any equipment or supplies used in connection with an attempt to render aid. For the purposes of this Article, "good faith" does not include willful misconduct, gross negligence, or recklessness. (1997-152, s. 1; 2007-484, s. 24.)

§ 166A-47. Supplementary agreements.

Inasmuch as it is probable that the pattern and detail of the machinery for mutual aid among two or more states may differ from that among the states that are party hereto, this instrument contains elements of a broad base common to all states, and nothing herein contained shall preclude any state from entering into supplementary agreements with another state or affect any other agreements already in force between states. Supplementary agreements may comprehend, but shall not be limited to, provisions for evacuation and reception of injured and other persons and the exchange of medical, fire, police, public utility, reconnaissance, welfare, transportation and communications personnel, and equipment and supplies. (1997-152, s. 1.)

§ 166A-48. Compensation.

Each party state shall provide for the payment of compensation and death benefits to injured members of the emergency forces of that state and representatives of deceased members of the forces in case the members sustain injuries or are killed while rendering aid pursuant to this Compact, in the same manner and on the same terms as if the injury or death were sustained within their own state. (1997-152, s. 1.)

§ 166A-49. Reimbursement.

Any party state rendering aid in another state pursuant to this Compact shall be reimbursed by the party state receiving the aid for any loss or damage to or expense incurred in the operation of any equipment and the provision of any service in answering a request for aid and for the costs incurred in connection with the requests; provided, that any aiding party state may assume in whole or in part the loss, damage, expense, or other cost, or may loan the equipment or donate the services to the receiving party state without charge or cost; and provided further, that any two or more party states may enter into supplementary agreements establishing a different allocation of costs among those states. (1997-152, s. 1.)

§ 166A-50. Evacuation.

Plans for the orderly evacuation and interstate reception of portions of the civilian population as the result of any emergency or disaster of sufficient proportions to so warrant shall be worked out and maintained between the party states and the emergency management or services directors of the various jurisdictions where any type of incident requiring evacuations might occur. Plans shall be put into effect by request of the state from which evacuees come and shall include the manner of transporting the evacuees, the number of evacuees to be received in different areas, the manner in which food, clothing, housing, and medical care will be provided, the registration of the evacuees, the providing of facilities for the notification of relatives or friends, and the forwarding of the evacuees to other areas or the bringing in of additional materials, supplies, and all other relevant factors. The plans shall provide that the party state receiving evacuees and the party state from which the evacuees come shall mutually agree as to reimbursement of out-of-pocket expenses incurred in receiving and caring for evacuees, for expenditures for transportation, food, clothing, medicines and medical care, and like items. The expenditures shall be reimbursed as agreed by the party state from which the evacuees come and that party state shall assume the responsibility for the ultimate support of repatriation of the evacuees. (1997-152, s. 1.)

§ 166A-51. Effective date.

(a) This Compact shall become operative immediately upon its enactment into law by any two states; thereafter, this Compact shall become effective as to any other state upon its enactment by the state.

(b) Any party state may withdraw from this Compact by enacting a statute repealing the same, but no withdrawal shall take effect until 30 days after the governor of the withdrawing state has given notice in writing of the withdrawal to the governors of all other party states. The action shall not relieve the withdrawing state from obligations assumed hereunder prior to the effective date of withdrawal.

(c) Duly authenticated copies of this Compact and of any supplementary agreements as may be entered into shall, at the time of their approval, be deposited with each of the party states and with the Federal Emergency Management Agency and other appropriate agencies of the federal government. (1997-152, s. 1.)

§ 166A-52. Validity.

If any provision of this Compact is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of this act and the applicability thereof to other persons and circumstances shall not be affected thereby. (1997-152, s. 1.)

§ 166A-53. Additional provisions.

Nothing in this Compact shall authorize or permit the use of military force by the National Guard of a state at any place outside that state in any emergency for which the President is authorized by law to call into federal service the militia, or for any purpose for which the use of the Army or the Air Force would in the absence of express statutory authorization be prohibited under section 1385 of Title 18, United States Code. (1997-152, s. 1; 2009-281, s. 1.)

Effect of Amendments. — Session Laws 2009-281, s. 1, effective July 10, 2009, substituted "National Guard" for "national guard" in this section.

CASE NOTES

Cited in Gregory v. Penland, 179 N.C. App. 505, 634 S.E.2d 625, 2006 N.C. App. LEXIS 1981 (2006).

§§ 166A-54 through 166A-59: Reserved for future codification purposes.

Article 5.

Emergency Management Certification Program.

§ 166A-60. Emergency Management Certification Program authority; purpose.

The Division of Emergency Management in the Department of Crime Control and Public Safety shall establish, as a voluntary program, an Emergency Management Certification Program as provided for in this Article. The purpose of the Program is to strengthen and enhance the professional competencies of emergency management personnel in State and local emergency management agencies. (2009-192, s. 2.)

Editor's Note. — Session Laws 2009-192, s. 3, made this Article effective June 26, 2009. Session Laws 2009-192, s. 2, enacted this section as G.S. 166A-54. It has been renumbered as this section at the direction of the Revisor of Statutes.

§ 166A-61. Program standards and guidelines.

(a) The Division shall establish standards and guidelines for administration of the Program, including:

(1) Minimum educational and training standards that must be met in order to qualify for Type IV (entry), Type III (basic), Type II (intermediate), and Type I (advanced) emergency management certification.

(2) Levels of education or equivalent experience that may be met in order to qualify for the certifications provided for in subdivision (1) of this subsection.

(3) Levels of education or equivalent experience for instructors who participate in programs or courses of instruction.

(4) Curricula, syllabi, and other educational materials.

(5) Mode(s) of delivery of educational and training programs.

(b) In developing the Program, the Division may consult and cooperate with political subdivisions, agencies of the State, other governmental agencies, universities, colleges, community colleges, and other institutions, public or private, concerning the development of the Program and a systematic career development plan, including conducting and stimulating research by public and private agencies designed to improve education and training in the administration of emergency management.

(c) The Division shall study and make reports and recommendations to the Secretary of Crime Control and Public Safety and other appropriate agencies and officials concerning compliance with federal guidance, training, educational, technical assistance needs, and equipment needs of State and local emergency management agencies. (2009-192, s. 2.)

Editor's Note. — Session Laws 2009-192, s. 2, enacted this section as G.S. 166A-55. It has been renumbered as this section at the direction of the Revisor of Statutes.

§ 166A-62. Emergency Management Training and Standards Advisory Board.

(a) The Secretary of Crime Control and Public Safety shall establish and appoint the Emergency Management Training and Standards Advisory Board to provide oversight of training and certification programs established pursuant to this Article.

(b) The composition of the Board shall include emergency management subject matter experts representative of the State, its political subdivisions, and private industry.

(c) The duties of the Board shall include:

(1) Oversight of the Emergency Management Certification Program.

(2) Review of applications for certification.

(3) Issuance of certifications at least semiannually.

(d) The Board shall meet at least semiannually and at other times at the discretion of the Secretary. (2009-192, s. 2.)

Editor's Note. — Session Laws 2009-192, s. 2, enacted this section as G.S. 166A-56. It has been renumbered as this section at the direction of the Revisor of Statutes.

§ 166A-63. Issuance of certification; reciprocity; renewal.

(a) The Emergency Management Training and Standards Advisory Board shall issue documentation of certification, in a form and manner prescribed by the Division, to each applicant within North Carolina demonstrating successful completion of the requirements for the level of certification sought by the applicant.

(b) The Board may issue documentation of certification to any person in another state or territory if the person's qualifications were, at the date of registration or certification, substantially equivalent to the requirements established pursuant to this Article.

(c) Every person certified pursuant to this Article who desires to maintain certification shall apply for renewal of certification within five years of the date of original certification or certification renewal.

(d) Renewal of Type I (advanced) certification is subject to completion of at least 24 hours of continuing education requirements as established by the Board.

(e) A certification that is not renewed in accordance with this section automatically expires. The Board may approve reinstatement of an expired certification upon good cause shown by the applicant.

(f) Certifications that have been expired for more than five years shall not be reinstated. (2009-192, s. 2.)

Editor's Note. — Session Laws 2009-192, s. 2, enacted this section as G.S. 166A-57. It has been renumbered as this section at the direction of the Revisor of Statutes.

Chapter 167.

State Civil Air Patrol.

§§ 167-1 through 167-3: Repealed by Session Laws 1973, c. 620, s. 9.

Cross References. — As to transfer of the State Civil Air Patrol to the Department of Crime Control and Public Safety, see G.S. 143B-475. As to the State Civil Air Patrol generally, see G.S. 143B-490 through 143B-492.

Editor's Note. — Sections 167-1 and 167-3 were repealed by Session Laws 1973, c. 620, s. 9. Section 167-2 was repealed by Session Laws 1979, c. 516, s. 6.

Board, technical assistance and development needs of State and local emergency management agencies. (2009-192, s. 2.)

Editor's Note. — Session Laws 2009-192, s. 2, enacted this section as G.S. 166A-55. It has been renumbered as this section at the direction of the Revisor of Statutes.

§ 166A-68. Emergency Management Training and Standards Advisory Board.

(a) The Secretary of Crime Control and Public Safety shall appoint the Emergency Management Training and Standards Advisory Board to provide oversight of training and certification programs established pursuant to this Article.

(b) The composition of the Board shall include emergency management subject matter experts representative of the State, its political subdivisions, and private industry.

(c) The duties of the Board shall include:

(1) Oversight of the Emergency Management Certification Program.

(2) Review of applications for certification.

(3) Issuance of certifications at least semiannually.

(d) The Board shall meet at least semiannually and at other times at the discretion of the Secretary. (2009-192, s. 2.)

Editor's Note. — Session Laws 2009-192, s. 2, enacted this section as G.S. 166A-56. It has been renumbered as this section at the direction of the Revisor of Statutes.

§ 166A-69. Issuance of certification; reciprocity; renewal.

(a) The Emergency Management Training and Standards Advisory Board shall issue documentation of certification, in a form and manner prescribed by the Division, to each applicant within North Carolina demonstrating successful completion of the requirements for the level of certification sought by the applicant.

(b) The Board may issue documentation of certification to any person in another state or territory if the person's qualifications were, at the date of certification or recertification, substantially equivalent to the requirements established pursuant to this Article.

(c) Every person certified pursuant to this Article who desires to maintain certification shall apply for renewal of certification within five years of the date of original certification or certification renewal.

(d) Renewal of Type I (advanced) certification is subject to completion of at least 24 hours of continuing education requirements as established by the Board.

(e) A certification that is not renewed in accordance with this section automatically expires. The Board may approve reinstatement of an expired certification upon good cause shown by the applicant.

(f) Certifications that have been expired for more than five years shall not be reinstated. (2009-192, s. 2.)

Editor's Note. — Session Laws 2009-192, s. 2, enacted this section as G.S. 166A-57. It has been renumbered as this section at the direction of the Revisor of Statutes.

Chapter 168.
Persons with Disabilities.

Article 1.
Rights.

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168-1. Purpose and definition.
168-2. Right of access to and use of public places.
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168-4, 168-4.1. [Repealed.]
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168-4.5. Penalty.
168-4.6. Donation of dogs for training.
168-5. [Repealed.]
168-6 through 168-7.1. [Repealed.]
168-8. Right to habilitation and rehabilitation services.

Sec.

168-9. Right to housing.
168-10. Eliminate discrimination in treatment of persons with disabilities.
168-11 through 168-13. [Reserved.]

Article 2.
Vocational Rehabilitation.

168-14. Vocational rehabilitation services for deaf persons.
168-15 through 168-19. [Reserved.]

Article 3.
Family Care Homes.

168-20. Public policy.
168-21. Definitions.
168-22. Family care home; zoning and other purposes.
168-23. Certain private agreements void.

ARTICLE 1.
Rights.

§ 168-1. Purpose and definition.

The State shall encourage and enable persons with disabilities to participate fully in the social and economic life of the State and to engage in remunerative employment. For purposes of this Article, the term "person with a disability" shall have the same meaning as set forth in G.S. 168A-3(7a). (1973, c. 493, s. 1; 2000-121, s. 33; 2005-450, s. 1.)

Editor's Note. — Session Laws 2008-83, s. 2, provides: "The UNC-CH Division TEACCH Autism Program (TEACCH), in consultation with the School of Government and the Autism Society of NC, shall develop a video to raise awareness of autism for those involved in government and public service, including information on recognizing the signs and symptoms of autism spectrum disorders, and contacts for further information on appropriate responses to individuals with autism."

Session Laws 2009-264, s. 1, provides: "It is the intent of the General Assembly to refer to a person with a disability as a person first when directing the drafting of statutes and resolutions. The Legislative Services Office shall incorporate into its drafting training of legislative drafters the preference to avoid language that implies a person as a whole is disabled, equates a person with his or her condition, or is regarded as derogatory or demeaning. The Arc of North Carolina shall provide a list of nationally recognized descriptors to the Legislative Services Office to be used in this training."

Session Laws 2009-264, s. 2, provides: "The General Statutes Commission shall recommend to the 2010 reconvened session of the 2009 General Assembly and to the 2011 Regular Session of the General Assembly any statutory changes and drafting policies needed to make the General Statutes and administrative rules refer to a person with a disability as a person first. The goal of such revisions shall be to avoid language that implies a person as a whole is disabled, equates a person with his or her condition, or is regarded as derogatory or demeaning. In making recommendations, the General Statutes Commission shall distinguish those instances where a word or phrase is required by federal law or regulation, is describing a medical diagnosis, or is referring to nonliving entities such as facilities, organizations, programs, services, or zone designations."

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"The Committee shall study ways to increase the availability of appropriate autism-specific education and training to public safety personnel, first responder units, judges, district attorneys, magistrates, and related organizations. The Committee may also study any other issue it deems relevant to Autism Spectrum Disorder and public safety.

"The Committee shall meet upon the call of its co-chairs. A quorum of the Committee is a majority of its members. No action may be taken except by a majority vote at a meeting at which a quorum is present.

"The Committee, while in the discharge of its official duties, may exercise all powers provided for under G.S. 120-19 and Article 5A of Chapter 120 of the General Statutes. The Committee may contract for professional, clerical, or consultant services, as provided by G.S. 120-32.02.

"Members of the Committee shall receive per diem, subsistence, and travel allowance as provided in G.S. 120-3.1, and G.S. 138-5 and G.S. 138-6, as appropriate.

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Session Laws 2009-451, s. 28.5 is a severability clause.

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

For comment on exclusionary zoning of community facilities, see 12 N.C. Cent. L.J. 167 (1980).

For note on employment discrimination against the handicapped, see 16 Wake Forest L. Rev. 836 (1980).

For note on AIDS and employment discrimination, see 23 Wake Forest L. Rev. 305 (1988).

CASE NOTES

Legislative Intent. — The legislature intended to grant broad protection of basic rights to all persons with any type of disability, and additionally sought to grant particular protection to an especially disabled group, the "visually handicapped." Burgess v. Joseph Schlitz Brewing Co., 39 N.C. App. 481, 250 S.E.2d 687, rev'd on other grounds, 298 N.C. 520, 259 S.E.2d 248 (1979).

Liberal Construction. — This Chapter is remedial statute, and should be construed broadly rather than narrowly to achieve its purposes. Burgess v. Joseph Schlitz Brewing Co., 298 N.C. 520, 259 S.E.2d 248 (1979).

Disability, in the context of this Chapter, is a present, noncorrectable loss of function which substantially impairs a person's ability to function normally. Pressman v. UNC, 78 N.C. App. 296, 337 S.E.2d 644 (1985).

Application of Term "Visually Handicapped". — The General Assembly did not intend the narrow definition of "visually handicapped" in G.S. 111-11 to control the meaning of the term "visual disabilities" in this section; rather, the General Assembly intended that the definition in G.S. 111-11 would apply only when the specific term "visually handicapped" was used. Burgess v. Joseph Schlitz Brewing Co., 298 N.C. 520, 259 S.E.2d 248 (1979).

The term "visual disability," as used in this section, includes as its most serious gradation the "visually handicapped" as defined in G.S. 111-11, but also includes person with visual impairments less serious than those encompassed by the term "visually handicapped." Burgess v. Joseph Schlitz Brewing Co., 39 N.C. App. 481, 250 S.E.2d 687, rev'd on other grounds, 298 N.C. 520, 259 S.E.2d 248 (1979).

Person who has eye disease but whose vision is functioning normally with glasses is not visually disabled within the meaning of this section, and thus is not a "handicapped person" who is granted a right of employment by G.S. 168-6. Burgess v. Joseph Schlitz Brewing Co., 298 N.C. 520, 259 S.E.2d 248 (1979).

People Irritated by Tobacco Smoke. — It is manifestly clear that the legislature did not intend to include within the meaning of "handicapped persons" those people with "any pulmonary problem," however minor, nor all people who are harmed or irritated by tobacco smoke. GASP v. Mecklenburg County, 42 N.C. App. 225, 256 S.E.2d 477 (1979).

A person suffering from occasional episodes of stress, depression and mental exhaustion is not a "handicapped person," as defined by Chapter 168, suffering from a mental disability. Pressman v. UNC, 78 N.C. App. 296, 337 S.E.2d 644 (1985).

Cited in Thomas S. v. Morrow, 601 F. Supp. 1055 (W.D.N.C. 1984); Stroud v. Harrison, 131 N.C. App. 480, 508 S.E.2d 527 (1998).

OPINIONS OF ATTORNEY GENERAL

Criminal and Civil Enforcement of Chapter. — This Chapter can be criminally enforced even though no criminal penalty is prescribed, and can be civilly enforced even though no specific civil remedy is prescribed. See opinion of Attorney General to Honorable James B. Hunt, 45 N.C.A.G. 131 (1975).

§ 168-2. Right of access to and use of public places.

Persons with disabilities have the same right as persons without disabilities to the full and free use of the streets, highways, sidewalks, walkways, public buildings, public facilities, and all other buildings and facilities, both publicly and privately owned, which serve the public. The Department of Health and Human Services shall develop, print, and promote the publication ACCESS NORTH CAROLINA. It shall make copies of the publication available to the Department of Commerce for its use in Welcome Centers and other appropriate Department of Commerce offices. The Department of Commerce shall promote ACCESS NORTH CAROLINA in its publications (including providing a toll-free telephone line and an address for requesting copies of the publication) and provide technical assistance to the Department of Health and Human Services on travel attractions to be included in ACCESS NORTH CAROLINA. The Department of Commerce shall forward all requests for mailing ACCESS NORTH CAROLINA to the Department of Health and Human Services. (1973, c. 493, s. 1; 1991, c. 672, s. 4; c. 726, s. 23; 1991 (Reg. Sess., 1992), c. 959, s. 84; 1997-443, s. 11A.118(a); 2004-203, s. 61; 2005-450, s. 1.)

CASE NOTES

Application of Term "Visually Handicapped". — The General Assembly did not intend the narrow definition of "visually handicapped" in G.S. 111-11 to control the meaning of the term "visual disabilities" in G.S. 168-1; rather, the General Assembly intended that the definition in G.S. 111-11 would apply only when the specific term "visually handicapped" was used. Burgess v. Joseph Schlitz Brewing Co., 298 N.C. 520, 259 S.E.2d 248 (1979).

Cited in Graham v. City of Charlotte, 644 F. Supp. 246 (W.D.N.C. 1986); Ragan v. County of Alamance, 98 N.C. App. 636, 391 S.E.2d 825 (1990); Stroud v. Harrison, 131 N.C. App. 480, 508 S.E.2d 527 (1998).

§ 168-3. Right to use of public conveyances, accommodations, etc.

Persons with disabilities are entitled to accommodations, advantages, facilities, and privileges of all common carriers, airplanes, motor vehicles, railroad trains, motor buses, streetcars, boats, or any other public conveyances or modes of transportation; hotels, lodging places, places of public accommodation, amusement or resort to which the general public is invited, subject only to the conditions and limitations established by law and applicable alike to all persons. (1973, c. 493, s. 1; 2005-450, s. 1.)

CASE NOTES

Application of Term "Visually Handicapped". — The General Assembly did not intend the narrow definition of "visually handicapped" in G.S. 111-11 to control the meaning of the term "visual disabilities" in G.S. 168-1; rather, the General Assembly intended that the definition in G.S. 111-11 would apply only when the specific term "visually handicapped" was used. Burgess v. Joseph Schlitz Brewing Co., 298 N.C. 520, 259 S.E.2d 248 (1979).

Cited in Stroud v. Harrison, 131 N.C. App. 480, 508 S.E.2d 527 (1998).

§§ 168-4, 168-4.1: Repealed by Session Laws 1985, c. 514, s. 1.

Cross References. — As to assistance dogs for mobility impaired persons, visually impaired persons, and hearing impaired persons, see now G.S. 168-4.2 through 168-4.6.

§ 168-4.2. May be accompanied by service animal.

(a) Every person with a disability has the right to be accompanied by a service animal trained to assist the person with his or her specific disability in any of the places listed in G.S. 168-3, and has the right to keep the service animal on any premises the person leases, rents, or uses. The person qualifies for these rights upon the showing of a tag, issued by the Department of Health and Human Services, under G.S. 168-4.3, stamped "NORTH CAROLINA SERVICE ANIMAL PERMANENT REGISTRATION" and stamped with a registration number, or upon a showing that the animal is being trained or has been trained as a service animal. The service animal may accompany a person in any of the places listed in G.S. 168-3.

(b) An animal in training to become a service animal may be taken into any of the places listed in G.S. 168-3 for the purpose of training when the animal is accompanied by a person who is training the service animal and the animal wears a collar and leash, harness, or cape that identifies the animal as a service animal in training. The trainer shall be liable for any damage caused by the animal while using a public conveyance or on the premises of a public facility or other place listed in G.S. 168-3. (1985, c. 514, s. 1; 1987, c. 401, s. 1; 1995, c. 276, s. 1; 1997-443, s. 11A.118(a); 2004-203, s. 62(a); 2005-450, s. 1.)

CASE NOTES

Applied in Stroud v. Harrison, 131 N.C. App. 480, 508 S.E.2d 527 (1998).

§ 168-4.3. Training and registration of service animal.

The Department of Health and Human Services, shall adopt rules for the registration of service animals and shall issue registrations to a person with a disability who makes application for registration of an animal that serves as a service animal or to a person who is training an animal as a service animal.

The rules adopted regarding registration shall require that the animal be trained or be in training as a service animal. The rules shall provide that the certification and registration need not be renewed while the animal is serving or training with the person applying for the registration. No fee may be charged the person for the application, registration, tag, or replacement in the event the original is lost. The Department of Health and Human Services may, by rule, issue a certification or accept the certification issued by the appropriate training facilities. (1985, c. 514, s. 1; 1987, c. 401, s. 2; 1997-443, s. 11A.118(a); 2004-203, s. 62(b); 2005-450, s. 1.)

§ 168-4.4. Responsibility for service animal.

Neither a person with a disability who is accompanied by a service animal, nor a person who is training a service animal, may be required to pay any extra compensation for the animal. The person has all the responsibilities and liabilities placed on any person by any applicable law when that person owns or uses any animal, including liability for any damage done by the animal. (1985, c. 514, s. 1; 2004-203, s. 62(c); 2005-450, s. 1.)

§ 168-4.5. Penalty.

It is unlawful to disguise an animal as a service animal or service animal in training. It is unlawful to deprive a person with a disability or a person training a service animal of any rights granted the person pursuant to G.S. 168-4.2 through G.S. 168-4.4, or of any rights or privileges granted the general public with respect to being accompanied by animals or to charge any fee for the use of the service animal. Violation of this section shall be a Class 3 misdemeanor. (1985, c. 514, s. 1; 1987, ch. 401, s. 3; 1993, c. 539, s. 1120; 1994, Ex. Sess., c. 24, s. 14(c); 2005-450, s. 1.)

§ 168-4.6. Donation of dogs for training.

Dogs impounded by a local dog warden that are not redeemed shall be donated to a nonprofit agency engaged in the training of service dogs, upon the agency's request. (1985, c. 514, s. 1; 2005-450, s. 1.)

§ 168-5: Repealed by Session Laws 2005-450, s. 1, effective September 1, 2005.

§ 168-6: Repealed by Session Laws 1985, c. 571, s. 3.

Cross References. — For the Handicapped Persons Protection Act, see now 168A-1 et seq.

§§ 168-7, 168-7.1: Repealed by Session Laws 1985, c. 514, s. 1.

Cross References. — As to assistance dogs for mobility impaired persons, visually impaired persons, and hearing impaired persons, see now G.S. 168-4.2 through 168-4.6.

§ 168-8. Right to habilitation and rehabilitation services.

A person with a disability shall be entitled to such habilitation and rehabilitation services as available and needed for the development or restoration of their capabilities to the fullest extent possible. Such services shall include, but not be limited to, education, training, treatment and other services to provide for adequate food, clothing, housing and transportation during the course of education, training and treatment. A person with a disability shall be entitled to these rights subject only to the conditions and limitations established by law and applicable alike to all persons. (1973, c. 493, s. 1; 2005-450, s. 1.)

CASE NOTES

Application of Term "Visually Handicapped". — The General Assembly did not intend the narrow definition of "visually handicapped" in G.S. 111-11 to control the meaning of the term "visual disabilities" in G.S. 168-1; rather, the General Assembly intended that the definition in G.S. 111-11 would apply only when the specific term "visually handicapped" was used. Burgess v. Joseph Schlitz Brewing Co., 298 N.C. 520, 259 S.E.2d 248 (1979).

§ 168-9. Right to housing.

Each person with a disability who is a citizen shall have the same right as any other citizen to live and reside in residential communities, homes, and group homes, and no person or group of persons, including governmental bodies or political subdivisions of the State, shall be permitted, or have the authority, to prevent any person with a disability who is a citizen from living and residing in residential communities, homes, and group homes on the same basis and conditions as any other citizen. Nothing herein shall be construed to conflict with provisions of Chapter 122C of the General Statutes. (1975, c. 635; 1985, c. 589, s. 61; 2005-450, s. 1.)

Editor's Note. — Session Laws 2005-450, s. 1, appeared to be amending "168.9," rather than "168-9." This apparently is a typographical error and the amendment was given effect in this section at the direction of the Revisor of Statutes.

Legal Periodicals. — For comment on exclusionary zoning of community facilities, see 12 N.C. Cent. L.J. 167 (1980).

CASE NOTES

Application of Term "Visually Handicapped". — The General Assembly did not intend the narrow definition of "visually handicapped" in G.S. 111-11 to control the meaning of the term "visual disabilities" in G.S. 168-1; rather, the General Assembly intended that the definition in G.S. 111-11 would apply only when the specific term "visually handicapped" was used. Burgess v. Joseph Schlitz Brewing Co., 298 N.C. 520, 259 S.E.2d 248 (1979).

§ 168-10. Eliminate discrimination in treatment of persons with disabilities.

Each person with a disability shall have the same consideration as any other person for individual accident and health insurance coverage, and no insurer, service corporation, multiple employer welfare arrangement, or health maintenance organization subject to Chapter 58 of the General Statutes solely on the basis of the person's disability, shall deny such coverage or benefits. The availability of coverage or benefits shall not be denied solely because of the disability; however, any such insurer may charge the appropriate premiums or fees for the risk insured on the same basis and conditions as insurance issued to other persons, in accordance with actuarial and underwriting principles and other coverage provisions prescribed in Chapter 58 of the General Statutes. No insurer, service corporation, multiple employer welfare arrangement, or health maintenance organization subject to Chapter 58 of the General Statutes shall be prohibited from excluding by waiver or otherwise, any preexisting conditions from coverage as prescribed in G.S. 58-51-15(a)(2)b. (1977, c. 894, ss. 1, 2; 1991, c. 720, s. 80; 1999-219, s. 3.1; 2005-450, s. 1.)

CASE NOTES

Application of Term "Visually Handicapped". — The General Assembly did not intend the narrow definition of "visually handicapped" in G.S. 111-11 to control the meaning of the term "visual disabilities" in G.S. 168-1; rather, the General Assembly intended that the definition in G.S. 111-11 would apply only when the specific term "visually handicapped" was used. Burgess v. Joseph Schlitz Brewing Co., 298 N.C. 520, 259 S.E.2d 248 (1979).

§§ 168-11 through 168-13: Reserved for future codification purposes.

ARTICLE 2.

Vocational Rehabilitation.

§ 168-14. Vocational rehabilitation services for deaf persons.

The Department of Health and Human Services shall promote the employment of deaf persons in this State. The Department shall assist deaf persons whose disability limits employment opportunities in obtaining gainful employment commensurate with their abilities and in maintaining such employment.

The Department, in furtherance of these objectives, shall maintain statistics regarding trades and occupations in which deaf persons are employed.

The Department shall attempt to employ deaf persons in its vocational rehabilitation services for deaf persons and shall have at least one deaf person so employed. (1975, c. 412, s. 2; 1997-443, s. 11A.118(a).)

Editor's Note. — Session Laws 1975, c. 412, s. 3, provided: "The intent of this act is to transfer the Bureau of Labor for the Deaf from the Department of Labor to the Department of Human Resources as a Type I transfer as defined in G.S. 143A-6(a)." Section 1 of the 1975 act repealed G.S. 95-70 to 95-72, which formerly provided for the Bureau of Labor for the Deaf.

§§ 168-15 through 168-19: Reserved for future codification purposes.

ARTICLE 3.

Family Care Homes.

§ 168-20. Public policy.

The General Assembly has declared in Article 1 of this Chapter that it is the public policy of this State to provide persons with disabilities with the opportunity to live in a normal residential environment. (1981, c. 565, s. 1; 2005-450, s. 1.)

Legal Periodicals. — For survey of 1981 property law, see 60 N.C.L. Rev. 1420 (1982).

§ 168-21. Definitions.

As used in this Article:

(1) "Family care home" means a home with support and supervisory personnel that provides room and board, personal care and habilitation services in a family environment for not more than six resident persons with disabilities.

(2) "Person with disabilities" means a person with a temporary or permanent physical, emotional, or mental disability including but not limited to mental retardation, cerebral palsy, epilepsy, autism, hearing and sight impairments, emotional disturbances and orthopedic impairments but not including mentally ill persons who are dangerous to others as defined in G.S. 122C-3(11)b. (1981, c. 565, s. 1; 1985, c. 589, s. 62; 1995, c. 535, s. 36; 2002-159, s. 24; 2005-450, s. 1.)

CASE NOTES

Persons with AIDS Not Similar to Handicapped Persons. — The intent of the legislature in providing for family care homes was to provide handicapped persons with the opportunity to live in a normal residential environment; however, persons with full-blown acquired immune deficiency syndrome (AIDS) would not be similar to those handicapped persons described in this section in being able to be mainstreamed into daily living in a single family zoned neighborhood. Taylor Home of Charlotte Inc. v. City of Charlotte, 116 N.C. App. 188, 447 S.E.2d 438 (1994), cert. denied, 338 N.C. 524, 453 S.E.2d 170 (1994).

The Department of Human Resources interprets the family care home statutes to include HIV residents; however, it is not clear that the Department of Human Resources would also interpret the statutes to include residents with full-blown acquired immune deficiency syndrome (AIDS) within the definition of handicapped persons in subsection (2). Taylor Home of Charlotte Inc. v. City of Charlotte, 116 N.C. App. 188, 447 S.E.2d 438 (1994), cert. denied, 338 N.C. 524, 453 S.E.2d 170 (1994).

§ 168-22. Family care home; zoning and other purposes.

(a) A family care home shall be deemed a residential use of property for zoning purposes and shall be a permissible use in all residential districts of all political subdivisions. No political subdivision may require that a family care home, its owner, or operator obtain, because of the use, a conditional use permit, special use permit, special exception or variance from any such zoning ordinance or plan; provided, however, that a political subdivision may prohibit a family care home from being located within a one-half mile radius of an existing family care home.

(b) A family care home shall be deemed a residential use of property for the purposes of determining charges or assessments imposed by political subdivisions or businesses for water, sewer, power, telephone service, cable television, garbage and trash collection, repairs or improvements to roads, streets, and sidewalks, and other services, utilities, and improvements. (1981, c. 565, s. 1; 1993 (Reg. Sess., 1994), c. 619, s. 1; 1999-219, s. 3.2.)

CASE NOTES

A group health care facility for five nonrelated mentally handicapped individuals was a "residential" use of the dwelling. Smith v. Association for Retarded Citizens for Hous. Dev. Servs., Inc., 75 N.C. App. 435, 331 S.E.2d 324 (1985).

Cited in Taylor Home of Charlotte Inc. v. City of Charlotte, 116 N.C. App. 188, 447 S.E.2d 438 (1994).

§ 168-23. Certain private agreements void.

Any restriction, reservation, condition, exception, or covenant in any subdivision plan, deed, or other instrument of or pertaining to the transfer, sale, lease, or use of property which would permit residential use of property but prohibit the use of such property as a family care home shall, to the extent of such prohibition, be void as against public policy and shall be given no legal or equitable force or effect. (1981, c. 565, s. 1.)

Chapter 168A.

Persons with Disabilities Protection Act.

Sec.
168A-1. Title.
168A-2. Statement of purpose.
168A-3. Definitions.
168A-4. Reasonable accommodation duties.
168A-5. Discrimination in employment; exemptions.
168A-6. Discrimination in public accommodations.
168A-7. Discrimination in public service.

Sec.
168A-8. Discrimination in public transportation.
168A-9. Affirmative defenses.
168A-10. Retaliation prohibited.
168A-10.1. Dispute resolution in public services discrimination cases.
168A-11. Civil action.
168A-12. Statute of limitations.

§ 168A-1. Title.

This Chapter may be cited as the North Carolina Persons With Disabilities Protection Act. (1985, c. 571, s. 1; 1999-160, s. 1.)

Editor's Note. — Session Laws 2008-83, s. 2, provides: "The UNC-CH Division TEACCH Autism Program (TEACCH), in consultation with the School of Government and the Autism Society of NC, shall develop a video to raise awareness of autism for those involved in government and public service, including information on recognizing the signs and symptoms of autism spectrum disorders, and contacts for further information on appropriate responses to individuals with autism."

Session Laws 2009-264, s. 1, provides: "It is the intent of the General Assembly to refer to a person with a disability as a person first when directing the drafting of statutes and resolutions. The Legislative Services Office shall incorporate into its drafting training of legislative drafters the preference to avoid language that implies a person as a whole is disabled, equates a person with his or her condition, or is regarded as derogatory or demeaning. The Arc of North Carolina shall provide a list of nationally recognized descriptors to the Legislative Services Office to be used in this training."

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Session Laws 2009-451, s. 10.21D(a)-(i), provides: "There is established the Joint Study Committee on Autism Spectrum Disorder and Public Safety (Committee). The Committee shall consist of members and co-chairs appointed by the President Pro Tempore of the Senate and the Speaker of the House of Representatives. The Committee and the terms of the members shall expire when the Committee submits a final report to the General Assembly. Members serve at the pleasure of the appointing officer.

"The Committee shall study ways to increase the availability of appropriate autism-specific education and training to public safety personnel, first responder units, judges, district attorneys, magistrates, and related organizations. The Committee may also study any other issue it deems relevant to Autism Spectrum Disorder and public safety.

"The Committee shall meet upon the call of its co-chairs. A quorum of the Committee is a majority of its members. No action may be taken except by a majority vote at a meeting at which a quorum is present.

"The Committee, while in the discharge of its official duties, may exercise all powers provided for under G.S. 120-19 and Article 5A of Chapter 120 of the General Statutes. The Committee may contract for professional, clerical, or consultant services, as provided by G.S. 120-32.02.

"Members of the Committee shall receive per diem, subsistence, and travel allowance as provided in G.S. 120-3.1, and G.S. 138-5 and G.S. 138-6, as appropriate.

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"The Committee may meet at various locations around the State in order to promote greater public participation in its deliberations.

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Session Laws 2009-451, s. 28.5 is a severability clause.

Legal Periodicals. — For note on employment discrimination against the handicapped, see 16 Wake Forest L. Rev. 836 (1980).

For comment, "HIV, AIDS & Job Discrimination: North Carolina Failure and Federal Redemption," see 17 Campbell L. Rev. 115 (1995).

For article, "Wrongful Discharge and the North Carolina Equal Employment Practices Act: The Localization of Federal Discrimination Law," see 21 N.C. Cent. L.J. 54 (1995).

CASE NOTES

Legislative Intent. — Both the plain language of its provisions and the legislative history surrounding this act indicate that the legislature did not intend to protect persons infected with human immunodeficiency virus (HIV) under this particular act. Burgess v. Your House of Raleigh, Inc., 326 N.C. 205, 388 S.E.2d 134 (1990).

Act Does Not Protect Asymptomatic Persons Infected with HIV. — A person who is infected with human immunodeficiency virus (HIV), but who is otherwise asymptomatic, is not entitled to protection under the provisions of this act. Burgess v. Your House of Raleigh, Inc., 326 N.C. 205, 388 S.E.2d 134 (1990).

Plaintiff's claim was not filed within a reasonable time after the former Handicapped Persons Act right to employment statute was repealed and the new Act was enacted; since "reasonable time" cannot exceed the limitations period allowed under the new law, plaintiff had 180 days after the new Act became effective in which to sue, and plaintiff failed to file within that time period. Spaulding v. R.J. Reynolds Tobacco Co., 93 N.C. App. 770, 379 S.E.2d 49 (1989), aff'd, 326 N.C. 44, 387 S.E.2d 168 (1990).

School Suspension of ADHD Student Justified. — Plaintiffs, student's parents, offered no evidence to show a violation of any North Carolina statute or the North Carolina Constitution where student diagnosed with attention deficit hyperactivity disorder admitted that he had a gun clip with live bullets in school and he was subjected to external school suspension, his parents attended and participated in disciplinary proceedings, and he was assigned to management school which could accommodate his specialized needs. Glen ex rel. Glen v. Charlotte-Mecklenburg Sch. Bd. of Educ., 903 F. Supp. 918 (W.D.N.C. 1995).

Failure to Rehire Actionable. — An employee had an actionable claim under the NCPDPA for employment discrimination based on an employer's failure to rehire solely for unlawful motives. On remand, there was to be a hearing to determine damages, costs and attorney's fees. Johnson v. Bd. of Trs. of Durham Tech. Cmty. College, 157 N.C. App. 38, 577 S.E.2d 670 (2003).

Applied in Simmons v. Chemol Corp., 137 N.C. App. 319, 528 S.E.2d 368, 2000 N.C. App. LEXIS 311 (2000).

Cited in Gottesman v. J. H. Batten, Inc., 286 F. Supp. 2d 604, 2003 U.S. Dist. LEXIS 18228 (M.D.N.C. 2003); Sheaffer v. County of Chatham, 337 F. Supp. 2d 709, 2004 U.S. Dist. LEXIS 18982 (M.D.N.C. 2004).

§ 168A-2. Statement of purpose.

(a) The purpose of this Chapter is to ensure equality of opportunity, to promote independent living, self-determination, and economic self-sufficiency, and to encourage and enable all persons with disabilities to participate fully to the maximum extent of their abilities in the social and economic life of the State, to engage in remunerative employment, to use available public accommodations and public services, and to otherwise pursue their rights and privileges as inhabitants of this State.

(b) The General Assembly finds that: the practice of discrimination based upon a disabling condition is contrary to the public interest and to the principles of freedom and equality of opportunity; the practice of discrimination on the basis of a disabling condition threatens the rights and proper privileges of the inhabitants of this State; and such discrimination results in a failure to realize the productive capacity of individuals to their fullest extent. (1985, c. 571, s. 1; 1999-160, s. 1; 2002-163, s. 1.)

Legal Periodicals. — For comment, "HIV, AIDS & Job Discrimination: North Carolina Failure and Federal Redemption," see 17 Campbell L. Rev. 115 (1995).

CASE NOTES

Remedy Precludes Action Under State Constitution. — A visually impaired plaintiff could not bring suit under Article I, G.S. 19 of the North Carolina Constitution, as this section provides an adequate state remedy for the plaintiff's allegation that a judge discriminated against him by refusing to allow his companion dog to accompany him into the judge's courtroom, and having failed to timely use this remedy, he could not call on the court to fashion one under the state constitution. Stroud v. Harrison, 131 N.C. App. 480, 508 S.E.2d 527 (1998).

Construction with Other Laws. — The Employment Act, enacted in 1977, and The Handicapped Act, enacted in 1985, although enacted at different times, relate to the same subject matter, employment discrimination against handicapped persons, and must be construed together to ascertain legislative intent. McCullough v. Branch Banking & Trust Co., 136 N.C. App. 340, 524 S.E.2d 569 (2000).

Cited in Buchanan v. Hunter Douglas, Inc., 87 N.C. App. 84, 359 S.E.2d 271 (1987); Burgess v. Your House of Raleigh, Inc., 326 N.C. 205, 388 S.E.2d 134 (1990); McCullough v. Branch Banking & Trust Co., 35 F.3d 127 (4th Cir. 1994); Gower v. Wrenn Handling, Inc., 892 F. Supp. 724 (M.D.N.C. 1995); Sheaffer v. County of Chatham, 337 F. Supp. 2d 709, 2004 U.S. Dist. LEXIS 18982 (M.D.N.C. 2004).

§ 168A-3. Definitions.

As used in this Chapter, unless the context otherwise requires:

(1) "Disabling condition" means any condition or characteristic that renders a person a person with a disability.

(1a) "Discriminatory practice" means any practice prohibited by this Chapter.

(2) "Employer" means any person employing 15 or more full-time employees within the State, but excluding a person whose only employees are hired to work as domestic or farm workers at that person's home or farm.

(3) "Employment agency" means a person regularly undertaking with or without compensation to procure for employees opportunities to work for an employer and includes an agent of such a person.

(4) Recodified as G.S. 168A-3(7a).

(4a) "Information technology" has the same meaning as in G.S. 147-33.81. The term also specifically includes information transaction machines.

(5) Recodified as G.S. 168A-3(1).

(6) "Labor organization" means an organization of any kind, an agency or employee representation committee, a group association, or a plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment.

(7) "Person" includes any individual, partnership, association, corporation, labor organization, legal representative, trustee, receiver, and the State and its departments, agencies, and political subdivisions.

(7a) "Person with a disability" means any person who (i) has a physical or mental impairment which substantially limits one or more major life activities; (ii) has a record of such an impairment; or (iii) is regarded as having such an impairment. As used in this subdivision, the term:

a. "Physical or mental impairment" means (i) any physiological disorder or abnormal condition, cosmetic disfigurement, or anatomical loss, caused by bodily injury, birth defect or illness, affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or (ii) any mental disorder, such as mental retardation, organic brain syndrome, mental illness, specific learning disabilities, and other developmental disabilities, but (iii) excludes (A) sexual preferences; (B) active alcoholism or drug addiction or abuse; and (C) any disorder, condition or disfigurement which is temporary in nature leaving no residual impairment.

b. "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

c. "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits major life activities.

d. "Is regarded as having an impairment" means (i) has a physical or mental impairment that does not substantially limit major life activities but that is treated as constituting such a limitation; (ii) has a physical or mental impairment that substantially limits major life activities because of the attitudes of others; or (iii) has none of the impairments defined in paragraph a. of this subdivision but is treated as having such an impairment.

(8) "Place of public accommodations" includes, but is not limited to, any place, facility, store, other establishment, hotel, or motel, which supplies goods or services on the premises to the public or which solicits or accepts the patronage or trade of any person.

(9) "Qualified person with a disability" means:

a. With regard to employment, a person with a disability who can satisfactorily perform the duties of the job in question, with or without reasonable accommodation, (i) provided that the person with a disability shall not be held to standards of performance different from other employees similarly employed, and (ii) further provided that the disabling condition does not create an unreasonable risk to the safety or health of the person with a disability, other employees, the employer's customers, or the public;

b. With regard to places of public accommodation a person with a disability who can benefit from the goods or services provided by the place of public accommodation; and

c. With regard to public services and public transportation a person with a disability who meets prerequisites for participation that are uniformly applied to all participants, such as income or residence, and that do not have the effect of discriminating against persons with a disability.

(10) "Reasonable accommodations" means:

a. With regard to employment, making reasonable physical changes in the workplace, including, but not limited to, making facilities accessible, modifying equipment and providing mechanical aids to assist in operating equipment, or making reasonable changes in the duties of the job in question that would accommodate the known disabling conditions of the person with a disability seeking the job in question by enabling him or her to satisfactorily perform the duties of that job; provided that "reasonable accommodation" does not require that an employer:

1. Hire one or more employees, other than the person with a disability, for the purpose, in whole or in part, of enabling the person with a disability to be employed; or
2. Reassign duties of the job in question to other employees without assigning to the employee with a disability duties that would compensate for those reassigned; or
3. Reassign duties of the job in question to one or more other employees where such reassignment would increase the skill, effort or responsibility required of such other employee or employees from that required prior to the change in duties; or
4. Alter, modify, change or deviate from bona fide seniority policies or practices; or
5. Provide accommodations of a personal nature, including, but not limited to, eyeglasses, hearing aids, or prostheses, except under the same terms and conditions as such items are provided to the employer's employees generally; or
6. Repealed by Session Laws 2002-163, s. 2, effective January 1, 2003.
7. Make any changes that would impose on the employer an undue hardship.

b. With regard to a place of public accommodations, making reasonable efforts to accommodate the disabling conditions of a person with a disability, including, but not limited to, making facilities accessible to and usable by persons with a disability, redesigning equipment, provide mechanical aids or other assistance, or using alternative accessible locations, provided that reasonable accommodations does not require efforts which would impose an undue hardship on the entity involved.

(11) "Undue hardship" means a significant difficulty or expense. The following factors shall be considered in determining whether an accommodation would impose an undue hardship:

a. The nature and cost of the accommodations needed under this Chapter.

b. The overall financial resources of the particular facility or facilities involved in the provision of the accommodation, the number of persons employed at the facility, the effect on expenses and resources at the facility, and any other impact on the operation of the facility.

c. The overall effect on the financial resources of the covered entity, the number of persons employed by the covered entity, and the number, type, and location of the covered entity's facilities.

d. The type of operations of the covered entity, including the composition, structure, and functions of the workforce of the entity, the geographic separateness of the particular facility to the covered entity, and the administrative or fiscal relationship of the particular facility to the covered entity. (1985, c. 571, s. 1; 1999-160, s. 1; 1999-456, s. 44; 2002-163, s. 2.)

Editor's Note. — Session Laws 2002-163, s. 2, in repealing sub-subdivision (10)a.6, redesignated sub-subdivision (10)a.7 as (10)a.6. The numbering of the sub-subdivisions has been retained pursuant to the direction of the Revisor of Statutes.

Subdivisions (4) and (5) were recodified as subdivisions (7a) and (1), respectively, at the direction of the Revisor of Statutes, in order to order the definitions alphabetically.

Legal Periodicals. — For note on AIDS and employment discrimination, see 23 Wake Forest L. Rev. 305 (1988).

For note, "North Carolina's New AIDS Discrimination Protection: Who Do They Think They're Fooling?," see 12 Campbell L. Rev. 475 (1990).

For note, "Rights of HIV-Infected Employees and Job Applicants Under North Carolina Law: Lots of Legislative Activity, But Just How Much Protection Does It Afford?," see 68 N.C. L. Rev. 1193 (1990).

For comment, "HIV, AIDS & Job Discrimination: North Carolina Failure and Federal Redemption," see 17 Campbell L. Rev. 115 (1995).

CASE NOTES

Construction with Other Law. — Plaintiff was required to have commenced proceedings under state law before commencing proceedings with the EEOC where the North Carolina Persons With Disabilities Protection Act (NCPDPA) provided plaintiff with a remedy under state law. Metts v. North Carolina Dep't of Revenue, — F. Supp. 2d —, 2000 U.S. Dist. LEXIS 2567 (E.D.N.C. Jan. 9, 2000), aff'd, 230 F.3d 1353 (4th Cir. 2000).

Person with Disability. — Employee's act of completing forms indicating that medications were administered to emotionally disturbed youths before medications were actually administered violated state law and justified termination of employment; employee did not establish that his employment was terminated in violation of the North Carolina Persons with Disabilities Protection Act, G.S. 168A-1 to 168A-12, or the Americans with Disabilities Act, 42 U.S.C.S. § 12101 et seq., because his conduct was related to problems the employee was having with depression, migraines, and a sleeping disorder. Leeks v. Cumberland County Mental Health Developmental Disability & Substance Abuse Facility, 154 N.C. App. 71, 571 S.E.2d 684, 2002 N.C. App. LEXIS 1415 (2002).

Insurance investigator's wrongful-discharge claim on the basis of disability under North Carolina law failed because he could not show that he was regarded as disabled under North Carolina law since his employer continued to employ him and even increased his salary after it removed large-loss claims from his job responsibilities. Rishel v. Nationwide Mut. Ins. Co., 297 F. Supp. 2d 854, 2003 U.S. Dist. LEXIS 23463 (M.D.N.C. 2003).

Person who had eye disease but whose vision was functioning normally with glasses was not visually disabled within the meaning of G.S. 168-1 and thus was not a "handicapped person" who was granted a right of employment by former G.S. 168-6. Burgess v. Joseph Schlitz Brewing Co., 298 N.C. 520, 259 S.E.2d 248 (1979).

Impaired Vision Due to Diabetes. — Appellate court affirmed the finding that an employee with severely impaired vision due to diabetes was a handicapped person, and his firing based on inability to keep up with his case load, was discrimination based on his disability. State Dep't of HHS v. Maxwell, 156 N.C. App. 260, 576 S.E.2d 688, 2003 N.C. App. LEXIS 131 (2003).

Plaintiff's rhinitis was not a "physical impairment" under this section because his medical records established that his condition was temporary; nor did his condition render him "handicapped" under this section. Simmons v. Chemol Corp., 137 N.C. App. 319, 528 S.E.2d 368, 2000 N.C. App. LEXIS 311 (2000).

Lower Back Pain. — Where plaintiff experienced some pain in her lower back upon repetitive "twisting, turning, reaching, stooping, bending," her physical impairment did not limit a "major life activity" so as to bring her under the purview of subdivision (4)(i) of this section. Gravitte v. Mitsubishi Semiconductor Am., Inc., 109 N.C. App. 466, 428 S.E.2d 254 (1993), disc. rev. denied, 334 N.C. 163, 432 S.E.2d 360 (1993).

State personnel commission's determination that state employee who had severe asthma was not "qualified person with a disability" was not supported by substantial evidence where the fact that her solution for a clean work environment was a job transfer did not support a conclusion that employee did not properly prove that she could perform her job with reasonable accommodations. Campbell v. N.C. DOT - DMV, 155 N.C. App. 652, 575 S.E.2d 54, 2003 N.C. App. LEXIS 24 (2003), cert. denied, 357 N.C. 62, 579 S.E.2d 386 (2003).

Duty of Employer to Make Accommodations. — Because petitioner was not a "qualified handicapped person," respondent was under no duty to make accommodations for petitioner's physical condition. White v. North Carolina Dep't of Cor., 117 N.C. App. 521, 451 S.E.2d 876 (1995).

A discussion of reasonable accommodations under this section is irrelevant where plaintiff's claim is based on wrongful discharge in violation of public policy under G.S. 143-422.2. Simmons v. Chemol Corp., 137 N.C. App. 319, 528 S.E.2d 368, 2000 N.C. App. LEXIS 311 (2000).

Applied in Burgess v. Your House of Raleigh, Inc., 326 N.C. 205, 388 S.E.2d 134 (1990); Campbell v. N.C. DOT - DMV, 155 N.C. App. 652, 575 S.E.2d 54, 2003 N.C. App. LEXIS 24 (2003).

Cited in Stroud v. Harrison, 131 N.C. App. 480, 508 S.E.2d 527 (1998).

§ 168A-4. Reasonable accommodation duties.

(a) A qualified person with a disability requesting a reasonable accommodation must apprise the employer, employment agency, labor organization, or place of public accommodation of his or her disabling condition, submit any necessary medical documentation, make suggestions for such possible accommodations as are known to such person with a disability, and cooperate in any ensuing discussion and evaluation aimed at determining possible or feasible accommodations.

(b) Once a qualified person with a disability has requested an accommodation, or if a potential accommodation is obvious in the circumstances, an employer, employment agency, labor organization or place of public accommodation shall investigate whether there are reasonable accommodations that can be made and make reasonable accommodations as defined in G.S. 168A-3(10). (1985, c. 571, s. 1; 1999-160, s. 1.)

CASE NOTES

Evidence Insufficient to Support Finding of Reasonable Accommodation. — State personnel commission's determination that state employers offers to accommodate employee with severe asthma, which included providing her with a facemask and removing her if painting was to occur in her area, was not supported by substantial evidence in light of the severity of the employee's last asthma attack, which nearly caused her death and required five days of hospitalization. Campbell v. N.C. DOT - DMV, 155 N.C. App. 652, 575 S.E.2d 54, 2003 N.C. App. LEXIS 24 (2003), cert. denied, 357 N.C. 62, 579 S.E.2d 386 (2003).

Cited in Stroud v. Harrison, 131 N.C. App. 480, 508 S.E.2d 527 (1998).

§ 168A-5. Discrimination in employment; exemptions.

(a) Discriminatory practices. — It is a discriminatory practice for:

(1) An employer to fail to hire or consider for employment or promotion, to discharge, or otherwise to discriminate against a qualified person with a disability on the basis of a disabling condition with respect to compensation or the terms, conditions, or privileges of employment;

(2) An employment agency to fail or refuse to refer for employment, or otherwise to discriminate against a qualified person with a disability on the basis of a disabling condition;

(3) A person controlling an apprenticeship, on-the-job, or other training or retraining program, to discriminate against a qualified person with a disability on the basis of a disabling condition in admission to, or employment in, a program established to provide apprenticeship or other training;

(4) An employer or employment agency to require an applicant to identify himself as a person with a disability prior to a conditional offer of employment; however, any employer may invite an applicant to identify himself as a person with a disability in order to act affirmatively on his behalf; or

(5) An employer, labor organization, or employment agency to fail to meet the duties imposed on them by G.S. 168A-4(b).

(b) Exemptions. — It is not a discriminatory action for an employer, employment agency, or labor organization:

(1) To make an employment decision on the basis of State and federal laws or regulations imposing physical, health, mental or psychological job requirements;

(2) To fail to hire, transfer or promote, or to discharge a person with a disability who has a history of drug abuse or who is unlawfully using drugs where the job in question is in an establishment that manufactures, distributes, dispenses, conducts research, stores, sells or otherwise handles controlled substances regulated by the North Carolina Controlled Substances Act, G.S. 90-86 et seq.;

(3) To fail to hire, transfer, or promote, or to discharge a person with a disability because the person has a communicable disease which would disqualify a person without a disability from similar employment;

(4) To fail to make reasonable accommodations where the person with a disability has not fulfilled the duties imposed by G.S. 168A-4;

(5) To inquire whether a person has the ability to perform the duties of the job in question;

(6) To require or request a person to undergo a medical examination, which may include a medical history, for the purpose of determining the person's ability or capacity to safely and satisfactorily perform the duties of available jobs for which the person is otherwise qualified, or to aid in determining possible accommodations for a disabling condition, provided (i) that an offer of employment has been made on the condition that the person meets the physical and mental requirements of the job with or without reasonable accommodation; and (ii) that the examination, unless limited to determining the extent to which a person's disabling condition would interfere with his or her ability or capacity to safely and satisfactorily perform the duties of the job in question or the possible accommodations for a disabling condition, is required of all persons conditionally offered employment for the same position regardless of disabling condition;

(7) To obtain medical information or to require or request a medical examination where such information or examination is for the purpose of establishing an employee health record;

(8) To administer pre-employment tests, provided that the tests (i) measure only job-related abilities, (ii) are required of all applicants for the same position unless such tests are limited to determining the extent to which the person's disabling condition would interfere with his or her ability to safely and satisfactorily perform the duties of the job in question or the possible accommodations for the job in question, and (iii) accurately measure the applicant's aptitude, achievement level, or whatever factors they purport to measure rather than reflecting the impaired sensory, manual or speaking skills of a person with a disability except when those skills are requirements of the job in question, provided that an employer shall not be liable for improper testing which was administered by a State agency acting as an employment agency. (1985, c. 571, s. 1; 1999-160, s. 1.)

Legal Periodicals. — For note on AIDS and employment discrimination, see 23 Wake Forest L. Rev. 305 (1988).

For comment, "HIV, AIDS & Job Discrimination: North Carolina Failure and Federal Redemption," see 17 Campbell L. Rev. 115 (1995).

CASE NOTES

Claim based on former § 168-6 was not subject to dismissal under § 1A-1, Rule 12 (b)(6), notwithstanding the repeal of G.S. 168-6, where it was clear that the complaint was sufficient to put the defendants on notice of the events or transactions which produced the claim, and even though the General Assembly did not include a saving clause in the repeal of G.S. 168-6, the same remedy was immediately available to the plaintiff for the same injury in the new act, without any intervening period in which the plaintiff's claim was without legal redress. It would be a grave injustice to foreclose the remedy of the plaintiff and other similarly situated persons when the General Assembly so clearly did not intend this particular cause of action to expire. Buchanan v. Hunter Douglas, Inc., 87 N.C. App. 84, 359 S.E.2d 271, cert. denied, 321 N.C. 296, 362 S.E.2d 779 (1987), decided under former § 168-6.

Failure to Rehire Actionable. — An employee had an actionable claim for employment discrimination based on an employer's failure to rehire solely for unlawful motives. Johnson v. Bd. of Trs. of Durham Tech. Cmty. College, 157 N.C. App. 38, 577 S.E.2d 670 (2003).

Construction with Americans with Disabilities Act. — The standards under this act are narrower than under the Americans with Disabilities Act (ADA), 42 U.S.C. § 12101-12213, and if a person is not disabled for the purposes of the ADA, she similarly is not disabled for the purposes of this act. Williams v. Channel Master Satellite Sys., 101 F.3d 346 (4th Cir. 1996), cert. denied, 520 U.S. 1240, 117 S. Ct. 1844, 137 L. Ed. 2d 1048 (1997).

Applied in Burgess v. Your House of Raleigh, Inc., 326 N.C. 205, 388 S.E.2d 134 (1990).

Cited in McCullough v. Branch Banking & Trust Co., 35 F.3d 127 (4th Cir. 1994); Stroud v. Harrison, 131 N.C. App. 480, 508 S.E.2d 527 (1998); Wilkins v. Guilford County, 158 N.C. App. 661, 582 S.E.2d 74, 2003 N.C. App. LEXIS 1224 (2003); Sabrowski v. Albani-Bayeux, Inc., — F. Supp. 2d —, 2003 U.S. Dist. LEXIS 23242 (M.D.N.C. Dec. 19, 2003).

§ 168A-6. Discrimination in public accommodations.

It is a discriminatory practice for a person to deny a qualified person with a disability the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodation on the basis of a disabling condition. In the area of structural modifications, this section may be satisfied by compliance with the North Carolina Building Code. (1985, c. 571, s. 1; 1999-160, s. 1.)

CASE NOTES

Cited in McCullough v. Branch Banking & Trust Co., 35 F.3d 127 (4th Cir. 1994); Stroud v. Harrison, 131 N.C. App. 480, 508 S.E.2d 527 (1998).

§ 168A-7. Discrimination in public service.

(a) It is a discriminatory practice for a State department, institution, or agency, or any political subdivision of the State or any person that contracts with the above for the delivery of public services including but not limited to education, health, social services, recreation, and rehabilitation, to refuse to provide reasonable aids and adaptations necessary for a known qualified person with a disability to use or benefit from existing public services operated by such entity; provided that the aids and adaptations do not impose an undue hardship on the entity involved. This subsection includes equivalent services provided via information technology.

(b) A State department, institution, or agency, any political subdivision of the State, and any person that contracts with these entities for the delivery of public services shall administer its services programs, and activities in the most integrated setting appropriate to the needs of persons with disabilities. (1985, c. 571, s. 1; 1999-160, s. 1; 2002-163, s. 3.)

CASE NOTES

Cited in Ragan v. County of Alamance, 98 N.C. App. 636, 391 S.E.2d 825 (1990); McCullough v. Branch Banking & Trust Co., 35 F.3d 127 (4th Cir. 1994); Stroud v. Harrison, 131 N.C. App. 480, 508 S.E.2d 527 (1998).

§ 168A-8. Discrimination in public transportation.

It is a discriminatory practice for any transportation system providing transportation to the general public to fail to ensure access to and the benefits of public transportation to a qualified person with a disability; however, public transportation systems may use alternative methods to provide transportation for persons with a disability, as long as persons with a disability are offered transportation that, in relation to the transportation offered to other persons, is:

(1) In a similar geographic area of operation;
(2) For fares not greater in price;
(3) With similar or no restrictions as to trip purpose;
(4) With reasonable response time; and
(5) With similar hours of operations.

Nothing in this section shall apply to privately owned, local transit or transportation systems existing on October 1, 1985, or to interstate air carriers complying with federal regulations promulgated by the Civil Aeronautics Board and administered by the United States Department of Transportation. (1985, c. 571, s. 1; 1999-160, s. 1.)

CASE NOTES

Cited in McCullough v. Branch Banking & Trust Co., 35 F.3d 127 (4th Cir. 1994); Stroud v. Harrison, 131 N.C. App. 480, 508 S.E.2d 527 (1998).

§ 168A-9. Affirmative defenses.

Any employer may assert affirmative defenses in any action brought under this Chapter. This section shall not create any inference that an employment action which is not listed as an affirmative defense is therefore, by implication, a discriminatory practice, so long as the employment action is not otherwise prohibited by this Chapter. The following is a non-exclusive list of affirmative defenses:

(1) The failure of the qualified person with a disability to comply with or meet the employer's work rules and policies or performance standards, provided that such person is not held to rules or standards different from other employees without a disability similarly employed;
(2) The excessive, willful or habitual tardiness or absence of a qualified person with a disability, provided that the standard used by the employer in determining whether such tardiness or absence is excessive is the same as that applied by the employer to employees without a disability similarly employed; or
(3) A bona fide seniority or merit system, or a system which measures earnings by quantity or quality of work or production, or differences in location of employment. (1985, c. 571, s. 1; 1999-160, s. 1.)

Legal Periodicals. — For note on AIDS and employment discrimination, see 23 Wake Forest L. Rev. 305 (1988).

For article, "North Carolina Employment Law After Coman: Reaffirming Basic Rights in the Workplace," see 24 Wake Forest L. Rev. 905 (1989).

CASE NOTES

Applied in Campbell v. N.C. DOT - DMV, 155 N.C. App. 652, 575 S.E.2d 54, 2003 N.C. App. LEXIS 24 (2003).

§ 168A-10. Retaliation prohibited.

No employer shall discharge, expel, refuse to hire, or otherwise discriminate against any person or applicant for employment, nor shall any employment agency discriminate against any person, nor shall a labor organization discriminate against any member or applicant for membership because such person has opposed any practice made a discriminatory practice by this Chapter or because he has testified, assisted or participated in any manner in proceedings under this Chapter. (1985, c. 571, s. 1.)

§ 168A-10.1. Dispute resolution in public services discrimination cases.

The North Carolina Office on the Americans with Disabilities Act shall adopt rules to provide a consistent and comprehensive mechanism for accommodating requests regarding accessibility to public services, and shall adopt dispute resolution procedures to govern responsiveness to those requests. This section does not authorize the North Carolina Office on the Americans with Disabilities Act to adopt rules or procedures that apply to the resolution of matters constituting grounds for a contested case under Chapter 126 of the General Statutes. (2002-163, s. 4.)

§ 168A-11. Civil action.

(a) A person with a disability aggrieved by a discriminatory practice prohibited by G.S. 168A-5 through 168A-8, or a person aggrieved by conduct prohibited by G.S. 168A-10, may bring a civil action to enforce rights granted or protected by this Chapter against any person described in G.S. 168A-5 through 168A-8 or in G.S. 168A-10 who is alleged to have committed such practices or engaged in such conduct. The action shall be commenced in superior court in the county where the alleged discriminatory practice or prohibited conduct occurred or where the plaintiff or defendant resides. Such action shall be tried to the court without a jury.

(b) Any relief granted by the court shall be limited to declaratory and injunctive relief, including orders to hire or reinstate an aggrieved person or admit such person to a labor organization. In a civil action brought to enforce provisions of this Chapter relating to employment, the court may award back pay. Any such back pay liability shall not accrue from a date more than two years prior to the filing of an action under this Chapter. Interim earnings or amounts earnable with reasonable diligence by the aggrieved person shall operate to reduce the back pay otherwise allowable.

(c) No court shall have jurisdiction over an action filed under this Chapter where the plaintiff has commenced federal judicial or administrative proceedings under Section 503 or Section 504 of the Vocational Rehabilitation Act of 1973, 29 U.S.C. §§ 793 and 794, as amended, or federal regulations promulgated under those sections; or under the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq., as amended, or federal regulations promulgated under that Act, involving or arising out of the facts and circumstances involved in the alleged discriminatory practice under this Chapter. If such proceedings are commenced after a civil action has been commenced under this Chapter, the State court's jurisdiction over the civil action shall end and the action shall be forthwith dismissed.

(d) In any civil action brought under this Chapter, the court, in its discretion, may award reasonable attorney's fees to the substantially prevailing party as part of costs. (1985, c. 571, s. 1; 1999-160, s. 1.)

CASE NOTES

Claim based on former § 168-6 was not subject to dismissal under § 1A-1, Rule 12 (b)(6), notwithstanding the repeal of G.S. 168-6, where it was clear that the complaint was sufficient to put the defendants on notice of the events or transactions which produced the claim, and even though the General Assembly did not include a saving clause in the repeal of G.S. 168-6, the same remedy was immediately available to the plaintiff for the same injury in the new act, without any intervening period in which the plaintiff's claim was without legal redress. It would be a grave injustice to foreclose the remedy of the plaintiff and other similarly situated persons when the General Assembly so clearly did not intend this particular cause of action to expire. Buchanan v. Hunter Douglas, Inc., 87 N.C. App. 84, 359 S.E.2d 271, cert. denied, 321 N.C. 296, 362 S.E.2d 779 (1987), decided under former § 168-6.

Relation to Federal Laws. — Where plaintiff student's claims against defendant school district under the North Carolina Persons with Disabilities Protection Act, G.S. 168A-1 et seq., arose from the same facts and circumstances as the Americans with Disabilities Act of 1990, 42 U.S.C.S. § 12181 et seq., and the Rehabilitation Act of 1973 claims, which had failed, the student's claims under G.S. 168A-11(a) also failed. Cone v. Randolph County Schs., 302 F. Supp. 2d 500, 2004 U.S. Dist. LEXIS 1727 (M.D.N.C. 2004).

G.S. 168A-11(c) required dismissal of the pharmacist's claim under the Persons with Disabilities Protection Act because the pharmacist had already commenced a federal administrative proceeding when he filed a claim with the EEOC. Bowling v. Margaret R. Pardee Mem'l Hosp., — N.C. App. —, 635 S.E.2d 624, 2006 N.C. App. LEXIS 2115 (2006), appeal dismissed, cert. denied, 361 N.C. 425, 648 S.E.2d 206 (2007).

Status Essential to Cause of Action. — In order to state a cause of action for violation of the right to employment granted in former G.S. 168-6, plaintiff was required to establish that he was a "handicapped person" to whom such rights are granted. Burgess v. Joseph Schlitz Brewing Co., 298 N.C. 520, 259 S.E.2d 248 (1979).

When Judgment Denied Conduct of Hearing on Remand Ordered. — Where judgment should have been entered for an employee, on remand the trial court was to conduct a hearing on damages, costs and attorney's fees that should be awarded to the employee under G.S. 168A-11 and caselaw. Johnson v. Bd. of Trs. of Durham Tech. Cmty. College, 157 N.C. App. 38, 577 S.E.2d 670 (2003).

Cited in Jarrell v. Town of Topsail Beach, 105 N.C. App. 331, 412 S.E.2d 680 (1992); McCullough v. Branch Banking & Trust Co., 35 F.3d 127 (4th Cir. 1994); Stroud v. Harrison, 131 N.C. App. 480, 508 S.E.2d 527 (1998); Simmons v. Chemol Corp., 137 N.C. App. 319, 528 S.E.2d 368, 2000 N.C. App. LEXIS 311 (2000); Metts v. North Carolina Dep't of Revenue, — F. Supp. 2d —, 2000 U.S. Dist. LEXIS 2567 (E.D.N.C. Jan. 9, 2000); Sheaffer v. County of Chatham, 337 F. Supp. 2d 709, 2004 U.S. Dist. LEXIS 18982 (M.D.N.C. 2004).

§ 168A-12. Statute of limitations.

A civil action regarding employment discrimination brought pursuant to this Chapter shall be commenced within 180 days after the date on which the aggrieved person became aware of or, with reasonable diligence, should have become aware of the alleged discriminatory practice or prohibited conduct. A civil action brought pursuant to this Chapter regarding any other complaint of discrimination shall be commenced within two years after the date on which the aggrieved person became aware of or, with reasonable diligence, should have become aware of the alleged discriminatory practice or prohibited conduct. (1985, c. 571, s. 1; 1999-160, s. 1.)

CASE NOTES

Action Under Federal Rehabilitation Act. — When a state has enacted a counterpart to the federal Rehabilitation Act, the statute of limitations of the state counterpart and not the personal injury statute is most analogous and therefore, the most appropriate limitations period. Because this Act is the most analogous statute to the Rehabilitation Act, an action under the federal act must be brought within this section's 180-day period. McCullough v. Branch Banking & Trust Co., 35 F.3d 127 (4th Cir. 1994), cert. denied, 513 U.S. 1151, 115 S. Ct. 1101, 130 L. Ed. 2d 1069 (1995).

Suit Under Americans with Disabilities Act. — A visually impaired man's discrimination suit was barred by the 180-day limitations period of this section, where he alleged that a judge barred his companion dog from the courtroom in violation of G.S. 168-4.2 and federal law. Stroud v. Harrison, 131 N.C. App. 480, 508 S.E.2d 527 (1998).

Claim Barred. — Where former employee was officially aware of his termination on January 7, 1993, when he received COBRA eligibility form, but did not file suit until January 31, 1994, his claim was time-barred; he should have filed action within 180 days of January 7, 1993, in order to seek relief. Gower v. Wrenn Handling, Inc., 892 F. Supp. 724 (M.D.N.C. 1995).

Because the employee did not file his claim under the NCPDPA until 273 days after the last alleged discriminatory act, the employee's claim was time-barred by the 180 day statute of limitations set forth in G.S. 168A-12. Gottesman v. J. H. Batten, Inc., 286 F. Supp. 2d 604, 2003 U.S. Dist. LEXIS 18228 (M.D.N.C. 2003).

Applied in Johnson v. Bd. of Trs. of Durham Tech. Cmty. College, 157 N.C. App. 38, 577 S.E.2d 670 (2003).

Cited in Johnson v. Bd. of Trs. of Durham Tech. Cmty. College, 157 N.C. App. 38, 577 S.E.2d 670 (2003); Badgett v. Fed. Express Corp., 378 F. Supp. 2d 613, 2005 U.S. Dist. LEXIS 19307 (M.D.N.C. Apr. 7, 2005); Bowling v. Margaret R. Pardee Mem'l Hosp., — N.C. App. —, 635 S.E.2d 624, 2006 N.C. App. LEXIS 2115 (2006).

[illegible] 42 U.S.C. § 12101, et seq., [illegible] menced under that Act, involving or arising out of the facts and circumstances involved in the alleged discriminatory practice under this Chapter. If such proceedings are commenced after a civil action has been commenced under this Chapter, [illegible]

[illegible]

Relation to Federal Claims. — Where plaintiff [illegible] under the [illegible] Persons with Disabilities Protection Act, G.S. 168A-1 et seq., [illegible] the Americans with Disabilities Act of 1990, 42 U.S.C.S. § 12101 et seq., [illegible] Rehabilitation Act of 1973 [illegible]

G.S. 168A-12 [illegible]

[illegible] G.S. 168A-11 [illegible] Johnson v. Bd. of Trs. of Durham Tech. Cmty. College, 157 N.C. App. 38, 577 S.E.2d 670 (2003).

Cited in [illegible]; McCullough v. Branch Banking & Trust Co., 35 F.3d 127 (4th Cir. 1994); Stroud v. Harrison, 131 N.C. App. 480, 508 S.E.2d 527 (1998); Simmons v. Chemol Corp., 137 N.C. App. 319, 528 S.E.2d 368, 2000 N.C. App. LEXIS 371 (2000); [illegible] v. North Carolina Dep't of Revenue, [illegible] (E.D.N.C. Jan. 9, 2000); Sheaffer v. County of Chatham, [illegible] (M.D.N.C. 2004).

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